UNDERSTANDING THE TAX PAYERS RIGHTS IN THE DIGITAL AGE

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Abstract

This paper discusses the main rights of taxpayers in the Nigerian tax system. Unlike what obtains in countries likethe USA and Australia, the rights of taxpayers are not expressly provided for in any statute in Nigeria. It appears instead that the right is embedded in various statutes including the Constitution. The paper looks at the powers of the tax authorities that affects tax payers' privacy and liberty. A good tax laws should be couched in such a way that will promote respect, mutual trust and cooperation between the tax payers and the government. Consequently, the paper concludes that there is a need for taxpayers' rights to be strengthened and legislated upon without compromising the ability of the tax authorities to assess and collect tax.

Keywords: Government, Rights, Tax Authority, Statutes.

1. Introduction

Tax is a compulsory payment imposed by government authority on property and individuals including corporate entities in order to raise money for public purposes.No one likes to pay tax but as a great man once said 'Two things are certain in this world, death and taxes.'[1] Tax is a necessary 'evil' and from biblical perspective, Jesus Christ himself recognized this fact and asked his followers to give to Caesar what belongs unto Caesar.[2] The legal framework for taxation requires that taxation must be according to the rule of law.[3]The experience of democracies in developed countries indicate that tax systems collapse very fast in the absence of institutional safeguards.[4]Over the years, governments' institutions, Non-Governmental Organizations (NGO's) and human rights activists always emphasize compliancewith enforcement of fundamental rights, rule of law and good governance. Unfortunately, this does not always apply to tax payers and tax system as we have not seen anyone claiming to be a 'tax payers rights activist.'Certain rights should flow from payment of tax and tax payers should be able to enforce these rights.

Nigerian tax law is purely statutory.[5] A tax system should be built on a tripartite foundation: a tax policy, tax laws and tax administration.[6] The policy sets out guidelines,

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[1] Benjamin Franklin., *Death and Taxes Quotes*available at www.phrase.org.uk accessed on the 4th day of 2017 at 1.30 pm.

[2] The Holy Bible, Matthew 22 vs 21.

[3]Vanistendael, F. (1996). Legal Framework for Taxation. Tax Law Design and Drafting. V. Thuronyi. Washington DC, International Monetary Fund. 1.

[4] Head, J. G. (1997). Tax Reform: A Quasi-Constitutional Perspective. Tax Avoidance and the Rule of Law. G. S. Cooper. Amsterdam, IBDF Publications BV: 155.

[5] Ade Ipaye, *Nigerian Tax Law & Administration: A Critical Review*, 1st Edition, (London: ASCO Prime, 2014), pp 16.

[6]Ibid.

principles and objectives to be achieved through the instrument of taxation. The tax laws create types, imposes rates, prescribe penalties for default and generally provide the enabling legal and regulatory framework for the system. Tax administration involves the implementation of the tax laws through the activities of the authorities vested with the responsibility of assessing, collecting and accounting for tax revenues.[7]

Payment of tax in Nigeria is statutory. The 1999 Constitution[8] provides that 'It shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly".[9]This notwithstanding,tax evasion and avoidance have beenserious issues in the field of taxation in Nigeria from time immemorial defying all possible solutions.This might not be unconnected with the fact that the issue of taxpayers' rights has not been given the necessary attention by the government. In order to maintain a high level of compliance, the public perception of the integrity of the system is crucial and important.

1.1 Nigerian Taxation System – Exclusive Legislative List

The 1999 Constitution divides the taxing powers between the federal and state governments. The Constitution contained sixty–eight (68) items with the title 'Exclusive Legislative List' (ELL).[10] The items are exclusively reserved for the federal government and only the National Assembly can legislate on them. Apart from the fact that exploration and production of crude oil and the accruable revenue is reserved for the federal government of Nigeria, the items in the ELL are mostly money generating items. The ELL concentrates most of the taxing powers in the federal government with little or nothing for the federating units to legislate upon.

Although, the ELL contains 68 items, only four (4) items were expressly referred to as taxes. This may give an erroneous impression that the federal government can only impose taxes on those four areas.[11] However, the federal government is generating revenue constantly from other items in the ELL though not as taxes but in form of charges, fees or levies to the exclusion of the state governments.[12]The legislative power contained in the ELL which is vested in the National Assembly[13] is derived from section 4 (2) of the Constitution which provides as follows:

[7]Ifueko Omoigui Okairu (eds.), *Tax Legislation*, Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria, 2012.
[8]The Constitution of the Federal Republic of Nigeria 1999 (as amended), referred to as the 1999 Constitution
[9] Section 24f of the 1999 Constitution
[10] Second Schedule, Part 1 of the 1999 Constitution. Abimbola Oyesile
[11]Sanni A. O., (2003) Division of Taxing Powers under the 1999 Constitution, No 3 vol 5 (Modus international Law and Business Quarterly) pp 103 – 109.
[12] For example, passports and visas, registration of companies, Railways etc.
[13] Section 4(1) of the 1999 Constitution

> The National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the Legislative list set out in Part 1 of the Second Schedule to this Constitution.

The Constitution further provides that the power of the National Assembly to make laws for the peace, order and good government of the Federation shall with respect to any matter included in the Exclusive Legislative List shall save as otherwise provided in this constitution, be to the exclusion of the Houses of Assembly of States.[14]

1.2 The Concurrent Legislative List

The Constitution also contains the concurrent list which both the Federal and the State governments have the power to legislate upon.[15] The Concurrent Legislative List (CLL) contains 30 items. It is however unfortunate that none of the items in the concurrent list is a revenue generating item. Inotherwords, no taxing power is expressly reserved for the state governments in the 1999 Constitution.[16] This accounts for the reason why the state governments depend largely on the federal governments for survival.

The taxing power of the states in Nigeria is open ended. States can impose and collect taxes from people within their respective jurisdiction. However, section 4 (5) of the Constitution further puts a check on the power of the House of Assembly to make laws when it provides that if any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail and that other law shall to the extent of its inconsistency, be void.[17]. In therefore connotes that for a state tax law to be valid, there must be no federal law which has covered the field sought to be covered by the state. Specifically, the law must not be inconsistent with the tax law made by the National Assembly.

1.3 Who is a Tax Payer?

Simply put, a taxpayer is an individual or business entity that is obligated to pay taxes to a federal, state, or local government body. The term “Tax payers” is not defined in any tax law in Nigeria. The various tax laws however recognized tax payers as taxable persons with certain obligations impose on such persons.[18]

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[14] Section 4(3) of the 1999 Constitution
[15] Second schedule, Part 11 of the 1999 Constitution
[16]Sanni op cit
[17] Ibid Section 4(5)
[18]For example, section 40 of the Income Tax Act provides a taxable person shall be chargeable to the tax- (a) in his own name; or (b) in the name of- (i) a receiver, trustee, guardian, curator or committee having the direction, control or management of property or concern on his behalf; or (ii) a person treated as his agent under section 4 of this Act or declared to be his agent under section 50 (1) of this Act, in like manner and to the like amount as the taxable person would be chargeable. The Value Added Tax Act however defined "taxable person" in section 46 to include an individual or body of individuals, family, corporations sole,

A taxpayer generally describes one who pays taxes. Although not everyone in Nigeria pays taxes but almost everyone is subjected to some form of taxation and therefore, everyone (including children) are considered as taxpayers at some point. Taxes exist in many forms, including personal income tax imposed by the federal but requiredto be administered by both the federal and state governments, Value Added Tax imposed by federal governments, Companies Income Tax levied on the assessable profits of companies registered in Nigeria or elsewhere and Petroleum Profits Tax which is levied on the income of companies in petroleum operation in Nigeria.

A situation may arise where the tax payers is different from the body remitting the tax to the tax authority. For example, under the Personal Income Tax Act, there is a method of payment which is known as Pay as You Earn (PAYE). It is a method of recovering an employee's personal income tax from any emolument paid by the employer to the employee. The tax is deducted by the employer and remitted to the tax authority. PAYE scheme is regulated in Nigeria by the provisions of Section 81 of the Personal Income Tax Act (as amended under Section 20 of Amendment Act) and the Operation ofPAYERegulations. By virtue of section 81(2) of the Act the employer is required to file a return with the relevant tax authority of all emoluments paid to the employees in his employment in the preceding year. Section 82 imposes and obligation on the employer to be answerable for the tax deducted.

The employees under PAYE do not know the amount they pay as taxes from their monthly income. This makes it practically impossible to challenge the deduction. There are conflicting judicial decisions arising from the operation of the scheme. Who is the tax payer? The employer or the employee? Who has the right to file an objection to an assessment? Who has the right to approach the court in the event of a dispute with the tax authority? Whose Property will be distrained for non-remittance of tax to the tax authority? In *Lagos State Board of Internal Revenue v Shell Petroleum Development Company of Nigeria,*[19]the court was of the opinion thatinterpretation of the provisions of statutes should be clear and the words given their simple natural meaning. Sections must not be read in isolation but according to the intention expressed therein by the draftsman. In interpreting the provisions of Personal Income Tax Act in relation to the operation of PAYE scheme, the court was of the opinion that there is no difficulty in arriving at the conclusion that the person referred to in this case is the employer as it is on the employer as tax payer that the demand for PAYE tax and withholding tax were served. The Court therefore finds that the person whose property ought to be distrained for non-payment of tax is the employer, and not the employee. In the same case, the learned Judge turned

trustee or executor or a person who carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business or a person or agency of Government acting in that capacity.

[19] *(2013)9TLRN 28*

around and held that the competent person to make an objection to tax assessment under the PAYE system is the employee being the tax payer and not by the employer.

2. Tax Payers Rights

As stated earlier, tax is statutory. Therefore, a good tax law should be couched in such a way to promote respect, mutual trust and cooperation between the tax payer and the government. The major problems preventing fast recognition and enforcement of taxpayers' rights are the lack of understanding of these rights.Unlike taxpayers in some other countries like Canada, USA, UK, and Australia. In Nigeria, there is no law on the rights of tax payers.The rights however appear to be embedded in other laws and can be extracted through judicial activism.

2.1 Right to Confidentiality

Before payment of tax, tax payers are expected to file tax returns and submit all necessary documents relating to their income and expenditure to the relevant tax authority. While some tax laws allow self-assessment[20] others prohibit self-assessment as taxpayers are mandated to submit all relevant documents and the tax authority will then calculate the tax payable.[21] In all these the returns and other information obtained by be used for the purposes of the administration and enforcement of the tax law ought to be treated with utmost confidentiality. Confidentiality of taxpayer information can be seen as an extension of the right to privacy guaranteed in section 42 of the 1999 constitution.[22] This should be considered as an important aspect of administration of our tax laws. To maintain the confidentiality of income tax returns and other obtained information is to encourage the voluntary tax payment. By instilling confidence in taxpayers that personal information they disclose will not be communicated in other contexts, voluntary disclosure of this information is allowed. The opposite is also true: if taxpayers lack the, confidence, they may be reluctant to voluntarily disclose all the required information.

Income tax returns and other information obtained from tax payers should not be admissible in law court as evidence against the tax payers in both civil and criminal matters except the trial relates to payment of tax. However, voluntary disclosure of this information by the tax payers may be allowed.Section 14 (1) (d) of the Freedom of Information Act[23] provides:

> A public institution must deny an application for information that contains personal information and information exempted under this subsection includes – information required of any tax payer in connection with the

[20]Section 41 and 44 of the Personal Income Tax Act allows taxpayers to file a return and assess themselves on the amount payable as tax.
[21]The Petroleum Profit Tax Act prohibit personal assessment.
[22]The section provides that the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected
[23]Freedom of Information Act 2011

> assessment or collection of any tax unless disclosure is otherwise requested by the statute

Section 14 contains four other (4) instances where a public institution is allowed to deny an application for information. However, sub section 2 provides that:

> Where disclosure of any information referred to in this section would be in the public interest, and if the public interest in the disclosure of such information clearly outweighs the protection of the privacy of the individual to whom such information relates, the public institution to whom request for disclosure is made shall disclose such information subject to Section 14 (2) of this Act.

The Act did not define the phrase ‘public interest’ and the yards stick in measuring the public interest and the right to privacy of the individual to whom such information relates. However, filing of returns and payment of tax should be seen itself as an act done in “public interest and any application for information to the tax authority relating to the collection and assessment of tax from a taxpayer should be denied not only on the ground of protecting the privacy of the individual but also on the ground of ‘public interest.’

In Canada, disclosure of taxpayer information is prohibited. Revenue authorities are prohibited from knowingly providing taxpayer information to any person, from knowingly allowing anyone access to such information, and from knowingly using it otherwise than in the course of administrative or enforcement duties under the Act, or for other purposes specified in this provision. A breach of these provisions attracts a fine of up to $5,000, or imprisonment for a term not exceeding 12 months.[24]

2.2 Right to Information

Pursuant to the Freedom of Information Act, a taxpayer has the right to access any record under the control of the tax authority subject to some limitations, such as the confidentiality requirement under section14 the Act. and the solicitor client privilege under section 16 of the Act.

2.3 Access to Tax Advice – The Ruling System

The ruling system constitute an important aspect of taxpayer rights. Although the ruling system is unknown in Nigeria, it has existed in other jurisdictions like Australia and Canada for years. Rulings is an administrative guideline which provide advice to taxpayers on the application of the tax law in particular situations and are important in guiding taxpayers as to how they should assessment themselves (self-assessment).

The challenges faced by tax payers in Nigeria are numerous, starting from what to pay and how to pay. Many tax payers do not know how to file their returns and assess

[24]Section 241(1) and 241(2) of Income Tax Act 1985

themselves. It is not the entirety of income of a tax payer that is subjected to tax. It is the residue that remains after all the deductibles. Calculating the deductibles is an enormous tax for the tax payers. Nigerian tax laws are laced with many technical words like assessable profit, chargeable tax, accounting yearetc, which makes the understanding of the tax laws unnecessarily complex. Hence the need for Ruling. It needs to be noted that Rulings are not binding on the tax authorities being merely an expression of the opinion of the tax authority. There are two types of ruling; public ruling and private ruling.

In Australia, public ruling has existed since 1982, prompted by the introduction of freedom of information legislation.[25]A public ruling is simply a "determination of the way in which a tax law or tax laws would apply to any person in relation to a class of arrangements, a class of persons in relation to an arrangement or a class of persons in relation to a class of arrangements''[26] Private rulings is just an "advance opinions" of the tax authority. Typically, a private ruling is sought by a taxpayer who wishes to know how the tax authority would exercise its discretion, or would interpret a provision of the tax law.

2.4 Rights of Objection and Appeal

The right to appeal against a tax assessment is probably the most fundamental right of the taxpayer.[27]The right is available after the notice of assessment has been served on the tax payer on the basis of the tax payer's return and any other information available to the tax authority It has long been accepted that liability to tax cannot be imposed upon citizens without leaving open to them some judicial process by which they may show that they are not in fact liable to tax.[28]

Dispute in assessment leads to an appeal. However, the question is: how much of right of appeal can tax payers exercise? The various State Boards of Internal revenue have no role in tax appeal procedure in Nigeria. The Tax Appeal tribunal which is a federal body was established in 2007 and it replaced the erstwhile Body of Appeal Commissioner and Value Added Tax tribunal. The Tribunals sit only in Lagos, Ibadan, Benin, Enugu, Kaduna and Jos covering five out of the six geo political zones. This is grossly inadequate in a country of approximately 200 million people, 36 states of the federation and 774 local governments. Each geo political zone has about six states. Unlike the regular courts, these tribunals are not accessible to tax payers. The jurisdiction to entertain appeal was taken away from the Federal High Court and vested on the Tax

[25] Audit Act 1901 (Cth) ss 34A, 701
[26] Barton G, "The Rulings System: Twilight Zone of Tax Law" (1993) 1 Taxation in Australia (Red Edition) 284.
[27] Wheelwright, Karen (1997) "Taxpayers' Rights in Australia," Revenue Law Journal: Vol. 7 :Iss. 1 , Article 10. Available at: http://epublications.bond.edu.au/rlj/vol7/iss1/10
[28] Ibid

Appeal Tribunal. The introduction of Tax Appeal Tribunal was a way of telling the tax payers in Nigeria that they have no right to bring cases on tax dispute to court.

Nigeria practices a federal system of government and in a federal system of government revenue power is shared between the Federal Government and the component units. Fiscal federalism on the other hand is concerned with understanding which functions and instruments are best centralized and placed in the sphere of decentralized levels of governments. Since the transition to democracy, there have been several concerns that Nigeria is practicing a unitary system of government as against true federalism. The tax system in Nigeria is centralized and also the appeal mechanism under the tax laws. A minor tax dispute goes to the Tax Appeal Tribunal, a body unknown to many tax payers, unlike our regular court.

2.5 Right to Fair Hearing and Power to appoint an Agent

The 1999 constitution guaranteed the right to fair hearing in all situations which include taxation[29] The provisions of section 49 of the Federal Inland Revenue (Establishment) Act provides as follows:

> The Board may by notice in writing appoint any person to be the agent of any company and the person so declared the agent shall be agent of such company for the purposes of this Act, and may be required to pay any tax which is or will be payable by the company from any moneys which may be held by him for, or due by or to become due by him to, the company whose agent he has been declared to be, and in default of such payment the tax shall be recoverable from him.
> (2) For the purposes of this section, the Board may require any person to give information as to any moneys, funds or other assets which may be held by him for, or of any moneys due by him to, any company.
> (3) The provisions of this Act with respect to objections and appeals shall apply to any notice given under this section as though such notice were an assessment.

The interpretation of the above section is that the FIRS has the power to freeze the bank account of an individual or corporate bodyin default of tax for the purpose of deducting any amount due as tax without notice to the such tax payers. In exercising its power under section 49, the FIRS is expected to observe the principle of fair hearing and its twin pillars.A taxpayer should be allowed to object to the appointment of an agent under section 49 above. However, the provision of section 49 seems to have been nullified by section 2 of the Taxes and Levies Approved List for Collection Act 1997 which prohibit anyone who is not a tax authority from collecting taxes on behalf of the government.

[29] Section 36

3. Conclusion/ Recommendations

The level of economic growth and development of any economy depends on the amount of the revenue generated and channeled towards the development of the country.[30]Tax systems are among the oldest and most fundamental of institutions. Taxes are necessary to raise revenue for governments to fund their operations and to finance investments in public goods and other sorts of public services conducive to general welfare and economic growth. The structure of taxes and how governments choose to generate revenue will have an effect on the economic activities.

Using tax as a source of revenue generation in financing development activities in Nigeria has been a difficult issue primarily because of various forms of resistance, such as evasion, avoidance and corruption in the administration. These activities are considered as sabotaging the economy and government readily present them as reasons for the underdevelopment of the country.[31]According to the Federal Inland Revenue Service (FIRS), the total number of tax payers in Nigeria is just 14 million and of this number, 96% have their taxes deducted at source from their salaries under the PAYE system while just 4% Nigerian comply under Direct Assessment. So, the vast majority of Nigerians do not pay taxes.[32] In 2014, the Minister of the Economy, Dr. Ngozi Okonjo-Iweala, disclosed that 65% of companies in Nigeria had declined to forward their tax returns and a whopping 75% were not in the FIRS tax net.[33]

Tax evasion has becomeso widespread in many developing countries and the situation is much deteriorated by thefact that many governments of these countries have not shown any effort and serious concern to determine and measure the cause's factors that encourage taxpayers in evading and behaving toward evasion. The provision of social amenities and welfare for the populace is the primary aim of government and to achieve this, the government need to generate revenue through taxation.[34] Taxation is the

[30]Kiabel, B. &Nwokah, N (2009). Boosting revenue generation by state governments in Nigeria: The Tax Consultants option revisited. European journal of social science, 8(4): 532 – 539. Cited by U. Patrick & C. Christian, Effect of Tax Revenue Generation in Nigeria, International Journal of Social Science and Management Research Vol. 4 No 7 2018.

[31] Ibid

[32] How Tax- Paying Nigerian can curb corruption and make government responsible, Speech delivered by His Excellency, Prof. Yemi Osinbajo San, GCON, The Acting President of the Federal Republic of Nigeria at Opening of the Voluntary Assets and Income Declaration Scheme at the Banquet Hall, State House on Thursday, vanguard 1st July, 2017 available at https://www.vanguardngr.com/2017tax-paying-nigeria-can-curb-corruption-makegovts-responsible-osinanjo.

[33]https://www.proshareng.com/news/TAXES%20&%20TARIFFS/Nigeria--A-Nation-Pauperised-by-Tax-Evasion/45916 Last Accessed 28th February, 2020

[34] Confidence J.I Ebipanipre&G.M,(2019) Taxation as an Instrument of Economic Growth (The Nigeria perspective) Journal of Information & Knowledge Management. Available at www.iiste.org. accessed on the 17th July, 2020.

foundation upon which the economy of many countries stand. it is the pillar and facilitator of development.[35]

Taxation is a legislative affair. The existence of a serialized and comprehensive law on the rights of tax payers will encourage more people to pay tax and thereby boost the economy. The National Assembly should consider passing a law to establish a body to be called Tax Payers Rights Commission to deal with problems tax payers may face in the course of paying tax. A tax payer should be protected from abusive use of power by the tax authorities.

The issue of taxpayers' rights is, or ought to be, as important to the tax administration as it is to taxpayers themselves. This is because voluntary compliance is central to the successful functioning of Nigeria's tax system and taxpayers' perceptions of the integrity of the system are crucial to maintaining a high level of compliance.

[35] Ibid citing Oji, N. (2000). Stimulating Economic Growth through an Efficient Tax System. A Paper Presented at the Second Annual Conference of The Chartered Institute of Taxation of Nigeria