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Examining the legal measures against tax offences under the Nigerian personal income tax act

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Abstract

Personal income tax is a reliable source of revenue for the State governments. To maximally achieve the objective of financing government expenditure, effective administration of personal income tax is necessary. This is because tax crime is a phenomenon relative in every tax system, which is capable of weakening the aggregate tax revenue mobilization. The aim of this paper is to examine the legal measures against tax offences under the Nigerian Personal Income Tax Act, Cap P8 Laws of the Federation of Nigeria, 2004. The specific objectives are to: examine the method of assessment and collection of personal income tax; examine the various tax offences under the Personal Income Tax Act; and assess the sanctions provided to prevent tax offences. The paper adopted a doctrinal research method to achieve the objectives. It was found that the Nigerian Personal Income Tax Act contains well-established statutory provisions to regulate the administration of personal income tax and the commission of tax offences. However, there are doubts whether these provisions are sufficient to curb or punish the commission of tax offences. The paper concluded that the implementation of the legal measures provided to curtail tax offences under the Personal Income Tax Act are not adequate to prevent the incidence and commission of tax offences. The paper recommended that the government and tax authorities should strengthen the system of personal income tax administration so as to reduce the incidence and commission of tax crimes among taxpayers in Nigeria.

Keywords: Legal, tax, offences, income, revenue

1. Introduction

Personal Income Tax is a tax levied on income received by individuals, communities, families, trust or estates from all sources ^[1] It is progressive in nature – the tax rate increases as the income increases.

Despite the progressiveness of personal income tax to ensure equity in taxation and the ability to pay, tax crimes is still prevalent among taxpayers subject to personal income tax, particularly those assessed under direct assessment system ^[2].

The Personal Income Tax Act criminalises certain acts or omissions on the part of the taxpayer which amounts to tax crimes. Tax offences under Personal Income Tax Act may be categorised into civil and criminal tax offences. Civil tax offences are those offences to which the sanctions or punishment attached is imposed by the tax authorities while the criminal tax offences are those offences which sanctions and penalties can only be imposed after a successful conviction in a law court.

The commission of tax crimes/offences not only weakens aggregate tax revenue mobilisation which ultimately results in poor developmental prospects ^[3] low employment rate ^[4], weak economic productivity and growth ^[5] but also weakens the pillars of fair tax system thereby undermining the prospects and essence of personal income tax administration.

To reduce the commission of tax offences and prevent its negative effect on society and the tax system, the Personal Income Tax Act contains measures both administrative sanctions and legal actions that may be set in motion by the taxing authorities to serve as preventive and punitive measures against tax offences.

This paper will examine the method of assessment and collection of personal income tax. The paper will also examine the various tax offences under the Personal Income Tax Act and the measures and sanctions provided to prevent and punish such tax crimes.

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2. Assessment and collection of personal income tax

Personal income tax is a levy paid on all incomes accruing to individuals, communities, families, trust or estate, from all sources. The personal income tax administration is regulated primarily by the Personal Income Tax Act ^[6] and administered by the States' Board of Internal Revenue; which operational arm is the State Internal Revenue Service ^[7]. The State Board of Internal Revenue Service is responsible for the effective assessment and collection of personal income tax, including penal fines due to the state government and the remission of same to the state government ^[8].

The Federal Internal Revenue Services is the taxing authority responsible for the individuals employed in the Armed Forces other than in civilian capacity; officers of the Nigerian Foreign Service, residents of the Federal Capital Territory and non-resident Nigerians deriving income and profit from Nigeria ^[9].

Personal income tax is levied on the worldwide income of a taxable person in Nigeria ^[10]. The incomes subject to personal tax include: gains or profits of self-employed taxable persons; emoluments, salaries, wages, allowances, fees, gains or profits of employees including bonuses, compensations, bonuses, premium, benefits from which the employee is subjected to make gain or profit excluding such sums or expenses incurred by the employee during the performance of duties as an employee; gain/profit/premium made from the use or occupation of a property; dividend, interest or discount on investments; charge or annuity and any other profit or gains or payment made by a taxable person ^[11]. However, gratuities; pensions; consolidated compensation for death or injuries; compensation for loss of employment; interests accruing to a taxable person on foreign currency domiciliary account; income of persons earning gross income of National Minimum Wage or less from employment; income and interest earned from securities bond and short term securities; income from dividend, interest, rent, royalties, fee, commission brought into Nigeria in a convertible currency and paid into a domiciliary account in a bank by a Nigerian resident; income earned from abroad brought into Nigeria and deposited into domiciliary account in an authorised bank in Nigeria by a temporary professional; and income of expatriates with which the government as technical assistance arrangement are all exempted from taxation ^[12].

Personal income tax is assessed at a graduated rate. The graduated tax rate ensures that the more a taxpayer earns, the more he pays, thereby making personal income tax progressive in nature. The chargeable income is subject to tax. Thus, the first N300,000.00 is taxed at 7%, the next N300,000.00 at 11%, the next N500,000.00 at 15%, the next N500,000.00 at 19%, the next N1,600,000.00 at 21% and the remaining chargeable income above N3,200,000.00 at 24% ^[13].

The Personal Income Tax Act provides for two methods of assessment to tax, to wit: the self-assessment and the administrative assessment ^[14].

The Tax Administration (Self-Assessment) Regulations 2011 regulates the procedure of assessment to personal income tax on taxable persons.

The self-assessment regime envisages voluntary tax compliance on the part of a taxable person who is expected to compute his tax liabilities, pay the assessed tax and file tax returns with the evidence of payment of assessed tax on or before the 31st March of every year of assessment with the relevant tax authority ^[15].

The administrative assessment is raised by the relevant tax authority when a taxable person refuses to voluntarily pay his tax liabilities and file a tax return on or before the 31st March of every year of assessment as expected under the self-assessment regime ^[16].

Under the self-assessment regime, a taxpayer may opt for payment of tax due by instalment, provided the final instalment will be liquidated on or before the 31st March of the relevant year of assessment ^[17]. Furthermore, a taxpayer is also privileged to seek for extension of time to file a tax return, provided same is applied for in writing before the tax due date, i.e. the 31st March, to the relevant tax authority, stating good reasons for the applicant-taxpayer's inability to comply ^[18]. The extension of time, when granted, will not alter the time limitation for tax assessment and payment ^[19].

The administrative assessment may also be raised on a taxpayer during an authorised audit on the taxpayer's books and account ^[20] or during authorised investigation into the affairs of the taxpayer ^[21] or during assessment of an employer under the Pay-As-You-Earn scheme ^[22].

The administrative assessment requires tax officials to obtain necessary documents and information from the taxpayer or through other appropriate means to adequately determine the total chargeable income of the taxpayer so as to compute the total tax liability, consequent on which a notice of assessment is issued on the taxpayer ^[23].

A taxpayer on whom an administrative assessment is raised is still expected to file tax return ^[24] and also pay penalties and interest on the tax due and tax returns paid and filed lately ^[25].

Notwithstanding the ease offered under the self-assessment regime and the bonus of 1% for early filing ^[26] for the taxpayer, studies have shown that taxpayer's ignorance and nonchalant attitude has been a clog slowing down the wheel of voluntary tax compliance envisaged under the self-assessment regime in Nigeria ^[27].

One of the contributory factors to the problem of nonchalance on the part of taxpayers is the ineptitude of tax officials and weak enforcement of tax laws. The ineffective enforcement of tax by the prosecution of tax law offenders have made taxpayers perceive tax laws to be weak, resulting in indifference and utter disregard towards voluntary compliance with tax laws ^[28].

It is suggested that more effort should be harnessed on taxpayers' education, tax enforcement and in making the self-assessment regime more enticing to taxpayers by the introduction of more incentives or bonus.

A taxpayer who is served with an administrative assessment, and who is dissatisfied with same, may lodge an appeal with the tax office of the tax authority from which the assessment emanated and same is referred to the Tax Assessment Review Committee (TARC) which arranges a meeting with the aggrieved taxpayer to resolve any issues contained in the objection against the assessment. If the TARC is not able to resolve the issue or the taxpayer is not satisfied with the decision of the TARC, an appeal may be lodged with the Executive Chairman of the relevant tax authority. If the objection is still unresolved, an appeal may be filed at the Tax Appeal Tribunal and if still dissatisfied with the decision of the Tax Appeal Tribunal, a further appeal may be filed at the Federal High Court ^[29].

It is very important for the taxpayer to comply with the time limit for raising an objection to an assessment and filing an appeal which must be within thirty (30) days of the service of the notice of assessment ^[30].

Personal income tax is collected either through the direct assessment system or the Pay-As-You Earn system. Under the direct assessment, the taxpayer walks into the tax office to fulfil his tax obligations or the tax officials go directly into the field to audit taxpayers, assess them to tax for them to fulfil their tax obligations. This system tends to be costlier when the tax officials have to go to the field to detect and assess eligible taxpayers in order to bring them within the tax net. Tax may easily be evaded under this system because it requires the taxpayers to voluntarily fulfil their tax obligations without compulsion. However, studies have shown that tax evasion is prevalent under the direct assessment system^[31].

For ease of collection of personal income tax, the Pay-As-You-Earn system was introduced. The system is regulated by the Personal Income Tax Act and the Operation Pay-As-You-Earn Scheme Regulation 2002. The system obliges every employer to voluntarily register under the scheme with a relevant tax authority, deduct personal income tax from its employees' emoluments and file tax return of all emoluments paid to all its employees in respect of the preceding year, not later than 31st January of every year of assessment^[32].

The employer is to remit PAYE taxes within 10 days after each month ends to the relevant tax authority and a receipt of such payment is to be issued to the employer by the tax officer^[33]. Where an employer defaults, the tax authority may place a demand for the remittance of the tax^[34].

Under the PAYE scheme, the employer is an agent of collection who is answerable to the relevant tax authority for the deduction of tax from employees' emoluments which includes PAYE obligations and withholding taxes among others. Although, the employee is the taxable person as he is the one earning the income, the employer is the chargeable person^[35].

The obligation vested in the employer under the PAYE scheme has been described as an administrative duty and the PAYE system as a form of withholding tax arrangement requiring the employer to act as the government's agent to ensure that its employees' income is taxed at source^[36].

Although an employee is the taxable person, an employer under the PAYE system can also validly raise an objection to a tax assessment or demand notice validly served on it by a relevant tax authority^[37].

It is pertinent to note that an employer or company who has no employee in a particular state is not liable to account for PAYE tax of such non-existent employees to the statetax authority^[38]. Furthermore, a tax authority cannot deem a company's vendors as employees of the company for the purpose of PAYE tax^[39].

Where an employer deducts and remit personal income tax due of its employees and the relevant tax authority detects under assessment or underpayment or fraudulent or unreasonable tax remittance, it is the duty of the tax authority to re-assess and fix tax payable on the basis of the tax returns made or filed by the employer. That is why the employer is duty bound to file tax returns of its employees. Where the employer defaults in filing tax return of its employees, the relevant tax authority is empowered by law to resort to the 'Best of Judgment' approach in assessing the income tax of employees of such defaulting employer. Although the 'Best of Judgment' approach uses a deemed income, the tax authority is obliged to act honestly and reasonably in making the assessment, and whether or not a tax return was filed by the taxpayer, same must not be punitive.^[40]

The problems associated with administration of personal

income tax, especially in the informal sector are illiteracy, non-keeping of accounting or business record, false information on tax returns, non-accessibility of taxpayers and lack of cooperation from employers and other government departments^[41], all of which are a form of tax offence or the other under the Personal Income Tax Act.

3. Tax offences under the personal income tax act

A tax offence is an act done in breach or contravention of a tax code or tax law. The breach or contravention carries with it a punitive consequence to serve as deterrence.

Some scholars categorized tax offences as mild or severe, depending on the punishment attached^[42]. Mild tax offences being the civil aspect which carries with it monetary payment of penal fines while the severe tax offences are those that carries with it punishment for a term of imprisonment and payment of fine upon conviction^[43].

Adopting this categorization under the Personal Income Tax Act, offences to which is attached imposition of interest and penal fine and which the tax authority can impose without recourse to a legal action to convict the guilt of the accused taxpayer in a Court of law but can be enforced through legal action will be regarded as the civil aspect of tax offences while offences to which the punishment attached can only be imposed after a successful conviction of the guilt of the accused taxpayer in a Court of competent jurisdiction will be regarded as a criminal tax offence.

Tax offences involve one form of tax evasion or the other^[44]. This is because the effect of a tax offence, notwithstanding the perpetrator, ultimately culminates in the loss of revenue to the government.

Civil tax offences under the Personal Income Tax Act include failure to pay assessed tax by due date^[45]; failure to file tax return^[46]; non-deduction and non-payment of withholding tax^[47]; failure of a taxpayer to comply with or answer a notice or summons issued under section 41^[48]; and failure of an employer to deduct PAYE tax^[49]. They carry sanctions such as monetary fines and penalties that can be imposed by the relevant tax authority itself on a defaulting taxpayer once the commission of any of the offences has been detected. However, the sanctions can be enforced against the defaulting taxpayer before a Court of competent jurisdiction.

Criminal tax offences under the Personal Income Tax Act are: omission or understatement of chargeable income on tax return^[50]; making false statements on tax return^[51]; forgery or falsification of tax clearance certificate^[52]; obstruction of tax administration^[53]; offences committed by tax officials/authorised persons and unauthorised persons^[54]; abuse/assault on tax officials^[55]; failure to keep books of account^[56]; failure of an employee under PAYE to file tax return^[57]; failure to demand tax clearance certificate^[58]; failure of banker to file returns pursuant to Section 49^[59]; and failure of banker to furnish tax authority with information pursuant to section 47^[60]. These offences are criminal in nature because the trial of the "accused taxpayer" is required and a successful conviction in a Court of competent jurisdiction before the sanctions attached can be imposed. The sanctions are a term of imprisonment or a monetary fine or both as maybe specified by the specific provision of the Act^[61].

4. Legal measures against tax offences

The Personal Income Tax Act provides sanctions to punish and prevent the commission of tax offences committed in

contravention of the Act. The sanctions can be categorised into two: Administrative measures and Legal actions.

The administrative measures are used as a preventive weapon to ensure tax compliance and as a punitive weapon on defaulting taxpayers detected to have committed a breach of the Personal Income Tax Act without having recourse to the Courts but can be enforced against the defaulting taxpayer in Court. However, the legal actions are strictly punitive in nature.

Administrative measures are not only cost and time effective in its imposition and enforcement but also yields more revenue to the government, the reason for its preference by the tax authority ^[62]. The administrative measures are monetary penalties in form of interest and fines, additional assessment, tax clearance certificate, tax investigation, tax audit and call for further returns.

The legal actions against tax offences may be instituted in the form of civil actions and criminal prosecution to enforce the administrative measures or recover or enforce tax due or punish tax crimes. The legal actions are distraint on taxpayer's property, civil action to recover tax and tax penalties or fines and criminal prosecution of tax crimes under the Personal Income Tax Act. Both the administrative measures and legal actions are discussed below:

4.1 Monetary interest and fines

When a taxpayer is detected to have committed a civil tax offence such as: non-payment of assessed tax by due date ^[63], non-deduction and non-remission of withholding tax to the relevant tax authority ^[64] and failure of an employer to deduct and properly account for tax deducted from its employees ^[65], a tax authority can impose the sanction of monetary interest and fine attached to such offences on the defaulting taxpayer without the need to go to Court.

Monetary penalty under the Personal Income Tax Act is two-winged. It can be a fine administered together with interest at the prevailing commercial rate or bank lending rate, as may be specified by the Act.

This sanction is easier and not expensive to administer by the tax authority and it is compensatory in nature as it protects the present value of the tax amount due to the government because the interests are levied at the prevailing commercial rate or bank lending rate ^[66].

It is pertinent to note that interest and fines can only be imposed on a tax that is due. This is because a tax that has not been conclusively determined or ascertained cannot be or form a basis for the calculation of interest or fine. A tax becomes due and conclusively determined where its assessment has become final and conclusive, that is, no appeal has been filed against the assessment or the appeal has been fully determined, otherwise, such monetary penal fine and interest will be in abeyance or abate until the appeal is determined ^[67].

4.2 Additional assessment

This is a civil measure to prevent tax evasion and rectify under-assessment or underpayment of tax. It is an additional tax imposed for the civil tax crime committed by a defaulting taxpayer ^[68].

Additional assessment may also be imposed where the commission of a civil fraud has been detected. For a civil fraud to be established, there must be a "discovery" or an "opinion" that same has been committed and must have resulted from the "willful default" or "neglect" on the part of

the taxpayer ^[69].

Where tax has been under-assessed or under-paid, a tax authority can only raise an additional assessment within the year of assessment in which the discovery was made or within 6 years after the discovery occurred unless a civil fraud is detected ^[70]. Furthermore, where an additional assessment needs to be raised beyond the 6 years limitation, the relevant tax authority must establish the existence of any ground of fraud or willful default or neglect as the reason for extending the additional assessment beyond the 6 years limit ^[71].

4.3 Tax clearance certificate

This measure is preventive in nature and aimed at curbing tax evasion ^[72]. Tax Clearance Certificate is issued by a taxing authority as evidence that the taxpayer has fulfilled his tax obligation for 3 years immediately preceding the current year of assessment ^[73].

To activate the preventive nature of the tax clearance certificate, the Personal Income Tax Act mandates ministries, departments, agencies (MDAs) of governments and commercial banks to demand the tax clearance certificate from individuals and businesses in respect of certain transactions listed under section 85 of the Act ^[74]. Furthermore, the authenticity of the tax clearance certificate presented by the taxpayer must also be verified with the issuing tax authority ^[75].

A strict compliance with this measure by the government MDAs and commercial banks will compel every eligible taxpayer to come within the tax net and fulfil their tax obligations as at when due. Although the success of this measure will depend largely on the cooperation of the government MDAs and commercial banks who are to compulsorily request and verify the tax clearance certificate, the tax authority can boost the overall success by strictly monitoring the extent of compliance by the government MDAs and commercial banks and promptly prosecute the stakeholders who do not comply under section 85 (9) of the Personal Income Tax Act.

4.4 Tax investigation

Tax Investigation is a preventive measure which entails an independent review of account books and financial statements of a taxpayer suspected to have committed tax fraud through non-payment or under-payment of tax due ^[76]. Where the outcome of the tax investigation establishes or detects tax fraud or evasion or other tax offence, the taxpayer will be prosecuted if found culpable ^[77].

Tax investigation is also used by a tax authority where total and partial non-disclosure of information or any irregularity as regards tax matters is suspected or where evidence of a tax offence or irregularity can be found in the premises or location of a taxpayer or taxpayer's agent or representative ^[78].

It is very essential that there must be reasonable suspicion that a tax crime has been committed before a tax authority can launch a tax investigation because the exercise of tax investigation is with a view to discovering whether a tax crime has been committed ^[79].

Sequel to a tax investigation, any person may be interviewed or questioned by the tax authority regarding a taxpayer being investigated ^[80]. Section 103 of the Act reinforces the power of a tax authority to conduct tax investigation by giving a tax collector the power to enter into a premises to request information regarding a taxpayer or his affairs as it deems

necessary.

Lack of cooperation, lack of record keeping, aggression and assault on tax officials, influence peddling, partial submission of books and records for inspection are some of the problems encountered during tax investigation, which are capable of limiting the effectiveness of tax investigation as a preventive tool against tax offences in Nigeria ^[81].

4.5 Tax audit

Tax audit is also a preventive measure used by tax authorities to prevent tax evasion. It entails an examination or review of the affairs of any taxpayer to obtain full information as regards his income or gain ^[82]. It involves an independent examination of the books, documents, accounts or tax returns to rectify matters relating to the income or gains of the taxpayer and to ensure that the amount of tax reported and paid is in accordance with the Personal Income Tax Act ^[83].

Tax audit is conducted by experienced staff of the relevant tax authority called tax auditors ^[84]. It may be in the form of desk audit or field audit ^[85]. Tax audit, if well utilised, is capable of detecting errors, misrepresentations and evasion in tax affairs of a taxpayer. However, this will depend largely on the skill, effort and integrity of the tax auditor and the cooperation of the taxpayer ^[86].

Some scholars maintain that tax audit sustains the integrity and purpose of the self-assessment regime in encouraging voluntary compliance ^[87]. However, problems associated with the measure such as taxpayer's nonchalance to tax reconciliatory meetings, inducement of tax auditors, corruption, lack of audit skills, deliberate delays, influence peddling and poor records are capable of hampering its effect as a preventive tool against tax offences ^[88].

It is important for the tax authority to duly follow the procedures laid down in conducting a successful tax audit as laid down in sections 55 and 58 of the Personal Income Tax Act ^[89].

4.6 Call for further returns

This preventive measure is used by tax authorities where more information is required from the taxpayer to correctly ascertain and determine tax liability. The tax authority may request for fuller or further return in writing within a reasonable time ^[90]. Fuller or further return may be necessary to prevent an incidence of under-assessment or over-assessment to tax.

4.7 Distrain on Chattel

In enforcement or recovery of tax due, a tax authority may levy distraint on a defaulting taxpayer's property and sell any of the distrained property. Such tax due must be final and conclusive and a demand notice must have been served on the taxpayer ^[91].

The procedure for levying a distraint is clearly set out in section 104 of the Personal Income Tax Act and must be strictly followed by the tax authority. The officer duly authorised by the tax authority must apply to a judge of a High Court sitting in Chambers, under oath for the issuance of a warrant to distrain the taxpayer's property ^[92]. The Application is made *ex parte*, accompanied with a statement on oath and an address.

This measure is punitive in nature but still gives the defaulting taxpayer priority to proceeds of the sale after the tax has been deducted ^[93]. However, it may be cost and time ineffective due to need to apply to a Court of competent jurisdiction for

authorisation of sale of a distrained immovable property ^[94].

Adedokun opined that the social stigma and embarrassment associated with the public auction and sale of the distrained property of a defaulting taxpayer may serve as a deterrent to others who intend to evade tax ^[95]. While this position might be positive, courage, ignorance and apathy on the part of tax officials in utilising this measure may be a challenge. Also, influence peddling may be a clog in its effective use.

4.8 Civil action

Civil action is both a punitive tool to recover personal income tax which has become due, final and conclusive as a debt due to the government from the defaulting taxpayer, alongside the penal interest and fine, as well as a preventive tool to forestall tax evasion ^[96].

The High Court and District or Revenue Court is the Court with competent jurisdiction to entertain such suit. The action may be brought under the Undefended list procedure or Summary judgment before the Court ^[97]. A civil action to recover unpaid tax as a debt due is entirely different from the procedure provided under Section 104 of the Personal Income Tax Act to levy distraint on a defaulting taxpayer's property. The procedure expressly set under Section 104 of the Act is a special procedure which must be strictly followed by the Courts and the taxing authorities. The uniqueness of the procedure under section 104 was reiterated by the Court of Appeal in the case of *Independent Television/Radio v Edo State Board of Internal Revenue* ^[98] when it held that in cases where an Act of the National Assembly provides for a special procedure to be adopted by the Courts in doing things, the Act of the National Assembly shall supersede the provisions of the High Court Rules.

Abdulrasaq reasoned that tax authorities prefer utilising civil action against tax defaulters because of the likelihood of recovering more revenue for the government ^[99]. As convincing as this position is, it is not always the outcome as seen in the case of *Kwara State Board of Internal Revenue v Nigerian Stored Product and Research Institute* ^[100] where the Court held that the Claimant was unable to discharge the burden of establishing the claim for the sum of N56,730,263.00 arising from a tax audit covering the period of January 2005 to December 2008. The Court held that the Claimant merely dumped tendered documents on the Court and was unable to lead evidence to convince the Court on how the respective figures contained on the Exhibits were arrived at. The Claimant's sole witness admitted being part of the tax enforcement team and not tax audit team, so he only read out figures and could not state or establish the basis for the assessment of the tax. The Court ruled the evidence of the Claimant's sole witness as hearsay and not sufficient to establish the claim but granted the sum of N44.2 Million solemnly declared as debt due by the Defendant's sole witness. The interest of 10% was also awarded on the judgment sum ^[101].

Despite the easy avenue to generate a huge sum as tax in the above case, same was botched by a mere technicality of law and an obvious inadvertence of the tax authority and the State Counsel representing the Claimant. The tax authority could have fully swayed the Court in its favour in granting the whole sum claimed if a member of the tax audit team or the maker of the Exhibits tendered was called as a witness to testify in the matter.

As rightly predicted by Abdulrasaq, the preference for civil suit by tax authorities has not deterred the commission of tax

crimes among taxpayers in Nigeria ^[2]. The tax authorities can improve by farming out their debt recovery cases to experienced law firms specialised in tax litigation or facilitate the grant of *fiat* for its legal department.

4.9 Criminal Prosecution

Criminal prosecution is a punitive measure under the Personal Income Tax Act to punish tax law offenders who commit criminal tax offences under the Act. It entails instituting a criminal proceeding in Court of competent jurisdiction against a taxpayer or other persons suspected to have committed a criminal tax offence.

Criminal sanctions under the Personal Income Tax Act where a criminal prosecution and conviction is required provide for specific fines and terms of imprisonment. These sanctions can only be imposed by a Court after the guilt of the offender has been established beyond reasonable doubt by the prosecution ^[3].

The Revenue Courts and the High Courts are the criminal courts with jurisdiction to prosecute criminal tax offences within their respective jurisdiction.

Issues may arise as to the apparent difficulty that may be faced by the prosecutor in establishing beyond reasonable doubt that a suspected tax offender is guilty, for instance in a case where the tax offence suspected to have been committed is omission or understatement or false declaration of income or false statement on tax return. This is because the taxpayer knows the true facts which the prosecution may not be privy to. However, the Act envisages such situations and has fortified the tax authority with the powers to require and obtain information by compelling the taxpayer to produce records and answer to queries that may be raised for the purpose of tax investigation, in addition to the power to exercise entry, search and seizure ^[4]. These powers bestowed on tax authorities have been termed as a “very wide discretion ^[5].”

Sections 94 (2) (b) and 95(1) of the Act uses the words “without sufficient cause” and “without reasonable excuse” respectively, which presupposes possible defences may be available to an “accused taxpayer” for not complying with the requirements of the Act. According to Abdulrazaq ^[6], there are circumstances which may qualify as reasonable excuse or sufficient cause and they include: major illness or injury of the taxpayer, spouse or staff; damage or malfunction of computer; lack of funds; cash flow problems; sudden resignation of taxpayer’s staff in charge of its tax affairs; failure of tax authority to reply to correspondences; misleading information from tax authority; error as to date for filing tax return; error by agents; lack of assistance; and injunction against collection of tax.

Notwithstanding the severity of the sanctions that follows after a successful conviction in a criminal prosecution, tax authorities still prefer to opt for the institution of civil actions against suspected tax offenders. This has been blamed on the tax authorities’ lack of knowledge on the ingredients of tax evasion ^[7].

5. Conclusion

This paper provides an understanding into the administration of personal income tax vis-à-vis the legal measures against tax offences. Personal income tax is administered by the States’ Board of Internal Revenue. Taxable persons are assessed to personal tax either through the self-assessment system or the administrative assessment system. An analysis

of the administration of personal income tax revealed that taxable persons would not usually opt for the self-assessment system, notwithstanding its ease and the bonus offered for early filing of tax returns, which may be due to ignorance or nonchalance toward discharging tax obligations.

The methods of tax collection through the direct assessment system or the Pay-As-You-Earn (PAYE) system have also been examined. It showed that the PAYE system is more organised as personal tax cannot be easily evaded under it, unlike the direct assessment system. The paper also revealed that tax offences are prevalent under the direct assessment system compared with the PAYE system.

This paper also examined tax offences and the measures provided under the Personal Income Tax Act. It was found that tax offences under the Personal Income Tax Act may either be civil or criminal in nature depending on the sanctions attached to the offence. It was also found that the legal measures provided to tackle the incidences of tax offences under personal income tax administration are both preventive and punitive in nature.

There are, however, doubts as to whether these legal measures are effective in preventing and punishing tax offences in view of the shortfalls identified in the paper which have consequently reduced its effectiveness in achieving their purpose of tackling tax crimes. It can, therefore, be rightly concluded that while personal income tax administration is well regulated under the Personal Income Tax Act, the implementation of the provisions of the Act may not adequately prevent the incidence and commission of tax offences because of the loopholes identified in the paper.

It is, therefore, important for the government and tax authorities to strengthen the system of personal income tax administration so as to reduce the incidence and commission of tax crimes among taxpayers in Nigeria. It is also recommended that more efforts should be harnessed on taxpayers’ education, tax enforcement and in making the self-assessment regime more enticing to taxpayers by the introduction of more incentives and bonuses.

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- companies or business name; allocation of market stall and plot of land. Other transactions are confirmation of appointment as Chairman or member of a public board, institution, commission or company; application for control permission to remit funds from investment incomes to a non-resident recipient and any other transaction as may be determined from time to time by the Minister.
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