

TAX DELINQUENCIES AND ITS IMPACTS ON TAX ADMINISTRATION IN NIGERIA\*

**Abstract**

The concept of 'Tax delinquencies' on its own is a specie of criminal tax offences and other infractions committed by tax payers against tax authorities. Tax delinquencies are deliberate tax evasion and avoidance related devices by the tax payers principally meant to mislead the appropriate tax authority in order to escape tax liability.<sup>1</sup> Both tax evasion and avoidance constitute the greatest impediment to revenue generation in Nigeria through taxation thereby denying government at all levels the much desired funds for development. This work therefore examines the nature, causes, effects of tax evasion and avoidance on tax administration in Nigeria, measures put in place to curtail the menace and proper recommendations.

**Keywords:** Tax Evasion, Tax avoidance, Appropriate Tax authority, Revenue Generation and Tax Liability.

**1. Introduction**

Tax delinquencies are species of tax crimes/offences, infractions including all manners of breaches of tax obligations in the form of omission or commission which attracts either civil or penal sanctions.<sup>2</sup> Tax delinquencies on the other hand are evasion related activities or devices on the part of tax payers, corporate or non-corporate, meant to mislead the tax authority in order to escape assessment or proper assessment and payment of correct tax due. It involves direct subterfuge, some sort of camouflage, concealment, or colouration in order to obscure relevant records.<sup>3</sup> According to Ayua,<sup>4</sup>

One of the greatest problems facing the country's tax administration is the problems of tax avoidance and evasion which is prevalent in the country. There is general agreement from many quarters that there is a tremendous gap between actual and potential tax collections. The government for instance, has repeatedly complained of the widespread incidence of tax avoidance and evasion in the country with companies and other taxable persons employing all kinds of tax avoidance devices to escape or minimize their taxes not to talk of deliberately fraudulent ways and means of evading tax altogether, sometimes with the connivance of the revenue officials.

It be pointed out that these are problems that face every tax system in the world over, but that of Nigeria seems to be unique due to the fact that there is non-existing or clearly defined comprehensive tax avoidance and evasion legislation, as there exists in Britain, couple with the lack of requisite man power to tackle the menace.<sup>5</sup> Therefore, the two (2) notable tax delinquencies in Nigeria are tax avoidance and tax evasion. Tax avoidance can be understood to mean:

Some act by which a person so arranges his affairs that he is liable to pay less tax than he would have paid but for the arrangement. Thus, the situation which he brings about is one in which he is legally in the right except so far as some special rule may be introduced that puts him in the wrong. Tax evasion on other hand, connotes all those activities which are responsible for a person not paying the tax that the existing law charges upon his income... he is in the wrong, though his wrong doings may range from the main of deliberately fraudulent return to a mere failure to make his return or to pay his tax at the proper time.<sup>6</sup>

In *7Up Bottling Company Plc V Lagos State Internal Revenue Board*<sup>7</sup>, the Court of Appeal under scored the distinction between Tax Avoidance and Tax Invasion when it held that: 'Whereas tax avoidance is permissible, tax invasion on the other hand, is illegal and gives rights to penalties and in some cases imprisonment. This is implicit in the provisions of the statute which are quite detailed'. Ola<sup>8</sup> elaborated and distinguished the differences between 'tax avoidance and tax evasion' in the following ways: i) While tax evasion is a criminal act since it is prohibited, tax avoidance is not; ii) Tax evader may be liable to fines and penalties and at times imprisonment or both; tax avoider does not face any of that; ii) Could be due to fraud or default; tax evader is not etc. This work therefore, discusses the nature and reasons for tax evasion and tax avoidance, the effects on tax administration in Nigeria, the necessary legal frameworks and safety nets provided to stem the menace in form of penal sanctions. The work concludes with recommendations aimed at addressing the challenges.

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<sup>1</sup> Dominic Asada, 'Corporate Tax Delinquencies: Analysis, Laws, cases and Recommendations for a sanitized regime (In topical issues on Nigeria Tax Laws and Related Areas) Ed Josephine, A. Agbonika (Ababa press ltd) 2015, page 18

<sup>2</sup> Black's Law Dictionary, 6<sup>th</sup> Edition, USA West Publishing Co: P.428, Nchi, SI; *Nigerian Law Dictionary*, New Edition, Green World Publishing Company Ltd. 2010, P. 182

<sup>3</sup> Dominic Asada op cit, p 18

<sup>4</sup> I. A. Ayua, *The Nigerian Tax Laws*, Spectrum Law Publishing (1996) P.345

<sup>5</sup> Ibid

<sup>6</sup> Meschack N. Umenweke, 'Tax Law and Its Implication for Foreign Investments in Nigeria' (2008), citing – The Royal Commission on 'Taxation of Profits and Income' distinguishing between Tax Avoidance and Evasion, P. 173

<sup>7</sup> (2000) 3 NWLR (Part 650) 665 at 591

<sup>8</sup> *Income Tax Law in Nigeria*, (1993) 3<sup>rd</sup> ed. Heineman Educational Books Ltd, U.K, 376

## **2. Nature of Tax Evasion and Avoidance in Nigeria**

**Tax Evasion:** The Personal Income Tax Act 2004 (as amended) and now repealed with other tax statutes did not specify or define what amounts to tax evasion, but it rather enumerates such activities that amounts or result to tax evasion, which includes, but not limited to:

Any person making an incorrect return by omitting or understanding any Income liable to tax under this Act,

- i) Gives an incorrect information in relation to a matter or thing affecting the liability of tax of any taxable person;
- ii) Keep or prepare false accounts or particulars concerning any income on which tax is payable under this Act;
- iii) Unlawfully refuses or neglects to pay tax;
- iv) Obtaining tax clearance certificate through misrepresentation, forgery or falsifications;
- v) Obstructing a tax collector or impersonating an authorized tax officers etc.<sup>9</sup>

The Federal Inland Revenue Establishment (FIRS) Act (2007)<sup>10</sup> now repealed, made provisions which enumerated such criminal activities amounting to tax evasion, the penalties and prosecution generally. Deducing from the above, it is pertinent to state that the basic elements for establishing the offence of tax evasion against a tax payer are as follows:

- (a) The statute must have stipulated payment of the tax,
- (b) The tax has become due for payment on the tax-payer
- (c) He has completely and deliberately ignored it or has under declared his income so as to enable him pay less tax.
- (d) The act is illegal and punishable under the law.<sup>11</sup>

It is worthy of note to state that criminal sanctions enforced by the various courts is in the form of fine or punishment, upon the prosecuting agency establishing the alleged offences against the defendant beyond reasonable doubt. The offences are generally of two types which comprises of those contained in the tax statutes and in other criminal statutes such as the Administration of Criminal Justice Act (ACJA) 2015, the ICPC Act, EFCC Act, the Penal Code, Criminal Code and the respective Administration of Criminal Justice Law of the respective states of the federation.<sup>12</sup> It should be reiterated that apart from the species of tax evasion as provided under the repealed Personal Income Tax Act and the Federal Inland Revenue Service Act (with effect from January 1<sup>st</sup> 2026, more explicit provisions are now in place under the new Act<sup>13</sup>, which provides for offences and penalties of general application.

**Causes of Tax Evasion:** Many reasons abound why tax payer(s) both corporate and non-corporate are averse to paying the assessed tax or taxes to government at the appropriate time and in accordance to the extant law. Some of the reasons are:

**No Justification in any form for previous tax or taxes paid by the citizens to government:** Government at all levels failed and it neglected to provide social amenities and infrastructures to people from the huge sum of money collected as tax. The tax payer in Nigeria is not getting anything substantial from the government that commensurate with the taxes collected so far by the various government agencies. Relevant and Strategic Infrastructures like good road network, portable water, health care delivery services, etc are lacking.<sup>14</sup>

**Inadequate/Inefficient Tax Administration Machinery:** This study reveals that there is no reliable statistical data showing the seriousness of tax evasion in Nigeria, there is no known agency of government in the country that can state with certainty the numbers of people or tax payers that have evaded taxes at a particular time due to the fact that no structure is in place in that regard. All that is being adopted today is based on speculations and assumptions<sup>15</sup>.

**Uneven Distribution of Resources:** Proceeds from the tax(es) are intended for public good and essentially meant to promote social justice in the society. If the need for the target project to be executed by government from taxes collected from the people are well founded and known to all, and the government itself has a record of probity, accountability and sincerity of purpose, incidence of prevalent tax evasion will be minimized.<sup>16</sup> It is of common knowledge that strategic social and infrastructural facilities such as power, quality medical care, schools, roads, security are cited where the elites and top government officials resides to the detriment of the larger members of the society who actually toil to work and pays these taxes. It is also a known fact that all these basic necessities are cited within government houses and the Government Reservation Area (GRA). This unequal distribution of basic items greatly discourages people from paying taxes in Nigeria.

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<sup>9</sup> Sections 95, 96, 97; PITA 2004 (as amended) respectively and now repealed by Nigeria Tax Act No.7 2025

<sup>10</sup> See Sections 100 to 137 of the Nigeria Tax Act 2025 (with effect from 1<sup>st</sup> January, 2025)

<sup>11</sup> Agbonika J. A.A., *Problems of Personal Income Tax in Nigeria* (2012), Ababa Press Ltd, Ibadan P 297

<sup>12</sup> Sections 40-46 Federal Inland Revenue Establishment Act, (FIRS) 2007, (Supra) Section 92-99 CITA 2004 (as Amended), Section 25-37 VAT ACT, Part 4 (2004) (as Amended), Sections 51, 52 and 53 PITA 2004 (as

Amended by Finance Act 2023, Section 1 EFCC Act 2004 and 6 of ICPC Act 2000 respectively. FIRS ACT 2007 now repealed by Nigeria Revenue Service (Establishment) Act No 4 2025, while CITA and VAT Act are now repealed by Nigeria Tax Act, 2025

<sup>13</sup> See Section 100 to 137, Nigerian Tax Administration Act, 2025 respectively (with effect from 1<sup>st</sup> January, 2026).

<sup>14</sup> 'Tax Avoidance and Evasion in Nigeria' > <http://michealchambers.com>. Accessed on 5<sup>th</sup> November 2024

<sup>15</sup> Ibid

<sup>16</sup> Tax Evasion in Nigeria – the solution > <http://www.vanguardngr.com> – January 3, 2024, Accessed on 9<sup>th</sup> August 2024

**Low Tax Education and Awareness amongst tax payers:** Study shows that the majority of Nigerian tax payers are in the dark as to why, how and when certain taxes are to be paid and the implication of evading the payment of such taxes.

**Complex tax regulations and tax statutes:** Some of the existing tax laws are technical to the understanding of so many Nigerian tax payers including the elites. This is borne out of the fact that some of these statutes are couched in way and manners that their meaning is not straight forward and clear, to the ordinary Nigeria tax payer.

**Lack of Basic Statistics:** This study reveals that prospective tax payers abound in the informal sector of the economy, such as the artisans, the hair dresser/barbers, fashion designers, business centre of operators etc, are yet to be brought into the tax net due to non-disclosure of their identities and existence to the appropriate tax authority<sup>17</sup>. It is a legal aberration for such citizens to be held liable for tax evasion by the appropriate tax authority.

**Tax Avoidance:** Tax avoidance on the other hand may arise when a tax payer reduces his liability to tax without actually incurring the economic consequences that parliament intended to be suffered by any tax payer qualifying for such reeducation in tax liability. This entails careful, deliberate planning and arrangement of the tax payers' financial affairs in way and manners as to take advantage of the fiscal opportunities such as tax reliefs, tax holidays and incentives contained in relevant tax statutes or by taking advantage of loopholes in tax legislation.<sup>18</sup> According to Ayua,<sup>19</sup> the major differences between tax evasion and tax avoidance stems from the fact that while tax evasion entails the deliberate violation of the law and therefore criminal in nature, tax avoidance does not on the other hand entails the transgression of the law and may be considered as legal. Tax avoidance is legitimate when a tax payer take advantage of the tax reliefs or exemptions created in several tax statutes so as to encourage individual and corporate tax payers to invest in certain strategic and rewarding sectors of Nigerian economy; while it is termed illegitimate avoidance when tax payer takes advantage of inherent loopholes in the various tax statutes aimed at reducing one's tax liability in way and manner that was not contemplated by the repealed Act.<sup>20</sup>

### 3. Effects Of Tax Avoidance and Evasion on Tax Administration in Nigeria

As earlier discussed in this work, while tax avoidance is thus considered to be a matter of being sensible as the law regards it as a legitimate same, tax evasion is seen as immoral and illegal where the tax payer dishonestly endeavour to reduce his tax liability through the use of unlawful means.<sup>21</sup> Some of the effects of tax avoidance and evasion on tax administration are:

- a) Tax Avoidance and Tax Evasion are detrimental to the growth and development of any economy, that of Nigeria inclusive. Revenue losses owing to tax evasion and avoidance are enormous as there appears to be a big gap between actual and potential income tax collections by the various levels of government in Nigeria.<sup>22</sup> Tax avoidance and evasion reduce the revenue that was proposed and, calculated to be generated over a period of time from a total number of persons. The country becomes cash strapped and restrained from carrying out what it is expected of it in terms of provisions of services and goods for the benefits of her citizens.
- b) Tax avoidance and evasion which result to drastic reduction in revenue and impacting on running government efficiently, exposes government to borrowing in other to cover up the huge gap left due to tax or revenue loss. According to president Bola Ahmed Tinubu at the inauguration of the Taiwo Oyedele tax reform committee, the President said:  
...the Country sets 18% tax to GDP target in 3 years. Expressed his resolute commitment to break the vicious cycle of overreliance on borrowing for public spending, and the resulting burden of debt servicing it places on the management of Nigeria's limited government revenue. The president further reiterated the fact that the nation is still facing challenges in areas such as ease of tax payment and its Tax- to-GDP ratio, which lags behind even Africa's continental average. Our aim is to transform the tax system to support sustainable development while achieving a minimum of 18% tax GDP ratio within the next three years. Without revenue, government cannot provide adequate social services to the people it is entrusted to serve.<sup>23</sup>
- c) Stagnation in economic growth and development.  
In situations when individual tax payers decide not to pay tax to the appropriate tax authority, the much desired economic growth and development become impossible. It is only through when citizens pay tax that the government

<sup>17</sup> Ibid

<sup>18</sup> Olowofoyeku A. A., Kirbride, Y, and others *Revenue Law: Principles and Practice*. Liverpool: Liverpool Academic Press, (2003) in 'Problems of Personal Income Tax in Nigeria' (ed) Josephine A. A. Agbonika, Ababa Press 2012, P. 30.

<sup>19</sup> I.A. Ayua, Op-cit P.246

<sup>20</sup> Section 17 PITA 2004 as amended, section 22, 95-98 CITA 2004 (as amended), section 8 VAT Act 2004 (as amended), Now repealed by Nigeria Tax Act, 2025.

<sup>21</sup> Onyeka and Virginia N, 'Effect of Tax Evasion and Avoidance on Nigeria's Economic Growth' *European Journal of Business and Management*, 2016 Vol. 8, No. 24.

<sup>22</sup> Umenwke, M.N, 'Tax Laws and its implications for Foreign Direct Investment in Nigeria' Op-cit 176, Citing Olorunleke D.A, *Business Times Lagos* Nov 2, 1981.

<sup>23</sup> <http://www//statehouse.gov.ng>new>Bloomberg 'President Tinubu Sets up Tax Committee in Bid to Drive Nigeria Revenue, Aims to Increase Tax to GDP ratio to 18% from 10.9 by 2026, accessed on 8/8/2023>.

can execute meaningful projects pertaining to the well-being of its citizens and engage in international trade, including partnering with other countries of the world.<sup>24</sup>

### **Measures Towards Tackling Tax Avoidance and Evasion in Nigeria**

Tax delinquencies such as Tax avoidance and evasion just like every other known socio-economic menace in Nigeria, can be addressed through the following measures:

**Use and Application of Technology:** According to Zach Adedeji,<sup>25</sup> he suggested the use and application of technology to tackle the challenges through fiscal discipline and harmonization of revenue channels with a view to streamline all government revenue-collection agencies in real time. This proposed measure will expose any shortcuts way of tax evasion or avoidance among tax payers which will greatly enhance tax compliance and ultimately improve tax revenue to the government.

**Legislative Efforts Aimed at Curbing Tax Avoidance and Tax Evasion in Nigeria:** Several tax statutes abound which, made provisions towards eradicating or at least minimizing tax delinquencies in Nigeria. For instance, the Company Income Tax Act (now amended)<sup>26</sup> is amended by the Finance Act<sup>27</sup> principally, to weed out all or some unwarranted clauses and incentives existing under the Company Income Tax Act which hitherto aids and abet tax avoidance under the Value Added Tax Act,<sup>28</sup>. This was meant to clearly define the quantum of tax to be charged and made payable on the supply of 'all goods and services' in Nigeria other than those listed in the first schedule to this Act'. The purpose of this clear cut definition of 'all goods and services' is to denote those goods that are physically present in Nigeria at the time of supply, imported into Nigeria for use by a person, assembled in Nigeria or installed in Nigeria or the beneficial owner of the right in or over the goods is a taxable person in Nigeria and the goods or right is situated, registered, or exercisable in Nigeria. And for services: The services are rendered in Nigeria by a person physically present in Nigeria at the time of service provision or the services are provided to a person in Nigeria, regardless of whether the services are rendered within Nigeria or outside Nigeria.<sup>29</sup>

Other anti-tax avoidance measures introduced by the new Act,<sup>30</sup> includes the introduction of anti-avoidance transfer pricing rules to counteract artificial / fictitious agreement between related parties for VAT purposes. This amendment cut across some major provisions of the Value Added Tax Act 2004<sup>31</sup>(as amended) now repealed. Under the repealed petroleum profit Act (2004) as amended, certain amendments which is also in consonance with the Petroleum Industry Act<sup>32</sup>, covers the section in reference<sup>33</sup> The Personal Income Tax Act<sup>34</sup> and the Federal Inland Revenue Service (establishment) Act<sup>35</sup> equally made sufficient provisions aimed at curbing the menace of tax avoidance and evasion in Nigeria particularly, as it regards to the power to disregard any disposition or transaction which in the opinion of the tax authorities reduces or would reduce tax. In the same vein, there is a prohibited tax avoidance arrangement, whereby relevant tax authority may counteract a prohibited tax avoidance arrangement by way of adjustment, disregarding, or recharacterising the arrangement through assessment, the modification of an assessment, amendment or disallowance of a claim or otherwise, in part or whole, unless the taxable prove to the satisfaction of the relevant tax authority, that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions or any other Tax Law<sup>36</sup> The Capital Gains Tax Act (CGT) (now repealed) is not also spared as the law is amended to include digital assets in the list of digital assets that will be subject to Capital Gain Tax upon disposal.<sup>37</sup>

**Power to Distrain and Sale Goods of Delinquent Tax Payer:** The Federal Inland Revenue Service under its law,<sup>38</sup> empowers the service to distrain a tax payers' goods or other chattels, bonds or other securities and land/premises and sale anything so distrained in order to recover the amount of tax owed. Under the Personal Income Tax Act (now repealed),<sup>39</sup>the law empowered the tax authority to distrain the property of a tax payer where a final assessment has been made and served on the tax payer and he has defaulted in payment of tax due and not paid, the appropriate tax authority has the powers to: a) Distrain the tax payer by his

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<sup>24</sup> 'Tax Avoidance and Evasion in Nigeria' *Thisday Live*, Op-cit

<sup>25</sup> Special Adviser to the President on Revenue 'Nigeria has a Revenue Problem, we 'll Deploy Technology to Monitor Revenue Collection in Real Time' > available at <http://www/channelstv.com>, assessed on 15th September 2024.

<sup>26</sup> Cap P. & LFN 2004 (as amended), and now repealed by Nigerian Tax Act 2025 (with effect from 1<sup>st</sup> January, 2026)

<sup>27</sup> Financial Act 2023, Amending Section 14 of (CITA 2004) by inserting subsection (4)a, (6), deleting Section 32, 34, 37, 24(7) of the second schedule to the CITA.

<sup>28</sup> VAT Act, 2004 (as amended) by the Finance Act 2019 substituting section 2 of VAT Act, a new section 2, 2(1), (2)(a) (1)(ii) (b)(i) and (ii), amended section 8, 10,14,15,16,19 substitute for section 28 of the VAT Act with a new section 28. Note that VAT Act is now repealed by Nigeria Tax Act 2025 (with effect from 1<sup>st</sup> January, 2026).

<sup>29</sup> Section 33, Finance Act 2019

<sup>30</sup> See Finance Act 2023

<sup>31</sup> See Sections 7, 14, 16 and 46 thereof (Supra)

<sup>32</sup>PIA 2021

<sup>33</sup> Section 10, 23, 30 and 51 PITA and Sections 297 to 301 of PIA 2021 respectively

<sup>34</sup> PITA 2004 (as amended, now repealed by the Nigeria Tax Act (NTA), 2025

<sup>35</sup> Federal Inland Revenue (Establishment) Act, 2007, now repealed by the Nigeria Revenue Service (Establishment) act 2025

<sup>36</sup> Section 17(1), Nigerian Tax Administration Act 2025(with effect from 1<sup>st</sup> January,2026)

<sup>37</sup> See Section 3(a) CGT, 'specifically, a 10% of digital assets' (with effect from 1<sup>st</sup> January,2026)

<sup>38</sup> Section 33(1) FIRS Establishment Act, now repealed (with effect from 1<sup>st</sup> January,2026), 2007 (Supra)

<sup>39</sup> Section 104 PITA, 2004 (as amended)

goods, other chattels, bonds or other securities or, b) Distrain upon any land, premises or places 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 foregoing provision was supported by the court's decision in *Edo State Board of Internal Revenue v Okomu Oil Palm Company Plc*<sup>40</sup>, where the Court of Appeal held: 'That an order of distraint for non-payment of tax is deemed final and conclusive, is a final judgment capable of enforcement through garnishee proceedings. This same legal principle was further buttressed in the case of *I – D Sam Nig. Ltd V. Lagos state Internal Revenue Service*<sup>41</sup> where the Lagos State High Court held thus:

Where a taxable person fails and or refuses to make the necessary tax payment, sanctions are prescribed in the relevant tax laws, which include, but not limited to the power to distrain. There is no doubt that the claimant has the right to distrain for non-payment of tax including for unremitted deductions in respect of PAYE and withholding in respect of PAYE and withholding tax on directors' fees, commissions and so on.

The trial court further laid down the condition for the sale of distrained goods in the following words:

The power to distrain by the appropriate Tax Authority is further qualified and amplified by the new Law<sup>42</sup> to the effect that:

61 (1) Where an assessment has become final and conclusive and a demand notice has been served on a person or company or on the person or company in whose name that person is chargeable and the payment of the Tax is not made within the time specified by the demand notice, the relevant tax authority may in the prescribed form, for the purpose of enforcing payment of tax due-

- (a) Distrain that person or corporate body by their goods, chattels, bonds or other securities: or
- (b) Distrain any land, premises, place or any asset in respect of which that person or corporate body is the owner and recover the amount of tax due by sale of anything so distrained.

However, Sub (10) of this law limits the above law to be applicable in the case of recovery relating to tax evasion and proceeds of crime where the offender cannot be found. Things distrained may be kept at the cost of the taxable person if all outstanding are not paid, the goods may be sold.<sup>43</sup> It is worthy of note that the power of a tax authority to distrain a defaulting tax payer's property must be done in accordance with the due process of the law, including the right to fair hearing at all times accorded the defendant was held in *Independent Television/Radio V Edo State Board of Internal Revenue*.<sup>44</sup>

**Sealing up Business Premises:** Sealing up of business premises of a defaulting tax payer is one of the measures and veritable past time of tax authorities in Nigeria to enforce tax compliance. This approach is considered autocratic and unacceptable.<sup>45</sup> The foregoing resentment over sealing up of business premises of defaulting tax payers was supported by a court decision in *Shittu v NACB Ltd & 2 Ors*<sup>46</sup> where it was held that: 'The action of the tax authority in issue was illegal, unconstitutional, null and void. It was further held that section 96 of the Personal Income Tax Act which empowers tax authorities to distrain does not extend to sealing up and closing up business premises due to non-payment of tax'. According to the above court's decision, the practice or approach of sealing up the business premises of a defaulting tax payer by the tax authority is illegal and not supported by any existing tax laws in Nigeria.<sup>47</sup> This will ultimately tantamount to the tax authority resorting to self-help which the law always frown at.

**Tax Clearance Certificate:** The use of tax clearance certificate is a preventive measure aimed at curbing tax evasion. The enabling law for the issuance of tax clearance in Nigeria are as contained in Personal Income Act,<sup>48</sup> Company Income Tax Act, Capital Gains Tax Act, and Federal Capital Inland Revenue Service Act respectively (all the above stated three Tax statutes now repealed with effect from 1/1/2026)<sup>49</sup>. Tax clearance is documentary evidence that a person has performed his tax responsibility to the appropriate tax authority overtime. The practice is such that the appropriate tax authority is enjoined by law to issue a tax clearance certificate to any person within two weeks of demand if the tax authority is of the opinion:

- a) That tax assessed on the income of the person for the three years immediately preceding the current year of assessment has been fully paid; or
- b) That no tax is due on the Income or
- c) That the person is not liable to tax for any of those three years.<sup>50</sup>

To make the use of tax clearance mandatory in official transactions in Nigeria, the Personal Income Tax Act PITA<sup>51</sup>, has provides that: 'A ministry, department or agency of government or a commercial bank with whom a person has any dealing with respect to

<sup>40</sup> (2018) 36 TLRN 60 at 63

<sup>41</sup> (2011) STLRN 41 at 50, referred to by IERGWAGH & SHIMA 'legislative efforts at curbing tax avoidance and Tax evasion in Nigeria a legal infraction' *Abuad private and business law journal* (apblj), Vol 2, No 1, 2018, (Pages 64-83)

<sup>42</sup> Section 61(1) – (10) of the Nigerian Tax Administration Act, 2025

<sup>43</sup> Ibid

<sup>44</sup> (2011) 5 TLRN 41 at 50

<sup>45</sup> See Joint Tax Board (JTB) pronouncement on Illegal sealing up of premises, published in *Modern Practice Journal of Finance and Investment* MJFIC Vol 2, No 2, July 1998 P. 96 referred to by D. Asada in *Corporate Tax Deliquesces Analysis, Law cases and Recommendations for a sanitized regime*, LOC-Cat 2, Page 28

<sup>46</sup> (2001) 10 NWLR (Pt 721 P. 298

<sup>47</sup> Ibid

<sup>48</sup> Section 85 PITA 2004 (as amended), Section 43 CGTA Cap. CI, Laws of the Federation of Nigeria, 2004 (as amended) and Section 31 FCT (IRS) Act, 2015 now repealed by the Nigeria Tax Act 2025 (with effect from 1<sup>st</sup> January, 2026)

<sup>49</sup> Section 101 CITA 2004 (as amended) now repealed by the NTA 2025

<sup>50</sup> Section 85 (1) PITA, now repealed with effect from 1/1/2026

<sup>51</sup> Section 85(2) PITA, now repealed (Supra)

any of the underlisted transactions, shall demand from the person a tax clearance certificate for the three years immediately preceding the current year of assessment’.

**Enactment of Companies Income Tax Significant Economic Presence Order 2020:** The above enactment was brought to bear by the then Minister of Finance, Budget and National Planning<sup>52</sup>. This order amongst other objectives was intended to eradicate Tax avoidance by digital hon.-resident companies operating in Nigeria. The above order<sup>53</sup> for purposes of taxation provides that:

company other a Nigerian Company shall have significant economic presence in Nigeria in any accounting year where it derives gross turnover or income of more than N25,000,000.00 (twenty-five million, naira) or its equivalent in other currencies, in that year, from any combination of the following streaming or downloading services, of digital contents, including but not limited to movies, videos, music, applications, game and e-books to any person in Nigeria, transmission of data collected about Nigerian users which has been generated from such users activities on a digital interface including website or mobile applications; provision of goods and services directly or indirectly through a digital platform to Nigeria or; provision of Intermediation services through a digital platform, website or other online application that link suppliers and customers in Nigeria, uses Nigerian domain name (ng) or registers a website address in Nigeria or has a purposeful and sustained interaction with persons in Nigeria by customizing its digital page or platform to target persons in Nigeria, including reflecting the prices of its products or services in Nigerian currency or providing options for billing or payment in Nigerian currency.

Under the same enactment, any other electronic or wireless apparatus referred to therein includes<sup>54</sup>:

Digital or related activities carried on through satellite<sup>55</sup>. For the purpose of determining whether the threshold for significant economic presence order have been met, activities carried out by connected person in that accounting year shall be aggregate. Connected persons include persons that are associates as defined by the Act<sup>56</sup>; as persons that are associate by participating directly or indirectly in the management, control or in the capital of the other, or the same person or persons that are associate by participate directly or indirectly in the management, control or in the capital of both enterprises.<sup>57</sup>

This study shows that 2020 order or enactment is strictly meant to ensure that even when certain corporate entities are not resident in Nigeria, in so far as where its income in Nigeria is Twenty-five million (N25,000,000.00) or there about within the calendar year, such is deemed to be significant economic presence in Nigeria and as such, the income earned therefrom must be subject to tax.

**Tax Amnesty:** Tax Amnesty in the case of Income tax may be given consideration as an anti-evasion drive. It is a term used to describe a onetime offer to settle an outstanding tax obligation as an aspect of a Country’s National tax policy over time. It may be in the form of a group of tax payers to pay a defined amount of money in exchange for forgiveness of tax liability relating to previous tax period or periods without the fear of criminal prosecutions.<sup>58</sup> Tax amnesty gives tax evaders immunity from prosecution, penalty charges and interest, if they voluntarily declare their undisclosed assets and Income<sup>59</sup>

**Criminal Prosecution or Sanction for Tax Offenders:** Criminal sanctions entail penalties of fine and punishment which are enforced in the appropriate courts. They are two types viz- those found in the tax statutes and those contained in other criminal laws such as ICPC, EFCC Act, the Penal Code Laws for Northern Nigerian and Criminal Code Laws for Southern Nigeria respectively.<sup>60</sup> It is pertinent to state that criminal prosecution does not exclude penalties and does not relieve a person from tax liability for which the tax payer may be come liable.<sup>61</sup> In the same vein, it is a fact that in every criminal offence, the doctrine of *mens rea* which means the blameworthy mental condition and the *actus-reus* which is the commission of the unlawful act itself, must exist in an offender before he can become criminally liable and which the prosecution must establish beyond reasonable doubt.<sup>62</sup> Thus it is incumbent on the appropriate tax authority to so establish such crime before the trial court. Mention must also be made of the fact that the right of criminal prosecution involving taxation is not limited to the Attorney – General of the Federation or any State alone, rather any relevant tax authorities may institute such actions as circumstances may dictate.<sup>63</sup>

For instance, in the ongoing criminal case bothering on tax evasion between *FIRS v Well Property Development Company Limited & Ors*,<sup>64</sup> the charges filed by FIRS on behalf of federal government of Nigeria are in respect of the company (that is the defendant) understating its tax returns, false declaration of earning and failing to deduct and remit taxes contrary to section 40 of the Federal

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<sup>52</sup> The then Honourable Minister of Finance, Budget and National Planning, Zainab Shamsuna Ahmed, passed the order in 2020 in Exercise of the Power conferred up in her office by section 13(4) of the Company Income Tax Act 20004 (as amended).

<sup>53</sup> Company’s Income Tax (Significant Economic Presence Order) 2020

<sup>54</sup> Section 13(2) (c), Company’s Income Tax (Significant Economic Presence Order) 2020

<sup>55</sup> Section 1(2) of the Companies Income Tax Significant Economic Presence Order 2020.

<sup>56</sup> Companies and Allied Matters Act 2020

<sup>57</sup> Section 1(5) Supra.

<sup>58</sup> Josephine A.A.A Agbonika’ Problems of Personal Income Tax in Nigeria’’, A baba Press Ltd Ibadan 2012, p.423.

<sup>59</sup> <http://www/businessday-ng/amp> accessed on 10/6/2025

<sup>60</sup> See sections 40-46 FIRSTER 2007; SECTION 92-99 CPTA 2004 (as amended) (both laws now repealed and to take effect from 1/1/2026. And DOMINIC.A; Corporate Tax Delinquencies: Analysis Laws, Cases and Recommendations for a sanitized Regime, OP-Cit

<sup>61</sup> Kareem A; Op-cit P150, referring to Abdulrazak M.T – Nigerian Revenue Law, Malt House Press Ltd., Ibadan 2005, PP 21-22 and section 98 PITA 2004 (as amended)

<sup>62</sup> Section 135(1) Evidence Act 2011 (as amended)

<sup>63</sup> Josephine Aladi A.A; Problems of Personal Income Tax in Nigeria, Op-cit 1254

<sup>64</sup> FHC/ABJ/Cr/293/2024 (unreported) and <http://www/dailyreport.ng> accessed on 24<sup>th</sup> June 2024

Inland Revenue Services (Establishment) Act 2007. Similarly, there is a pending case between the *FIRS v Binance & Ors*<sup>65</sup> at the Federal High Court Abuja, bothering on allegations of tax evasion against the defendant of Value Added Tax (VAT), Company Income Tax, failure to file tax returns and complicity in aiding customers to evade taxes through its platform. The Federal Government further accused the Defendants of neglecting to register with FIRS for tax purposes thereby contravening existing tax regulations within the country. It is worthy of note that the above referenced cases were instituted and pending at the Federal High Court, due to the fact that the allegations thereof bother on Federal Government revenue which falls within the exclusive jurisdiction of the Federal High Court of Nigeria.<sup>66</sup>

The principle that the criminal prosecution bothering on tax matters can be initiated even by the appropriate tax agencies was tested in the case of *UniPetrol Nig Plc V. Edo State Board of Internal Revenue*,<sup>67</sup> where the appellant was charged at the Mobile Revenue Court of Edo State for its refusal to pay outstanding withholding tax contrary to section 5(2) (B) of the Income Tax of the state. The appellant filed an objection to the competency of the case on ground that the appropriate complainant would have been the Attorney General of the state and not the State Inland Revenue Board. The objection was refused and dismissed by both the Trial Court and the Court of Appeal, while the Supreme Court finally laid the matter to rest by holding that: ‘The State Board of Inland Revenue (SBIR) can institute criminal proceeding in its corporate name, and as such the action in the present case incompetent.’<sup>68</sup> It is appropriate to state that even when the enabling tax statutes empowers tax authority to initiate criminal action against tax offenders, that must be in substantial compliance with the provisions of the Constitution of the Federal Republic of Nigeria<sup>69</sup> which provides thus:

36(12) subject as otherwise provided by this constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law; and in this subsection, a written law refers to an Act of the National Assembly or a law of a state, any subsidiary legislation or instrument under the provisions of a law.

Situations may arise where the tax defaulter is an agency of government, or its parastatals. The enforcement of outstanding tax liability against such public agency will be through the office of the Accountant General of the Federation or of the State who is empowered to deduct at source from the statutory allocations of such government agency, such taxes as may be outstanding inclusive of interests at the prevailing commercial rate.<sup>70</sup>

#### **4. Conclusion and Recommendations**

The recently enacted four tax statutes to wit- The Nigeria Tax Act (NTA),2015, Nigeria Tax Administration Act(NTAA) 2025, Joint Revenue Service (Establishment) Act (JRSEA),2025, and Joint Revenue Board of Nigeria (Establishment) Act(JRBA),2025, which are to take effect from January 1<sup>st</sup> ,2026, have made elaborate provisions; which if implemented to the later will minimize incidences of Tax Evasion and avoidance to the barest minimum. In other words, the new Tax Laws will go a long way in enhancing maximum Tax compliance and ultimately results to appreciable and enhanced revenue generation in the Country. This paper dwells on various dimensions to tax delinquencies by way of tax avoidance and tax evasion in Nigeria, the effects on revenue generation/tax administration in Nigeria and the remedial measures that are in place towards stemming the menace, by making recourse to the existing tax statutes and legislations in Nigeria. One fundamental fact that this research had revealed is that the prevalence of tax delinquencies in Nigeria is attributed to lack of basic statistics and data of particulars of tax payers particularly in the informal sector of the economy are not known, the non-application of modern technology in monitoring tax payers that are spread all over the country, corruption, delays in the prosecution of Tax related cases in our Courts etc. As a result of the above, this work had shown that the country had lost substantially in terms of revenue generation, and this had ultimately impacted negatively on the capacity and capability of government at all levels to provide the much needed services to the citizenry.

It is hereby recommended as follows: Penal sanctions to tax offences must be accurate and proportionate to each other. Tax offenders can only be deterred when punishment meted out is adequate and proportionate to the offence(s). It is also recommended that special Tax tribunals or courts be established or in the alternative, the Tax Appeal Tribunal be elevated to the status of a superior court of records just as it was done with the National Industrial Court. This will enable the Court that is the (TAT) to entertain cases bothering on taxation only. This can be achieved through an amendment to section 6 of 1999 constitution of Nigeria. There is an urgent need for the tax authorities to invest in modern technology (IT) towards enhancing tax payment and compliance as is being envisaged and canvassed by the presidential aid on revenue<sup>71</sup>. There is also need for massive training of lawyers who are versatile in tax laws and administration to enable them preside over and prosecute tax defaulters in the proposed special tax courts. Punitive cost upon conviction should be pegged at the prevailing value of the Nigerian currency other than major international currencies. There should be improved tax education and awareness in Nigeria, particularly among tax payers meant to enlighten them about the existing tax statutes, and penalties for tax evasion. This will ultimately enhance tax compliance which will result to improved tax revenue generation. The prevalence of multiple taxes at the federal states and local government levels, apart from being a disincentive to investment decision, it also encourage tax evasion whereby prospective tax payers in their bid to evade the payment of certain taxes to the appropriate tax agencies, result to cutting corners by indulging in various criminal act of subverting the existing tax statutes.

<sup>65</sup>FHC/ABJ/Cr/115/2024 (unreported) >accessed 21<sup>st</sup> September 2024 and <http://www/Westernpost.ng>.

<sup>66</sup> Section 251(1) (a)- (d) CFRN 1999 (as amended)

<sup>67</sup> (2006) 8 NWLR (PT 983)

<sup>68</sup> Josephine Aladi A.A; Op cit P 255

<sup>69</sup> Section 36(12) CFRN 1999 (as amended) both now repealed

<sup>70</sup> Section 83 CITA and 24 of the FIRS Act 2007, Josephine Aladi A.A; ‘Problems of Personal Income Tax in Nigeria’ Op cit, p 263

<sup>71</sup>Jacheous Adedeji, Op-cit