MULTINATIONAL ENTERPRISESAND TAX AVOIDANCE IN NIGERIA*

1.1 INTRODUCTION

The growing internationalization of economic activities has given rise of recent to taxation problems in the sphere of international investment[1]. In a developing country like Nigeria. multinational business transactions usually take place between members of the group such as the sale of goods, the provision of services, the licensing of patents and know – how, the granting of loans and so on. It is an open secret that tax factors affect the prices charged for such transfers which are usually not at arm's length prices[2]. The multinational or trans-national corporations adopt transfer prices which are not arm's length prices in order to minimise tax. This can be done for example, either by selling goods to a subsidiary in a tax haven at less than arm's length prices or by a parent company overpricing its exports to foreign subsidiaries sò that by inflating the-cost of imports of the final product or raw materials, a corporation can increase the margin of profit which of course will be concealed for tax purposes. This leads to artificially lower profits and therefore lower tax collections in the taxing company. Thus by shifting profits from one company to another company, the taxable profits are consequently distorted. These manipulations can have ason market and Industrial structures as well as the balance of payments.

Indeed they are likely to adversely affect economic development generally particular domestic capital formation revenues of a developing country like Nigeria.

It remains therefore tomeasures have been adopted in Nigeria under the company tax legislation to counter these abuses which we shall now examine.

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1 Dominant Positions of Market Power of Transnational Corporations Use of Transfer Pricing Mechanism, Study by the UNCTAB Secretariat United Nations, New York 1978 pp. 6-7

2 Transfers Pricing and Multinational Enterprises, Report of the OECD Committee on Fiscal Affairs, 1979.

1.2 Issues on Tax Avoidance.

The attempt made in 1968 forcing expatriate companies doing business in Nigeria to incorporate as separate entities in Nigeria as distinct from their parent companies[3] though desirable for the purpose of ensuring adequate control over them in respect of their operation in Nigeria has not been all that successful. As salutary as this measure is, it has one serious unfortunate effect, which the foreign companies were soon to exploit. By forcing foreign companies to form subsidiaries in Nigeria, the Companies and Allied Matters Act [CAMA] 1990 has thereby created two separate and distinct persons in law, both of which are under the centralised management of the multinational expertise thereby giving rise to important problems regarding the taxation of corporate profits. In short this opened up avenues for tax evasion and avoidance.

Thus as Mr. J. I . Obi has rightly observed:[4]

Everyone knows that almost all the companies incorporated here in Nigeria by expatriate companies are not Nigerian companies under the definition of Nigerian Company in S. 2 of CITA, this is because these so — called Nigerian companies are not more than branch offices of their expatriate parent companies in so farm control and management of such companies are concerned. And yet for many years before Decree No2. of 1974, we persisted in the illusion that the so — called Nigerian Companies were independent legal entitles capable of negotiating and concluding agreements with their foreign parent companies at arm length. The predictable effect of course was that spurious agreements were made and honoured by the Revenue under which the foreign expatriate companies were able b dictate what portion of their income should be left lo the Nigerian subsidiaries to emit their local Naira requirements and pay a pre determined tax — usually what such companies consider in their absolute discretion as reasonable.

Thus, this device gave expatriate companies the substance of income derived in Nigeria without liability to companies income tax. The device manifested itself particularly in such items like royalties, chose in action and general contracts, the performance of which are in Nigeria and the commission for hire charges for the use of tangible assets for example, machineries, rigs and so on in Nigeria.

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[3] Companies Act 1968 now Companies Allied Matters Act, 1990.
[4] Companies Act 1990 now called Companies and Allied Matters Act, 1990.

The courts were therefore called upon to pronounce on the property or otherwise of this tax avoidance scheme. Nigerian courts judgments on the matter leave much to be desired[5]. In particular they displayed an apparent lack of judicial will to strike down the infamous device through piercing the corporate veil of the Nigerian subsidies as independent legal entitles to see the realities of the state as English court often do. In Reiss and Co. (Nigeria) Ltd. V Federal Board of Inland Revenue[6]. For example this lack of judicial dynamism was quite glaring. In this case the question arose as to whether the Federal Revenue Court could disregard the legal entity of the Nigerian subsidiary for the purposes of taxing the profits of the expatriate parent company Reiss and Co Amsterdam which were derived in Nigeria. Mr. Justice A.G. Karibi — Whyte has this to say:[7]

Considerable importance has been attached and emphasis laid on the relationship between appellants and Reiss & CO. (Amsterdam), it is evidence that appellant was before 2Yd September, 1960 only an overseas branch of Reiss & Co (Amsterdam) following upon the promulgation of the companies Decree, 1968 and in compliance with the promulgation of the Companies Decree, the Nigerian branch became incorporated as a separate legal entity with its own managing Director and Board of .Directors. There is however evidence before me that Reiss & Co (Amsterdam) still has a controlling share of 55 percent of the sham of the appellant company.

In spite of this evidence and that fact that the judge himself has conceded that there is a considerable dark cloud of suspicion regarding the genuineness of the transactions between the two companies, he surprisingly concludes that[8]

The separate legal identity of appellants and Reiss & Co (Amsterdam) cannot be denied; Salmon v Salmon & Co. [9]Respondent cannot impugn the

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[5] Aluminium Industries Aktien Geselishaft v F.B.I.R (1971) NMLR 339

[6] Suit No. FRC/LIA 76

[7] Ibid at pp. 19 -20

[8] Suit No. FRC/LIA/76 of P.2 6

[9] For instance, Lord Denning in the case of Littlewood (Mail Order Stores Ltd v McGregor (1961) 45 T.0 519 and 536 said this "The doctrine laid down in Salmon v Salmon & Co(19897) A.0 22 has to be watched very carefully. It has often been supposed to cast a veil over the personality of a Limited Company through which the courts cannot see. But that is not true , the courts and can often do, draw aside the veil. They can and often do pull off the mask. They look to see what really lies behind." Thus in this case Lord Denning declined to treat a subsidiary of the Littlewoods as an independent company for tax purposes.

legal situation successfully without adducing sufficient evidence to the contrary.

From the foregoing it becomes evidence that our judges are just too ready to take the law and the legal consequences of transactions as they find them without the willingness to set the legal form of transactions and see what lies behind them. In this way, they seem to encourage tax avoidance schemes particularly those cleverly devised by multinational enterprises operating in Nigeria through subsidiaries. It can thus be seen that our judges lack the dynamism of some English judges such as Lord Denning in swiftly striking down tax evasion and avoidance devices.[10]

It is not therefore surprising that a number of sundry amendments have not been made to the Companies Income Tax Act, 1916 (now the 1990 Act) to take care of the problems relating to dues or allowances for services rendered in Nigeria and interest payments among other things. First, any company entering into any agreement (whether oral or written) in respect of fees, dues and allowances (wherever paid) for services rendered in Nigeria must make a full disclosure to the Board in writing of the terms of such agreement[11]. This will certainly strengthen the Board's hand in dealing with cases where the main purpose or one of the purposes of the transaction is the avoidance of tax and consequently this could have a restraining influence on both the Nigerian and expatriate companies.

Now, interest is deemed to be derived from Nigeria, if there is liability to payment of the interest by a Nigerian company or a company in Nigeria regardless of where or in what form the payment is made or regardless of which every way the interest may have accrued[12] Previously, interest was only taxable in the hands of the recipient if there was a right to payment of the interest in Nigeria. This, among other things as has been stated earlier, created a loophole through which expatriate companies could evade tax liability on interest they received in respect of operations carried on in Nigeria by so contracting that payment of interest was effected outside

[10] Ibid
[11] CITA 1979 S. 10
[12] CITA 1990 S. 8(2) (a) & (b)

Nigeria by their subsidiaries[13]. The new law however is that interest is taxable irrespective of the place of payment.[14]

Another device through which foreign companies evade tax lies in the use they usually made of management fees, technical assistance fees and other similar fees to transfer profits ahead. A tax benefit is usually the reason for the discretionary use of both royalties and management fees. Thus in the words of S. Robbins:[15]

The use of royalties and management fees typically brings tax advantages to the system when a subsidiary's local tax rate is higher than that of its parent. The royalties and management fees are tax deductible locally; but if such a subsidiary remits by means of dividends, it must pay a tax on its earnings prior to the distribution. Though the parent receives a tax credit, the amount it is entitled to effect against the foreign payment is limited by the lower tax rate of the parent. Accordingly, the fee paying subsidiary benefits to the extent of the differential between the tax rate prevailing in its country and that in the country of the parent.

Thus, multinational enterprises are more concerned with higher margin of profit than with the forms they take whether for example, they are recorded as royalties, management fees, cost charges or dividends from their subsidiaries and if they can get higher profits through management fees and royalties, they would surely accept these forms in order to prevent the avoidance of tax through the transfer of profits in these forms. Section 61 of the Companies Income Tax Act 1990 provided for the taxation of management fees or royalty when one company pays or credits such fee to another company. Head office expenses incurred for and on behalf of any company in Nigeria were specifically prohibited as allowable deductions.[16]
It would be sanguine to believe that the above legislative measures would the problem of the tax avoidance by multinational enterprises. These transnational corporations have as their fundamental objective the

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[13] See Aluminium Industries Aktien Gesellschaft v Federal Board of Inland Revenue (1971)NMLR 339 "

[14] CITA 1990, S.8 Cap 60 LFN 1990

[15] S. Robbins and L Stobaugh, Money in the Multinational Enterprise: A study of Financial Policy (London) Longman Group Ltd; 1974) p. 89

[16] See FinanceMiscellaneous Taxation Provisions Act 1993-1996, See also Finance (miscellaneous Taxation provisions) Decree 1979 Part III, S. 22

increasing of profits globally and so try to minimise their overall tax burden by manipulating as we have seen the prices of intra — corporate transactions in goods and services so as to raise profits in these countries where lower tax rates prevail and to reduce them in countries where they are higher. This affects both developed as well as developing countries. Intra — firm imports of developing countries are larger in particular in industrial sectors such as chemicals, pharmaceuticals, electrical machinery, and so on. But a developing country like Nigeria, is less equipped than a developed country to check these abuses. The United Kingdom, for example has a comprehensive set of rules which it uses to control the abuses. Thus the Inland Revenue Department in Britain recovered about £20 million following investigations into the transfer pricing policies of foreign owned transnational corporations operating in Britain.,[17]

A developing country like Nigeria is seriously handicapped in several ways quite apart from the fact that existing provisions were drafted at the time the problem was not clearly recognised. Factors inhibiting the effectiveness of the government include the following. Firstly, there seems to be difficulties faced by the tax authority in determining 'arm's length' prices as there are hardly comparable market substitutes. Arm's length pricing seems to be the best approach in arriving at profits for tax purposes where reliable accounts are not kept. Secondly, there is the difficulty in obtaining from firms the data necessary to reconstruct prices on the basis of actual costs, and their position is further worsened by the fact that often the information necessary to determine the reasonableness of transfer prices for particular products has to be obtained from abroad. The problem is accentuated by the possibility that subsidiaries may claim that they do not have access to the information required in that it is with the parent company and even where the companies are willing to provide the information to foreign authorities, their respective governments mat not allow them to do so.

It seems therefore necessary that in Nigeria, efforts should be devoted to enacting a more comprehensive legislation to check transfer pricing but it also seems that the effectiveness of such a legislation has to depend on

[17] See Financial Times 14 January 1977

international cooperation. As the UNCTAD Secretariat United Nations has said;[18]

Until more accurate methods of assessment of enterprises (in particularly multinationals), can be employed and this may very well imply and much more thorough application of the principle you were Zuilty of a.,, high income unless you can provide (reliable) accounts to show you are innocent.[19]

Finally on tax avoidance, we shall now consider the omnibus or residual provision designed to strike down all kinds of tax avoidance schemes

1.3 Artificial Transactions

From the foregoing discussion we have considered some specific categories of tax avoidance schemes and how the legislature has attempted to counteract them showing as well some of the weaknesses inherent in many of the statutory provisions. Thus the situations we have so far covered are not by any means exhaustive and the anti avoidance provisions we have examined are not comprehensive enough apart from their other particular shortcomings. The fact of the matter is therefore that there are several other devices currently employed by companies and those who control them to avoid or reduce their liability to tax. It is at this juncture that section 18 of Companies income Tax Act,1990conws in.[20]

Section 18 provides that were the Board is of the opinion that any disposition is not in fact given effect to or that any transaction which reduces or would reduce the amount of any tax payable is artificial, it may disregard any such disposition or direct that such adjustments be made as to counter the avoidance or reduction of tax. Thus the board is empowered to disregard `artificial or fictitious' transactions carried out with the intention of reducing the amount of tax payable. In this connection the term "disposition" is given an extensive statutory definition and includes any trust, grant, covenant, agreement or arrangements[21] which is a word of very wide meaning thereby embracing a whole range of activities and so

[18] Dominant Position of Market Power of Transnational Corporation's Use of Transfer Pricing Mechanism, Study by UNCTAD Secretariat of the United Nations New York 1978 p. 4 1 para 17

[19] See the National Income of Nigeria 1950- 51 London; Her Majesty's Stationery Office 1953 at p. 83

[20] See also Section 17 PITD 1993 which is similarly worded.

[21] CITA 1990 s. 18(2)(a)

extending considerably the definition of disposition. Furthermore, transactions between persons one of whom either has control over the other or in the case of individuals who are related to each other to between persons both of whom are controlled by some other person are treated as artificial or fictitious unless they are affected "at arms length ".[22] It seems, however, that this is not wide enough to cover transactions between a company and the relatives of its (say) directors if the aim is to deplete the company's profit in order to reduce its tax liability since it appears a situation involving the directors' relatives and the company is not envisaged under this subsection.

Be that as it may, a company in respect of which any direction is made by the Board has right of Appeal against that direction under s. 1 as if the direction were the same as an 'assessment'. Apart from the qualification made above, s. 18 seems to be general in scope and could thus be employed to restrict substantially the scope for tax avoidance schemes.

The surprising thing, however is that the Nigerian courts seem to take note of the existence of s. 18. it is rare indeed to find an important Nigerian Court..Decision in which s. 18 has been relied upon to strike down any tax avoidance device.

One reason for the negative approach to s. 18 could be that its language is rather vague an imprecise so that it places an enormous burden on our otherwise less skilled tax officials by requiring them to examine every transaction which can be sometimes very sophisticated and complicated and to make a ruling as to whether it is fictitious or artificial. Given the level of their training they are more likely to give up when confronted with difficult situations which are bound to be many in the face of a booming economy. For example, they may find it difficult in some circumstances to say exactly what proceedings are within and what are outside the scope of S. 18 commenting on s. 18 (then S. 25 a Senior tax Official said this :[23] "It involves so much preparatory work, that it would only use it as a last resort."

[22] Ibid s. 18(2)(b)

[23] P.S.A. Layade, ' Tax Evasion' in Fifth Annual Senior Officers' Conference of the Federal Board of Inland Revenues, op cit at p. 29

Thus, the reluctance by tax officials to use s. 25 (now s. 18) could indeed make it counter — productive by causing loss of badly needed revenue.

This same difficulty applies to companies and other taxable persons who may find it difficult to take important commercial or investment decisions as every such decision will be theoretically open to attack since the section is very pervasive.

It is in the light of the above reasons that it is suggested that a more appropriate approach to the problem of tax avoidance is by specific enactments which will identify the kind of transactions to strike at and prescribe with equal precision the consequences which are to follow. In addition to the several advantages of this approach, it has an important advantage for the business community in the sense that it actually assists them by defining for them the obstacles they must be ingenious enough to get round.[24] This paradoxically creates in each particular anti- avoidance provision, the seeds of its own avoidance. This is, however a matter that cannot be satisfactorily concluded either way as there will always be a contest between the government desirous to plug all loopholes so as to obtain the maximum tax as much as possible and the commercial world intent on finding ways and means to reduce their tax liability. This notwithstanding, it seems that dealing with particular transactions with specific provisions is the more effective way of curtailing tax avoidance and it has the added advantage of inculcating confidence in the commercial firms.

Where, however, it is not humanly possible for the legislature to cover a particular situation effectively, the only alternative may be to introduce legislation of a more sweeping character, but this should be by- way of exception only.

In the light of the above and considering the fact that many companies now find it attractive to indulge in various tax avoidance schemes, it is suggested that s. 18 should be amended along the lines of S. 460 of the UK Income and Corporation Taxes Act 1970 which attacks any transaction in the securities, the purpose of which is to obtain a tax advantage. It defines both the types of transactions and the situations to be struck at. This is further augmented by providing for consequences for other situations or

[24] See Cmnd. 9474 (U.K)

transactions aimed at unduly minimising tax liability in several other sections.

We should therefore have a similar tax avoidance legislation, as the UK have empowering the Board to challenge any arrangement, operation or scheme of which the main purpose or one of the main purposes is the avoidance or reduction of liability to tax and to make adjustment to counter the avoidance of reduction. But this legislation should be very detailed and comprehensive by specifying the kinds of transactions or arrangements that should be attacked, such as transfer or acquisition of shares in a company or a change in the persons carrying on a trade or business or increased relief from tax, or repayment or increased repayment of tax; the avoidance of a possible assessment and so on all designed to unduly minimise the tax burden

It must, however be stressed that operations which result in a reduction of tax liability could well be undertaken for purely bona fide commercial or other non – tax savings reasons. This therefore raises the question whether for our own purposes, the British criteria of (a) genuine commercial purpose or (b) management of a portfolio of investments constituting a defence to the revenue ruling that the company's operation is to effect tax avoidance will be satisfactory in Nigeria.

The point is that the British courts have held that the test to be applied in the above situation is a subjective one[25] being a matter of intention which cannot be divorced from the directors who govern the company's policy or the shareholder's who are the proprietors and pas resolutions which bind the company.[26] Apart from the subjective approach leading to serious practical problems, it opens the door to tax avoidance as there seems to be nothing to prevent the company pleading in the face of its transactions being challenged that they have been carried out bona fide, commercial reasons or in the ordinary course of making and managing investments. Although as can be seen from the above, the British criteria of justification has its shortcomings, it is nonetheless essential if genuine commercial business is not to be introduced in Nigeria. Bu, there must be an express provision to the effect that the tax payer company must show to the satisfaction of the

[25] See IRC v Brehner 91967) 43 T.0 705
[26] Ibid at p. 715

board or its representatives that the transaction or transactions were carried out for bona fide commercial reasons and that a tax advantage was not one of their main objects. While this may help to prevent companies taking undue advantage of the criteria of justification it may lead to arbitrariness and indeed abuse on the side of tax officials against companies engaging in genuine commercial operations totally unconnected with tax avoidance. A safeguard should therefore be provided to protect the companies against abuses of this kind In this respect, it is suggested that that aspect of the legislation should be amended to define what constitute or amount to "bona fide or genuine business" for tax purposes.

1.4 Effects of tax evasion and tax avoidance

Tax evasion is of serious concern in Nigeria for at least three reasons. First, it results in a loss of tax revenue.[27] Second, given that opportunities to evade taxes differ among tax payers, tax evasion impairs the chances of realizing the distributional or equity goals of taxation. Third, if tax evasion becomes too wide spread and out of control, honest tax payers may lose faith in tax administration and be tempted to join the ranks of tax evaders.[28] One way of looking at the seriousness of the situation is to examine their economic costs. Investigations show that in Lagos State alone, a prime commercial centre, as much as N100 million is lost annually through tax evasion. The state's Financial Commissioner also admitted that Lagos State Government loses substantial revenue through tax evasion.

Accordingly, if 20 percent of the N100 million loss suffered annually by the Lagos State Government is computed and projected for each of the remaining twenty nine states and Abuja, it means that each of the states loses an average of N20 million annually. Cumulative total loss for all the 30 states and Abuja will be about N600 million annually.[29] Revenue losses owing to tax evasion as can be seen is enormous[30] as there appears to be a big gap between actual and potential income tax collections by the various

[27] The Federal Board of Inland Revenue (FBIR) declined to give a specific figure on possible loss of tax revenue to the nation but admits that it is more than one billion Naira annually. See Jegede Osula J and Nwosu T. (1998) Five Billion Naira Lost through Tax Evasion The President 31 July 1 No. 3 p. 12

[28] Spicer M.W (1975) New Approaches to the Problem of Tax Evasion B.T.R p 152

[29] ibid footnote 94

[30] Olorunleke D. A (1981) Business Times (Lagos) Monday November 2

levels of government.[31] In effect the end total of tax evasion is less revenue to the taxing authority. It also tends to shift the tax burden on the less fortunate members of the community.

In a developing economy like Nigeria where all hands should be on deck to revamp the economy, the prevalent magnitude of the crime is indeed injurious. It is difficult to provide any reliable statistical evidence of the seriousness of tax evasion in Nigeria because of the persistent distrust of statistics. This is because statistics has become immensely politicized[32] in Nigeria and it is linked to the distribution of the national resources. Therefore the ability to manipulate statistics ultimately works in favour of the manipulator hence any benefit which might accrue form the use of statistics is lost.

In a study carried out in Nigeria in 1976[33] it was discovered that the paucity of tax statistics had been very serious. That there was no annual or quarterly bulletin on tax statistics issued from internal revenue department sources with the foregoing background it is no surprise that few attempts have so far been made by the internal revenue departments to discover either on the state or local government basis, if the total number of persons paying taxes to the government are keeping pace with the population trend. In recent times however this attitude appears to be changing as revealed in the efforts made by Lagos State and the Federal Department of Inland Revenue.

Figures made available by the Lagos State Internal Revenue Board for the period 1979 and 1984 showed that revenue accruing to the state from both PAYE (Pay as You Earn) and direct assessment increased from N108, 851, 582.12 in 1976 to N201, 088,709.23 in 1984 an increase of nearly 100 percent. Totally internally generated revenue is approximately N240 million.[34] The Federal Inland Revenue Department also made available its estimated revenue collections. The department is collecting an average tax

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31 Rabiu S.A (1984) Tax Evasion and Offences. A paper presented at the National Conference on State Taxation; Problems and Possibilities under the auspices of the Institute of Administration, A.B.U, 28 — 30 November pp. 1-2

32 Such as been, the case with the various census undertaken in the country especially that of 1973

33 Orewa (1976) Taxation in Western and Midwestern Nigeria, Nigerian Institute for Social and Economic Research (N.I.S.E.RO pp. 118, 120

34 ibid footnote 94

of N1 billion per month. By the end of September 1987, the collection had risen to N9.25 billion. This figure is about N2.8 billion higher than the total revenue estimate for 1987. However, the element of devaluation of Naira due to the operation of the Foreign Exchange Market should be taken into consideration in the sense that the profits of corporate bodies especially banks increased enormously with participation in foreign exchange transactions.[35]

There is no doubt that the tax collection machinery of government at the moment lacks the capacity to correctly determine the total number of Nigerians who should pay tax and those who have not been performing their civic obligations. A major handicap is the lack of a computerized tax collection machinery which would enable the inland revenue boards to keep accurate and up to date data on tax payers and be able to effectively apply and enforce the penal provisions in the various tax laws and acts. There are also the questions of lack of funds, inadequate staff training, poor pay and lack of motivation.[36] Despite the efforts of Lagos State and the Federal Inland Revenue Department, it is still difficult to accurately estimate the seriousness of tax evasion in Nigeria and all that can be presently done is to assume in the light of revenue collection and estimated population the problem of tax evasion is a serious one. Studies carried out in the United Kingdom also show that the use of the same criterion of economic cost shows that tax crime is more serious than other forms of property criminality[37]. According to 1981 Home office Figures, the total losses form theft, burglary and robbery in England and Wales were £551 million in 1980. by contrast income tax evasion is reputed to cost between £1,000 million and £4,000 million and unpaid value added tax costs £250 — 1, million per annum.[38] Therefore even if the most conservative estimates are accepted, tax crime costs three times as much as does property crime.
It may be claimed that the majority of tax evaders obtain relatively small sums on each occasion and that this makes their actions less serious. Yet during 1979, 67.4 percent of thefts and 68.3 percent of burglaries cost

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35 Sulu E.A (1987) Board Secretary's Report to the 17" Annual Senior Staff Conferences of the Federal Inland Revenue Department, Lagos on 2-4 December, p.13
36 ibid footnote 94
37 Levi M. (1982) The powers of Revenue Agencies An Overview ; B.T.R pp.37-39
38 Public Accounts Committee (1981), UK

between £1 00 and £500.[39] The Inland Revenue has claimed that one in four persons has undeclared income of £500 per annum.[40] Only 9.7 percent of thefts and 10.1 percent of burglaries involved more than this sum. It is not possible to obtain figures for burglaries and annual incomes from crime. It should be noted that while money not given to the revenue is worth its face value, burglars generally receive only one - tenth or at most one third of the value of stolen goods for themselves. It does appear, then that at the lower end of the scale, the typical costs of ordinary crime are similar to those of tax crime while the top 10 percent of tax evaders probably receive higher profits than the top 10 percent of thieves and burglars. Moreover, if any credibility is to be attached to the Inland revenue figures, there are far more tax evaders than there are thieves or burglars.[41]

1.5 Conclusion

The moral aspects of tax evasion are, however considerably less clear cut than the economic aspects. The incidence of tax evasion should not be viewed in isolation. It is regrettably a reflection of the basic maladies of the present Nigerian society and to that extent it ought to be viewed in the context of the law generally. It is common knowledge that our present society has little regard for law and order. Laws are broken with impunity and very regrettably laws are disregarded by those who have benefited more from society and who on reflection are those who stand to gain much more from a well ordered law abiding society.[42]

Enthusiasts for the virtues of unlawfulness and "underground economy" suggest that evaded tax keeps down the price of services, increases willingness to work at the margin and even via the 'multiplier effect' creates

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[39] These figures assume that house holders do not accidentally or fraudulently inflate their losses for insurance purposes

[40] H.0 312 — 11979 Evidence of the Chairman of the Board of inland Revenue, the House of Commons Expenditure Committee (UK)

[41] See also S. Henry (Ed) 1971 Can I have it in cash?

[42] Obi, J.1 (1983) Tax Evasion and Its Solution. Paper presented at the Seminar on Taxation held by the west African sub — regional committee of the Association of African Tax administrators, February 2 — 24 Lagos p.24; Ayua LA (1982) The Problem of Tax Evasion and Avoidance in Nigeria. Paper presented at the First National Seminar on Commercial Laws, Ahmadu Bello University Zaria 4-9 October p. 25 See also president op cit p. 15. Although this statement appears rather sweeping, it will nevertheless be difficult to obtain any empirically support for it in view of the sensitivity and political nature of taxation in Nigeria as evidenced by the Aba women riots of 1929 and the refusal of the Ogbomoso populace to pay tax during the second republic.

an economic stimulus which eventually leads to higher net tax revenue. All of these claims may be true. Eventually, it should be noted that armed robbery, theft and the replacement of stolen goods stimulates the insurance business, increases the population of goods, if the recipients of the stolen goods would not otherwise have bought them and possibly inhibits revolutionary demands by providing an extra form of income distribution yet it is doubtful that we would wish to advocate theft and burglary on that account.

When people's perceptions of the seriousness of tax evasion are examined, we find that income tax evasion is regarded far less seriously than the theft or burglary or the embezzlement of the same amount and there also appears to be no moral taint either. This probably accounts for the low level or even total failure of the various tax authorities to make use of the powers at their disposal.[43] In the United Kingdom it was found[44]. That two thirds of the sample of respondents in Scotland thought that most people would hide a small amount of income if they thought they could get away with it, and 44 percent thought that such conduct would not be "bad'. It was also found that a random sample of the Sheffield population thought that very small — scale tax evasion was the least serious of the property offences.[45] On the other hand, there is reason to suppose that tax evasion is not regarded homogenously as a category because it was found that the evasion of $100 in tax was regarded three times as seriously as the evasion of $1 and was regarded more seriously than the theft of trivial amounts. Surveys which compare non — tax fraud with other property crime also indicate that the size of defalcations is an important element to show seriously they are regarded.[46]

In Nigeria, members of the upper socio — economic groups are far more guilty of major tax evasion than poorer people are because they do seem to enjoy an inmunity from tax prosecutions.[47] However, it seems likely that

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[43] Ibid footnote 98

[44] Dean P. Keenat T and Keeney F. (1980) Tax Payer's attitudes to Income Tax Evasion; An Empirical Study.

[45] Walker M. (1978) Measuring the Seriousness of Cries. 18 British Journal of Criminology (B.. Crim 348-364)

[46] Levi M. (1977) The Seriousness of White Collar Crime; An Empirical Overview and Reassessment (unpublished research report); Sparks R. Genn, H and Dodd D Surveying victims

[47] Obi J.0 op cit p. 24 Ayua LA (1982) op cit p. 25

taking the Nigerian public whose antagonism to tax payment ar
the basic lack of confidence in tax officials and the governmen
the major cause for the low tax compliance efforts generally.[48]

Finally, though public perceptions monetary assessment on th
where it is proved that the acts of the tax payer also amount to fra
default or neglect. This is not good enough to deter taxpayers agai
less tax or give tax assessment.

The provision should be amended by providing a fine of about
imprisonment for 6 months or both. This is because, refusal t
assessment or paying less tax is a disrespect of ones civic respons
IMO of taxing provisions.

[48] Surve S. (1967) Tax administration in Developing countries