APPRAISING THE ROLE OF THE FEDERAL INLAND REVENUE SERVICE IN THE ENFORCEMENT OF TAX LAWS IN NIGERIA*.

1.1 Introduction

Taxation is one of the avenues by which governments worldwide realize revenue to fund critical expenditures such as defense, law and order, health services, education, social welfare and economic infrastructure. Taxation from time immemorial has been deployed by government as fiscal weapon to plan and direct the economy to bring about economic growth and development. It has also served the useful egalitarian purpose as instrument for social equalization. It is the goal of every tax system that taxes are yielded voluntarily or compelled at very minimal compliance cost[1].

Since the discovery of crude oil in Oloibiri in 1956 Nigeria has depended largely on this resource as major state revenue. Unpredictable fluctuations in global oil market, the exhaustible nature of this resource and the concomitant environmental abuses that goes with its exploitation resulting in the insecurity in the Niger Delta region have collectively brought to the fore the dangers in continued dependence on oil revenue. This reality has awakened the debate on more sustainable revenue sources to fund government programmes and policies. It is desired that non-oil revenue will eventually account for a substantial portion of the country's total revenues. Taxation as a viable alternative now occupies the front burner in national debates.

In April 2012, Nigeria launched a new tax policy[2] anchored on fiscal federalism with the following objectives:

i. Promoting fiscal responsibility and accountability;
ii. Facilitating economic growth;
iii. Providing the government with stable resources for the provision of public goods and services
iv. Addressing the inequalities in income distribution;

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1 Reasons for tax default include legal and institutional inadequacies, multiplicity of taxes, illiteracy and low level of awareness, corruption and insecurity that undermines economic activities and high tax rates.

2 Nigeria, National Tax Policy, Federal Ministry of Finance, Abuja, April 2012,pp 4-6.

v. Providing economic stabilization by minimising the negative impacts of volatile booms and recessions and complementing the efforts of monetary policy;

vi. Adopting a tax system that is fair and equitable; and

vii. Correcting market failures or imperfections either through an upwards or downwards tax review as may be necessary to achieve the above objectives.

No doubt, these objectives are developmental in character and, in themselves growth enhancers. Only recently, the Ministerial Implementation Committee on Harmonization of Taxes within the federation was constituted to fashion modalities for the prevention of multiple taxation in Nigeria[3]. A faithful pursuit of these objectives can enable Nigeria attain the vision of being one of the twenty largest economies in the world by the year 2020. In the context of our nascent regulatory framework are these objectives achievable?

On the international arena, there is cause for concern. The USA is the largest importer of Nigeria's oil. The country has discovered large deposit of crude oil in some of its states and for the first time since 1943 has now joined the league of exporters of refined petroleum. Indications point to the reality that the future oil production capacity of the USA could overtake Saudi Arabia and Russia, the two largest oil producers in the world[4]. This portends a major impending loss of market for Nigeria oil necessitating a rethink on alternative revenue sources.

The quality of a legislative framework and interpretation of taxing statute go a long way in determining how a taxing system is able to meet its objectives. The effectiveness of any tax system depends largely on its administrative machinery. Tax may be more easily and brazenly avoided or evaded where the administrative machinery is weak. An inept tax administrative machinery rubbishes the tax goals and becomes an albatross for the entire economy. This paper examines the Federal Inland Revenue Service (FIRS/Service) of Nigeria. As the teeth with which to bite and make impact, the discussion considers the potency of the enforcement tools at the disposal of the FIRS. Drawing lessons from other jurisdictions, the case is made for improvements. The objective of this discourse is to make the FIRS more vibrant, capable of delivering on its challenging mandate and enable it attain a world class regulator capable of meeting any global peer review

[3] See Sun Newspaper,22/10/2013.P.1

[4] FIRS Staff News Bulletin (2012) December, Volume 2, P.2.

mechanism.

Nigeria is an endowed nation with a total land area of 923,768 square kilometers and a population of over 168 million people. The main stay of the economy is oil, solid mineral deposits, gas reserves and arable land for agriculture. Nigeria's population, land endowments and eco-system are potential strength for a virile economy and a large market in the West African sub-region and a major player in the global economy. Considering theses endowments taxation should be a catalyst to her rightful place in the comity of nations.

Nigeria is a federation of 36 states and 774 Local Government Areas. In line with the structure, the state maintains fiscal federalism with delineated spheres where the component parts, federal, states and local government councils can assess, collect, and account for tax in their domains. To lighten the burden of ascertaining the exact scope the Taxes and Other Levies (Approved List for Collection) Act, 2004, provides the list of taxes that can be collected by the various tiers of government.

Considering its population and economic activities taxation should rightly provide a strategic revenue source for Nigeria.

Tax is a compulsory contribution under the authority of a legislation or directive of constituted authority for public purposes[5]. In its nature, tax is compulsory, backed by authority, and not levied in return for any particular service. It is distinguishable from other sources of government revenue like fees and rates. Payment of tax entails the public appropriation of private assets and runs contrary to the innate human inclination for self preservation of body and property. This thinking is sometimes stretched too far when tax obligation is viewed as a foe to be outfoxed by foul or fair means. This attitude stretched far translates to tax evasion and avoidance. It is the delicate balance of the right to assets preservation and the civic duty to 'render unto Caesar the things that are Caesars' (pay tax) that is represented by the provisions of section 47(2) of the 1999 constitution. While the constitution proclaims the right to assets preservation, moveable and immoveable, this obligation stops short when the citizen is obliged to pay tax. Simply put, payment of tax is constitutionally charged. It is the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly[6].

Every tax system is driven by two tracks of regulation: the body of

[5] Mathew v. Chicory Marketing Board(1938)6CLR 263,270: United States v. Butler 2279,US 1 936,961.

[6] 1999 Constitution. Section 24(f)

rules and institutional regulator[7] charged with supervising compliance and enforcement. While a motley of laws govern the subject, in Nigeria the Federal Inland Revenue Service (FIRS) is charged with administration of the federal tax laws.

Tax administration has come a long way in Nigeria. Taxation was a major revenue source in pre-colonial[8], colonial[9] and the independence era in Nigeria. In pre-colonial Nigeria, the traditional institutions levied and collected various taxes to run the various native societies. From 1904-1940, the administration of taxes was co-ordinated by the Inland Revenue Department in the British colonial administration for the whole Anglo phone West African countries[10]. The Nigerian Inland Revenue Service was carved out in 1943[11]. It was replaced by the Board of Inland Revenue in 1958[12] charged with the power of administering all tax laws at the time. After the grant of independence, the Federal Board of Inland Revenue (FBIR) was established in 1961[13] as a department in the Federal Ministry of Finance. The FBIR was again reestablished in 1993[14] with more powers under an executive chairman. The fact that this body remained within the public service of the Federation and did not have its own enabling law granting it some relative autonomy was a central weakness.

The work of a Study Group on the Reform of Nigeria's Tax System in 2002 reviewed by a Working Group on the Reform of the Nigerian Tax System 2004, gave impetus to the eventual promulgation of the Federal Inland Revenue Service (Establishment) Act 2007[15]. The Act provides for the establishment of the Federal Inland Revenue Service (FIRS). It is charged with powers of assessment, collection of, and accounting for revenues accruable to the Government of the Federation, and for related matters.

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[7] In the USA, the Internal Revenue Service is a bureau of the Department of Treasury and under the charge of the Commissioner of Internal Revenue. The Internal Revenue Service is responsible for collecting taxes and the interpretation and enforcement of the Internal Revenue Code. In the UK, The Her Majesty Revenue and Customs is the tax authority responsible for making sure that money is available to fund UK's public service and for helping families and individuals in targeting financial support.

[8] Amadu, M.K. "Tax Administration in Nigeria and Cameroon, LL.M Thesis (unpublished) Faculty of Law, Ahmadu Bello University, Zaria (1992), p. 4.

[9] Native Revenue Proclamation No. 4, 1904: Aba Women's Riot, 1929, Companies Income Tax Ordinance 1939.

[10] Covering Nigeria, Ghana, Gambia and Serial one.

[11] See Income Tax Ordinance, No. 29, 1943.

[12] See Income Tax Ordinance, 1958.

[13] Company Income Tax Act, No. 22, 1961

[14] Finance (Miscellaneous Taxation Provisions) Act, No. 3, 1993

[15] No. 13, 2007 (FIRS Act)

1.2 The Powers And Functions of the Federal Inland Revenue Service (FIRS)

The FIRS is a body corporate with perpetual succession and common seal. It can sue and be sued and empowered to acquire or dispose of any property for the purpose of carrying out any of its functions under the Act. The service has such powers and duties as are conferred on it by the Act and other enactments on such matters on which the National Assembly can legislate upon.

The object of the FIRS is to control and administer[16] the different taxes and laws specified in the first schedule or other laws made or to be made from time to time by the National Assembly or other regulations made there under by the government of the federation and to account for all taxes collected. According to the First Schedule, the legislations administered by the FIRS are

(1). Companies Income Tax Act, Cap 60, LFN, 1990;
(2). Petroleum Profit Tax Act, Cap 354, LFN, 1990;
(3). Personal Income Tax Act, No. 104, 1993;
(4). Capital Gains Tax Act, Cap 42, LFN, 1990;
(5). Value Added Tax Act, No.102, 1993
(6). Stamp Duty Act, Cap 411, LFN, 1990;
(7). Taxes and Levies (Approved List for Collection) Act, 1998, No. 2, 1998;
(8). All regulations, proclamation, government notices or rules issued in terms of these legislations;
(9). Any other law for the assessment, collection and accounting of revenue accruable to the government of the federation as may be made by the National Assembly from time to time or regulation incidental to those laws, conferring any power, duty and obligation on the Service;
(10). Enactments or laws imposing taxes and levies within the Federal Capital Territory;
(11). Enactments or laws imposing collection of taxes, fees and levies collected by other government agencies and companies including signature bonus, pipeline fees, penalty for gas flared, depot levies and licences, fees for Oil Exploration Licence (OEL), Oil Mining Licence (OML), Oil Production Licence (OPL), royalties, rents (productive and

16 FIRS Act, section 2

non-productive), fees for licences to operate drilling rigs, fees for oil pipeline licences, haulage fees and all such fees prevalent in the oil industry but not limited to the above list.

As regards type, these taxes span corporate, personal and transaction taxes. The very essence of the FIRS is to see that these taxes are fully implemented. The dictions "control and administer," it is submitted are intended to convey that wholesome and robust application of these laws and future laws on tax is envisaged as the sole purpose of the FIRS[17].

Two quick comments can be made on this totalitarian provision. To the extent that the FIRS is expected to control and administer taxes within the purview of the state and local government councils, there may be an infringement of the fiscal federalism arrangement as recognised by the constitution. Secondly the reference to some of these taxing statutes as contained in the Laws of the Federation of Nigeria,1990 when they have been fully integrated in the Laws of the Federation of Nigeria, 2004 is a misnomer which the draftsman was not careful enough to have observed and avoided.

To enable the Service attained its objects, the Act constituted for it a high powered Board which has overall supervision of it. The ten member board is constituted by operatives of key sectors of the economy[18] who in giving direction to the Service are expected to bring to bear their diverse expertise and experiences to enable the Service deliver on its mandate. Section 8 of the Act prescribes the function of the FIRS. According to this section, the Service shall –

(a) *assess persons including companies, enterprises chargeable with tax;*

(b) *assess, collect, account and enforce*

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[17] According to Black's Law Dictionary control means...to exercise power or influence over...To regulate or govern...To have controlling interest...Garner,B.,(2004) Black's Law Dictionary,Thomson West,USA,8th edn.p.353. Administer is interpreted to mean inter-alia ...to make sure that something is done fairly and in the correct way...See Turnbull, J.,(2010) Oxford Advanced Learner's Dictionary, Oxford University Press,Oxford,8th edn.p.18.

[18] The membership of the Federal Inland Revenue Service Board are: the Executive chairman of the service who shall be experienced in taxation as chairman of the service to be appointed by the president and subject to confirmation of the senate: six members with relevant qualifications and expertise who shall be appointed by the President to represent each of the six geo-political zones; a representative of the Attorney-General of the Federation; the Governor of Central Bank of Nigeria or his representative; a representative of the Minister of Finance not below the rank of a director; the Chairman of the Revenue Mobilisation, Allocation and Fiscal Commission or his representative who shall be any of the Commissioners representing the 36 states of the federation; the Group Managing Director of the Nigerian National Petroleum Company or his representative who shall not be below the rank of a Group Executive Director of the Corporation or its equivalent; the Comptroller-General of the Nigerian Customs Service or his representative not below the rank of Deputy Comptroller-General; the Registrar-General of the Corporate Affairs Commission or his representative not below the rank of a director; and the Chief Executive Officer of the National Planning Commission or his representative not below the rank of a director.

payment of taxes as may be due to the Government or any of its agencies;

(c) *collect, recover and pay to the designated account any tax under any provision of this Act or any other enactment or law;*

(d) *in collaboration with the relevant ministries and agencies, review the tax regimes and promote the application of tax revenues to stimulate economic activities and development;*

(e) *in collaboration with the relevant law enforcement agencies, carry out the examination and investigation with a view to enforcing compliance with the provisions of this Act;*

(f) *make, from time to-time, a determination of the extent of financial loss and such other losses by government arising from tax fraud or evasion and such other losses (or revenue forgone) arising from tax waivers and other related matters;*

(g) *adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion;*

(h) *adopt measures which include compliance and regulatory actions, introduction and maintenance of investigative and control techniques on the detection and prevention of non-compliance;*

(i) *collaborate and facilitate rapid exchange of information with relevant national or international agencies or bodies on tax matters;*

(j) *undertake exchange of personnel or other experts with complementary agencies for purposes of comparative experience and capacity building;*

(k) *establish and maintain a system for* *monitoring international dynamics of taxation in order to identify suspicious transactions and the perpetrators and other persons involved;*

(l) *provide and maintain access to up to date and adequate data and information on all taxable persons, individuals, corporate bodies or all agencies of government involved in the collection of revenue for the purpose of efficient, effective and correct tax administration and to prevent tax evasion or fraud;*

(m) *maintain database, statistics, records and reports on persons, organizations, proceeds, properties, documents or other items or assets relating to tax administration including matters relating to waivers, fraud or evasion;*

(n) *undertake and support research on similar measures with a view to stimulating economic development and determine the manifestation, extent, magnitude and effects of tax fraud, evasion and other matters that affect effective tax administration and make recommendations to the government on appropriate intervention and preventive measures;*

(0) *collate and continually review all policies of the Federal Government relating to taxation and revenue generation and undertake a systematic and progressive implementation of such policies;*

(P) *liaise with the office of the Attorney-General of the Federation, all government security and law enforcement agencies and such other financial supervisory institutions in the enforcement* *and eradication of tax related offences;*

(q) *issue taxpayer identification number to every taxable person in Nigeria in collaboration with States Boards of Internal Revenue and Local Government Councils;*

(r) *carry out and sustain rigorous public awareness and enlightenment campaign on the benefits of tax compliance within and outside Nigeria;*

(s) *carry out oversight functions over all taxes and levies accruable to the Government of the federation and as it may be required, query, subpoena, sanction and reward any activities pertaining to the assessment, collection of and accounting for revenues accruable to the Federation; and*

(t) *carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions under this. Act.*

(2) *The Service may, from time to time, specify the form of returns, claims statements and notices necessary for the due administration of the powers conferred on it by this Act.*

Emanating from this provision is the fact that the law has created an octopus with the wherewithal of a behemoth. In substance, the FIRS is an assessor and collector of tax, enforcer of tax payment, collaborator with national and international organisations on tax matters and for comparative experience and capacity building, reviewer of the tax regime, promoter of the application of tax revenue to stimulate economic activities, examiner and investigator for tax compliance, determiner of extent of financial loss owing to tax fraud, a monitor of international dynamics of taxation, a sanctioner and rewarder of tax compliance. So many things rolled into one body: it is submitted that considering the nature and importance of tax only such a highly charged organisation can work to realize the objectives of taxation as enumerated in the Nigerian 2012 tax policy framework.

The mission of the FIRS is "To operate a transparent and an efficient tax system that optimizes tax revenue collection and voluntary compliance". The vision is "to deliver quality services to tax payers in partnership with all stakeholders and make taxation the pivot of national development.

The challenge of an efficient tax system in Nigeria is no doubt a daunting one. According to Ayua

> *One of the greatest economic problem facing Nigeria is the Problem of tax avoidance and evasion which is prevalent in the country. There is general agreement from many quarters that there is tremendous gap between actual and potential tax collections. The government has repeatedly complained of the wide spread 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 tax not to talk of deliberately fraudulent ways and means of evading tax altogether, sometimes with connivance of the revenue officials*[19].

The essence of every tax system is to maximize the discharge of tax liabilities by every subject of tax and where possible at the least cost by voluntary compliance. Compliance provisions provide the process for the discharge of tax liabilities.

Giving a choice, no tax subject will voluntarily diminish his fortunes by appropriating his assets to payment of tax hence the need to compel compliance by resorting to enforcement. Tax enforcement may be defined as measures put in place to compel compliance with the provisions of tax laws. The FIRS is empowered to resort to enforcement mechanism where tax is due and remains unpaid after proper notice to the tax payer has been given. The entire Part V of the FIRS Act is on tax administration and enforcement.

Where a tax due is not paid, it shall be paid on demand made by the Service. If it is still not paid, the tax payer is in default. He is then liable to

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[19] Ayua, I.A.,The Nigerian Tax Law(Lagos,Spectrum Law Publishing,1996) p.6.

pay the full tax and the penalty of an amount equal to the tax due[20]. This section encourages voluntary tax compliance to avoid the sanction of default payment of twice the amount that voluntary and timely payment would ordinarily have avoided.

In the administration of the Act, The FIRS is at liberty to call for any relevant information from any subject of tax or from a bank on any transaction in the threshold of N500,000 or N10,000,000 in the case of an individual or corporate body respectively. For the purpose of accessing information, the Service may access any land or building where such records are kept.

Section 31 FIRS Act gives the FIRS the power to appoint a person as an agent of a tax payer and to require the agent to pay the tax payable by the tax payer from *"any money which may be held by the agent of the taxable person"*. Where the agent defaults, the tax shall be recoverable from him directly. The exercise of this power is very similar to garnishee proceedings[21] where a judgment creditor may, by an order of court, attach the judgment debtors' funds in the hands of a third party. This power at the disposal of the FIRS will prove very potent against financial institutions holding funds of a defaulting tax payer. This no doubt will require intelligence gathering and an up to date database of taxpayers. The membership of the Governor of Central Bank of Nigeria in the FIRS board can be helpful at accessing the necessary information for the beneficial use of this power.

By virtue of section 32, FIRS Act, where a tax payer fails to pay the relevant assessment as at when due, the default shall attract additional liability of 10% penalty. In the case of naira and foreign currency remittances the tax due shall carry interest at the prevailing minimum rediscount rate plus spread to be determined by the Minister of Finance[22]. Where there is good tax education, this punitive consequence should deter tax evaders

A potent tool for enforcement of tax payment in Nigeria is the power to distrain. This mechanism enables the tax authority seize the moveable assets of a tax defaulter and may even proceed to dispose of the assets if the default persist. According to section 33(1)

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[20] FIRS Act. section 27(2).

[21] Webb v. Stenton (1883) 11 QB 518.

[22] It Is now monetary policy rate of CBN and no longer minimum rediscount rate. The reason behind vesting the Minister with the power to determine the spread in this section is difficult to rationalize. This is a power that should ordinarily reside with the Chairman of the FIRS or the Board of the FIRS. Introducing unnecessary bureaucracy into a purely fiscal matter or creating room for government patronage of political affiliates or cronies in the law is unneeded stumbling block at this stage of national development. It is submitted that this section be amended and the Minister should be replaced with the FIRS Board as in section 32(3).

Without prejudice to any other power conferred on the board for the enforcement of payment of tax due from a company, where an assessment has become final and conclusive and a demand notice has, in accordance with the provisions of the relevant tax laws in the First Schedule to this Act, been served upon the taxable person or upon the person in whose name the taxable person is chargeable, then, if payment of the tax is not made within the time limited by the demand notice, the Board may in the prescribed form, for the purpose of enforcing payment of the tax due-

(a) distrain the taxpayer by his goods or other chattels, bonds or other securities;

(b) distrain upon any land, premises or place in respect of which the tax payer is the owner and, subject to the following provisions of this section, recover the amount of tax due by sale of anything so distrained.

The substance of this provision is also contained in section 86, Companies Income Tax Act[23], 2004. The power to sign the Warrant of Distrain is vested on the Chairman of the Service[24]. The law provides for the keeping of the distrained goods for 14 days and thereafter sold to redeem the tax liability. Nothing in section 33 shall be construed to authorize the sale of any immovable property without any order of a High Court[25]. Regrettably, this provision has not enjoyed any serious use in Nigeria. According to Adedokun[26]:

[23] Cap C21,Laws of the Federation of Nigeria,2004.

[24] Section 33(2) FIRS Act. 4th Schedule to the Act. It has been argued that this power is a judicial one and not one to be exercised by the executive. If the power to execute a warrant for search and seizure is, there is no reason why the far reaching power of distrain should not be subject to a judicial oversight.

[25] Ibid. section 33(6)

[26] Adedokun, K.A., Surveillance, Investigation and Enforcement of Tax Laws in Nigeria: Raising the Standard and Protecting Rights and Responsibilities. Paper presented at a 2 day interactive workshop on Tax Laws, Ethics and Judicial Interpretation for Superior Court Judges and Senior Tax Law Officers organized by the FIRS,NIALS & JUK Igwe's Chambers at Transcorp Hilton, Abuja from the 18th-19th December,2012.

However lack of courage, ignorance and apathy on the part of tax collectors has not made this enforcement procedure yield a positive result. In the last couple of years, events have revealed that tax administrators are exhibiting ignorance of the explicit procedures governing distress. They grope in darkness in a so manifestly obvious manner that when they intend to distrain, they embark on sealing up of business premises of companies which method is alien to Nigerian(sic) income tax laws.[A.M.Shittu v.NACB Ltd & 2 Ors (2001)10 NWLR, (Pt.721) p.298]

An enforcement tool for the FIRS is the power to enter and conduct search in any premises on a reasonable suspicion of the commission of a tax offence[27]. The Service may enter into any premises covered by a search warrant to search for, seize and take possession of any book, documents upon reasonable suspicion that an offence involving any form of total or partial non disclosure of information or any irregularity or an offence in connection with or in relation to tax has been committed. Under section 36, FIRS Act, a tax officer armed with a warrant issued by a judicial officer and accompanied by a number of law enforcement officers can enter any premises covered by the warrant to search and seize records used or suspected to be used in the commission of a tax offence. The interposition of judicial action in this process is to provide objective assessment of the situation or threat before any intrusion into the private right of the citizens is embarked upon.

Legal proceedings may be undertaken by the FIRS to enforce the payment of tax due. Legal proceedings for this purpose may be civil or criminal. Under section 34(1), the Act[28], the Service is empowered to sue for recovery of tax in a court of competent jurisdiction with full costs of the action from the tax defaulter as a debt due. For this purpose, all conditions precedent to valid action must be fulfilled. A Magistrate Court shall be a court

27 Personal Income Tax Act, Cap P8, LFN, 2004, section 53(1); Companies Income Tax Act, C21, LFN, 2004, section 64.

28 See also Companies Income Tax Act, LFN, Cap C 11, 2004, section 87(1).

of competent jurisdiction in so far as the amount claimed does not exceed the amount of the jurisdiction of the Magistrate.

The Act has criminalized certain conducts. Part VI of the FIRS Act is on offences and penalties. Failure to deduct or remit tax, obstruction of authorized officers of the service, false declaration, counterfeiting documents, demanding gratification and making false return, impersonation are offences under the Act with appropriate sanctions. Jurisdiction in this respect is vested on the Federal High Court[29]. This is without prejudice to disputes and controversies being referred to the Tax Appeal Tribunal. The FIRS however has the power to compound any offence under the Act by accepting such sum of money not exceeding the maximum fine specified for the offence[30]. This provision is commendable and in tandem with the fast growing jurisprudence on victim compensation, non custodial sentences and restorative criminal justice.

From regulatory perspective there appears to be no hiding place for tax defaulters in Nigeria. The regulatory frame work is relatively adequate to ensure proactive and vibrant tax system in Nigeria. The FIRS in pursuing its mandate has taken some giant strides in recent time and these have reflected on the revenue recorded. It has undertaken several workshops with stakeholders[31] and held enlightenment activities on print[32] and electronic media[33]. These efforts reflected in its revenue recorded as the table[34] below shows for the year 2012.

FIRS COLLECTION FOR THE YEAR 2012

MONTHS	OIL & GAS		NON-OIL		TOTAL	
	Target	Actual	Target	Actual	Target	Actual
January	166.815	267.7404	136.4413	101.65	303.2563	369.38[illegible]
February	166.815	372.7299	136.4413	94.138	303.2563	466.867[illegible]
March	166.815	216.6917	136.4413	119.52	303.2563	336.212[illegible]
April	166.815	268.017	136.4413	117.15	303.2563	385.17[illegible]
May	155.4500	199.677	147.5000	128.34	302.9500	328.0205
June	155.45	278.7143	147.5	275.32	302.9500	554.0377
July	155.4517	302.3731	147.5042	221.75	302.9559	524.12[illegible]
August	155.4512	245.1544	147.5057	192.93	302.9569	438.08[illegible]2
September	155.4512	250.7952	147.5057	153.09	302.9569	403.8823
October	155.4512	290.5341	147.5057	164.33	302.9569	454.86[illegible]6
November	155.4500	291.1037	147.51	114.62	302.96	405.7[illegible]2
December	1755.4153	2983.5308	1578.2965	1682.845	3333.712	4666.3[illegible]5

29 See section 25 Constitution of the Federal Republic of Nigeria, section 251 (1) & (3).

30 FIRS Act, section 48

31 i.e 2 day interactive workshop on tax laws, ethics and judicial interpretation for superior court judges and senior tax lawyers organized by the FIRS of Nigeria in Collaboration with the Institute of Advanced Legal Studie and JUK Igwe's Chambers held at the Transcorp Hilton, Abuja,Nigeria from the 18th-19th December,2012.

32 See the periodic articles by the Executive Chairman,FIRS in the Nation Newspaper-

33 Radio and television programmes and its online websites where it has posted some of its acitivies and guides for tax payers.

34 FIRS Staff News Bulletin (2012) December,Volume 2, P.I.

Sectoral collections for the various months from January to December show steady increase. The total revenue profile of each month from January to December clearly culminating in the record yield of over 4 trillion in 2012 speaks volume of the contribution of taxation to the national wealth portfolio. The new initiatives at the FIRS no doubt is largely paying off.

Notwithstanding, the greatest challenges of compliance in Nigeria are many and diverse. They include low level of income, low tax payers education, poverty, unemployment and negative perception of tax use. A sizeable portion of the citizens are in the informal sector and neither pay tax or pay appropriate taxes, multiple taxation and unfriendly business environment, weak institutional framework, inadequate facilities and logistical support, inadequate capacity and human resources, corruption and political interference[35] and delays in the justice system.

1.3 Conclusion

In line with the federal structure of the Nigerian state, tax administration in Nigeria is three tiered: the FIRS is responsible for assessing, collecting, and accounting for tax and other revenue accruing to the Federal Government, while the State Board of Inland Revenue and the Local Government Committee on Revenue perform similar functions at the states and local government levels respectively. For an efficient and robust tax system, the body charged with administering the tax rules must be proactive. This can only be so if its tools of regulation are potent. The FIRS with a robust historical background is armed with legal provision to ensure compliance and enforcement of tax laws in Nigeria. The FIRS is imbued with wide power as regulator, researcher and developer of the tax industry in Nigeria. To ensure the attainment of the ultimate objective of tax and international best practice it must do one or two things a bit differently. Short of abusive behaviour the FIRS must aggressively wield its statutory enforcement sword. Ample lessons can be gleaned from other jurisdictions like Italy[36], Germany and the USA[37] where the tax authority is no respecter

[35] Especially in the appointment of Chief Executive for the FIRS.

[36] Italian Fashion designer Domenico Dolce and Stefano Gabbana were handed suspended prison sentences of almost 2 years and fine half a billion euros by a court in Milan for tax evasion. See FT.com updated June 20,2013. 8.22am retrieved on the 25/10/2013

[37] Martha Stewart of the famed Insider trading debacle was forced to pay S220,000 in back taxes and penalties to the state of New York. Wesley Snipes famously known as Blade was found guilty of tax evasion and fined S17million dollars and sentenced to 3 years imprisonment effective from December,2010. Marc Anthony,husband of the international songtress,Jennifer lopez was fined over S5 million between 2007-2010 for tax related wrong doing. Boris Becker, the German tennis Superstar was compelled to pay S3 million in back taxes in his home in Munich.See http://www.legalzoom.com/legal-headlines/celebrity-lawsuits/10-celebrities-convicted-tax. retrieved

of any person. In short in these jurisdictions, the fear of the tax authority is the beginning of wisdom. Hear this of the IRS in the US

> *The internal Revenue Service has nearly three thousand of exceptional agents who are skilled to congregate the information necessary to find tax defaulters and to stop tax evasion. The special agents work secretly and also are committed to their jobs...The tax agents have admission to tax income of the defaulters and the much needed power to issue summon...These are just the starting steps of the investigation and if the defaulter is proved guilty of evasion then the IRS agents can levy heavy penalties for tax evasion on him, like if it is recognised that taxes have been deliberately evaded, the IRS can levy tax liens on the defaulter. They can grab hold of his or her possessions. They can congeal cash in his or her accounts and last but not the least they can deprive him or her of the wages. The agents and the IRS have full authority to hold or seize any property held by the tax defaulter and it can be sold at auction...*[38]

Nigeria has not shown any seriousness in this regard. It is certainly not a case of tax compliance as it is a case of non exposure of incidences of tax default.

The essence of every tax system is to maximize the discharge of tax liabilities by every subject of tax and where possible at the least cost by voluntary compliance. Compliance provisions provide the process for the discharge of tax liabilities. Where the tax subject has commendably discharged its civic duty of payment of tax, he is entitled to a certificate of an affirmation of this good conduct. According to section 85,Personal Income Tax Act, 2004,

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on 10/25/2013

[38] http://www.watax.com/penalties-tax evasion.html retrieved on the 4/2/2011.

Whenever the relevant tax authority is of the opinion that tax assessed on profit or income of a person for the three years immediately preceding the current year of assessment has been fully paid or that no tax is due on the income or that the person is not liable to tax for any of those three years, it shall issue a tax clearance certificate to the person within two weeks of the demand for the certificate by that person or, give reasons for the denial, so however, that the payment of current year tax shall not be made a condition for the issuance of the certificate unless the applicant is leaving the country finally.

nstructively, subsection 2 states in clear and affirmative terms that any stry, department, or agency of government or any commercial bank with m a tax subject deals shall demand from such person a tax clearance ficate before undertaking the following transactions:

ı. Application for government loan for industry or business;
). Registration of motor vehicles;
:. Application for firearms licence;
1. Application for foreign exchange or exchange control permission to remit funds outside Nigeria;
:. Application for certificate of occupancy;
:. Application for award of contract by government and its agencies and registered companies;
g. Application for approval of building plan;
h. Application for trade license;
i. Application for transfer of real property;
j. Application for import or export license;
k. Application for agent license;
l. Application for pools or gaming license;
m. Application for registration as a contractor;
n. Application for distributorship;
o. Confirmation of appointment by Government as chairman or member of a public board ,institution, commission, company or to any other similar postions made by the Government;

p. Stamping of guarantor's form for a Nigerian passport;
q. Application for registration of a limited liability company or of a business name,
r. Application for allocation of market stalls;
s. Application or election into public office.

Regrettably notwithstanding this unambiguous provision, this law is obeyed more in breach. Ministries, departments and agencies of government do not consider the request and production of tax clearance certificate as a necessary prerequisite for transacting the business expressly mentioned by law. In addition there is no reason why commercial banks in opening a banking account do not demand a tax clearance certificate as part of the documentation for establishing a banker customer relationship.

The great potential of naming and shaming as instrument for exposure of tax defaulters and a deterrent to prospective defaulters has neither been fully appreciated nor resorted to in Nigeria. Under section 94,UK Finance Act,2009, the HM Revenue and Customs is empowered to publish details of deliberate tax defaulters who have received penalties either for deliberate errors in tax returns or deliberately failing to comply with their tax obligations[39]. The negative effect on being on such list published in print, electronic and online media caution against tax wrong. Even though a similar provision is not found in our tax statute, the FIRS is charged to carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions under the Act[40]. It is submitted that the FIRS can proactive name and shame under this omnibus power. Regretfully, the FIRS has not shown any inclination for such proactiveness.

Inadequate staffing, absence of required skill and poor training of tax officers are the bane of an inept tax authority. The FIRS must boost its human capital resource by employing legal, actuarial scientists and officers with relevant forensic skills to staff meet the challenges of a tax authority in the 21st century. For instance, the UK HM Revenue and Customs has a very strong law enforcement unit with a very strong cadre of criminal investigators responsible for investigating serious organized fiscal crimes. The FIRS must have a robust policy of training with recourse to peculiar national situation and bench marked on international best practices on tax

[39] See the current list of the Published Details of Deliberate Defaulters(PDDD) verion of 14/08/2013-http://www.hmrc.gov.uk/defaulters/defaulters-list pdf retrieved on the 25/10/2013
[40] Section 8(t) FIRS Act, No.13, 2007

matters.

The Service enforcement actions must be complemented by a robust and incisive education on tax obligation and the use to which this tax is put. The citizen must be encouraged to demand accountability from government on the use of their tax payment and to report known cases of tax cheats via phone and emails. This will enable the citizens' police against tax default and scale down on compliance cost.

There is the need to amend section 2 of the FIRS Act, 2007 on the constitution of the FIRS board. While the money market is represented on the board, the capital market is not. This cannot be deliberate in the light of the importance of the capital market to the economy. There is the need to include the Director-General of the Securities and Exchange Commission or his representative on the board. This inclusion will provide invaluable first hand information on the activities of capital market where some of the multinational and blue chip companies are quoted and their shares traded. The regular supply of information on these companies (subjects of corporate tax) in the capital market will enable the FIRS monitor these concerns for appropriate payment of tax.

There is the urgent need for a comprehensive data base for tax use in this country. The importance of this to tax planning, tax policy implementation and realistic tax projection can never be overemphasised. This will ensure that aside from those in the formal/public service, those in the informal private sector are also brought into the tax net and widen resources from tax realization which this country is in dire need of. Although this is provided for in section 8 of the FIRS Act, eight years after the enactment of this law, the Service can still not boast of a comprehensive data on taxpayers in Nigeria.

Corruption has become an intractable problem in Nigeria. It has become a challenge such that it is feared, that if not killed, it may kill Nigeria. Effective employment of tax can help the battle against corruption in Nigeria. Income, assets and transaction taxes can go a long way in tackling the menace of corruption. The need for more studies on tax as effective weapon against corrupt accumulation can never be overemphasised.

On the international scene, the Service must leverage on its collaborative initiatives. It must put in place a national collaborative strategy with the different intelligence and law enforcement agencies to smoke out and stamp out incidences of tax default. Partnership with the Nigerian Police, State Security Service, Nigerian Army, and Para- military bodies like the Civil Defence Corps and Federal Road Safety Corps and traditional institutions will go a long way in widening and bringing those now outside the tax net within. In the United States of America, the Strike Force in the State of Florida has been relatively successful. The strike force is a partnership between federal, States and local agencies created in 2012 to make it easier to apprehend and prosecute tax fraudsters[41]. The reality of globalization has widened the essence of this collaboration beyond national boundaries. The US is currently engaging with over fifty countries to implement its information reporting and withholding tax provisions[42]. These are examples of successes that lessons can be drawn from.

The real function of taxation is to accomplish positive social and economic objectives beyond the revenue. It can be deployed as instrument for human welfare. To achieve this, the FIRS must be vibrant, world class, and purposeful. The laws are fairly adequate; there is the need for the FIRS to do more.

[41] Massive Tax Fraud Take Down During Government Shut Down-http://www.forbes.com/sites/kellyphillipserb/2013/10/21/massive-tax-fraud-takedown-du...retrieved 10/25/2013

[42] commonly known as the Foreign Account Tax Compliance Act, 2010