CHAPTER- NINE

CRIMINAL SANCTIONS UNDER THE NIGERIAN FEDERAL INLAND REVENUE SERVICE (ESTABLISHMENT) ACT

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1.1 INTRODUCTION

The Federal Inland Revenue Service (Establishment) Act, (FIRSEA) 2007, provides for the establishment of the Federal Inland Revenue Service (FIRS), which is charged with the powers of assessment, collection and accounting for revenues accruable to the government of the Federation and for matters related. The objective of the FIRS is to control and administer the different taxes and laws specified in the First Schedule of the Act[493]. The FIRSEA provision for different offences and penalties,[494] could be broadly categorized into three, namely, administrative, civil and criminal.

However, it is observed that the FIRS, which is vested with the power to employ its own legal officers who shall have power to prosecute any of the offences under the FIRSEA, subject to the power of the Attorney-General of the Federation,[495] seldom institute criminal proceedings against those who are involved in tax crimes. It is also observed that in Nigeria, Revenue Authorities rarely make use of criminal sanctions to tackle tax offences, whereas in developed countries such as the U.S.A,

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[493] The following are the taxes being administered by the FIRS:, Companies Income Tax Act,(CITA).Cap C 21.LFN2004, Petroleum Profits Tax Act,(PPTA), Cap C13.LFN.2004, Personal Income Tax Act(PITA)CapP8, LFN 2004, Capital Gains Tax Act, (CGTA) Cap C1. LFN, 2004, Value Added Tax Act,(VAT) CapV1 LFN,2004, Stamp Duties Act,(SDA) Cap S8 LFN,2004, Taxes .and Levies (Approved List for Collection) Act, 2004 etc. See First Schedule to the Act

[494] Part VI(Offences and Penalties) Section 40-49, FIRSEA,2007

[495] Section 47, FIRSEA,2007.

Britain, Canada, and Japan, non- compliance with tax laws are always viewed as a criminal offence and are treated as such.

This paper examines the different types of offences and penalties under the FIRSEA to see whether tax offenders are being adequately prosecuted for criminal tax offences. It also sets out to examine the offences and penalties to see whether criminal proceedings are instituted against criminal tax offenders and to compare the Nigerian situation with what obtains in the United States of America and Britain. The overall objective is to see whether there is a link between criminal sanctions and the non- compliance attitude of the majority of Nigerian taxpayers.

1.2 DEFINING SANCTIONS/PENALTIES

Sanctions and Penalties are sometimes used interchangeably. Sanctions are penalties or other means of enforcement used to provide incentives for obedience to laws and regulations. Sanctions can be broadly divided into three, Civil, Criminal and Administrative. Civil sanctions are those which redress civil injuries, while Criminal sanctions also called Penal sanctions are those which punish crimes. Effective use of criminal, civil and administrative sanctions in any organisation is an indication that the business of fighting noncompliance to laws, rules and regulations is serious business.

Administrative sanction, on the other hand, is the sanction levied on a person, organization or entity by an administrative body for any wrongdoing committed against the rules and regulations or laws governing the administration of a statute or regulation. The decision to impose an administrative sanction lies with an executive authority instead of a court. This is an in-house thing and different from civil or criminal sanctions that are usually dealt with judicially. Normally, an administrative body does not have the jurisdiction to try a criminal offence, this is usually the prerogative of a court of law or a Tribunal. The Tax Appeal Tribunal (TAT) created pursuant to Section 59(1) of the FIRSEA, 2007 has the power to adjudicate on disputes and controversies arising from any of the tax laws the FIRS administers. However, where in the course of its adjudication, the TAT discovers

evidence of possible criminality it is obliged to pass such information to the appropriate criminal prosecuting authorities.[496]

The various types of administrative sanctions that can be inflicted by the executive authority must be defined in the law. Also, any person who is aggrieved by a decision taken by an executive body should be able to contest the decision before a court of competent jurisdiction or appeal to a higher administrative body.[497]

An example of Administrative sanction under the Act is the power of the Service to Levy distress on the property of a company for non-payment of tax. This power is provided for in section 33 of the Act. According to Oni, recovering tax due, through the levying of distress is an extreme measure which the Service may embark upon, in order to enforce compliance with the tax law where a taxpayer refuses to pay tax duly assessed and not disputed.[498] This is probably because such properties confiscated can actually be sold off within a space of 14 days with an order of a High Court.[499]

According to Abdulrazaq, despite the presumed importance of sanctions in the legal process, adequate use of them are rarely made in Nigeria to secure tax compliance even though there exist an array of weapons at the disposal of the tax authorities begging to be used.[500] That notwithstanding, the different enabling laws governing the taxation system has put in place different sanctions and penalties for the different types of offences identified under the taxation law.

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[496] Fifth Schedule to the Act, Section 12 titled Criminal Prosecution.

[497] www.fao.org/docrep/006/Y5063E/y5063e05.htm steps to follow for the introduction of Administration Sanctions in Fisheries Law. Google Search, accessed 21/07/2012.

[498] Oni Isaac Olajide, Nigerian Company Income Tax (Law and Practice)Spectrum Book Ltd. Ibadan, Nigeria (2008), pg 32

[499] Section 33 (1) - (7) FIRSEA, 2007.

[500] Abdulrazaq M.T Civil Sanctions under the Nigerian Income Tax Acts. In Taxation System in Nigeria (Gravitas Legal Business Resources Ltd, Lagos) 2016. P. 219.
Abdulrazaq M.T, Journal of the Indian Law Institute (The Indian Law Institute) Vol.32:4 pp 478-496

1.3 THE ROLE OF THE FIRS IN TAX INVESTIGATION AND ENFORCEMENT

An accused person can only be tried for an offence contained in a written law. This is provided in Section 36(12) of the Constitution of the Federal Republic of Nigeria, (CFRN 1999). Many decided cases are based on this premise[501]. Similarly only a court of law or tribunal can try a person alleged to have committed a criminal offence, an administrative body has no jurisdiction to try a criminal offence[502].

Section 35(1) (2) (3) & (4) of the Federal Inland Revenue Service (Establishment) Act, 2007, (FIRSEA) 2007, spelt out the role of the Service, in Tax Investigation and enforcement. Under the above mentioned Section[503], the Act gives power to the Service to employ Special Purpose Tax Officers to assist any relevant law enforcement agency in the investigation of any offence under the Act[504]. It provides in subsection 2 of the same section that;

> Notwithstanding anything to the contrary in any other enactment or law, the Service shall have the power to investigate or cause investigation to be conducted to ascertain any violation of any tax law whether or not such violation has been reported to the Service.

and subsection 3, further clarifies how such investigation may be conducted in the following words;

> In conducting any investigation under subsection (2) of this section, the Service may cause investigation to be conducted into the properties of any taxable person if it appears to the service that the

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[501] See *Ekwuazi vs DPP Lagos State & Ors* (1999) 3NWLR (Pt 593)31 *Ayanpele vs The Nigerian Army* (2000) 13 NWLR (pt 684) 209.

[502] (a) See *Garba vs University of Maiduguri* (1986) 1 NWLR (pt. 18) 5550 and
(b) *Olatunbosun vs NISER* (1988) 3 NWLR (pt. 80) 25; and
(c) Federal Civil Service Commission vs Laoye (1989) 2 NWLR (pt. 106) 652.

[503] Section 35 FIRSEA,2007

[504] Section 35 (1) Ibid

> lifestyle of the person and extent of the properties are not justified by his source of income.

And subsection 4;

> Where any investigation under this section reveals the commission of any offence or an attempt to commit any offence, the Service shall, pursuant to section 48 of the Act, undertake the prosecution of the offences.

The above provisions of the Act imply that the FIRS has the power to investigate and prosecute, although the Service may co-opt the assistance and cooperation of any of the law enforcement agencies in the discharge of its duties under the Act.[505] The FIRS therefore works in conjunction with the Judiciary, who may be called upon to issue warrant of arrest, police officers who will assist to arrest any offender who is to be investigated of a criminal tax offence and the Economic and Financial Crime Commission (EFCC)[506] who are charged with the responsibility of enforcing all laws and regulations relating to economic and financial crimes.

The Service has the power to employ its own legal officers who will have power to prosecute any of the offences under the Act, subject to the powers of the Attorney-General of the Federation. By virtue of Section 48(1) of the Act, the Service may compound any offence under the Act, by accepting a sum of money not exceeding the maximum fine specified for the offence.[507] The rationale behind this is to reduce litigation, which usually takes a longer time to settle. This particular section should be amended so that the Revenue Authority do not use it as an excuse not to prosecute tax offenders. There should be a limit to the type of offence that can enjoy

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[505] Section 36(1) Ibid

[506] The Economic and Financial Crime Commission (Establishment) Act, 2002, LFN, is charged with the responsibility of enforcing the provisions of the Money Laundering Act, 1995, the Advance Fee Fraud and other Fraud Related Offences Act 1995, the Failed Banks (Recovery of Debts and Financial Malpractices in Banks Act1994 as amended, the Banks and other Financial Institutions Act 1991, as amended, Miscellaneous Offences Act and any other law or regulations relating to economic and financial crimes

[507] Section 48(1) FIRSEA,2007

this discretion not just "any" offence as is stated in this section. The question then is, what is the role of the Tax Appeal Tribunal (TAT) in tax enforcement? Its jurisdiction covers adjudication on disputes and controversies emanating from federal tax laws. The TAT is however expected to pass any criminal information, to the appropriate criminal prosecuting authorities for appropriate action.[508]

1.4 DISTINCTION BETWEEN TAX EVASION AND TAX AVOIDANCE

Tax evasion is the general term for efforts by individuals, corporations, trusts and other entities to evade taxes by illegal means. Evasion is defined by the Oxford Advanced Learner's Dictionary as; "The Act of avoiding somebody or of avoiding something that you are supposed to do".[509] Abdulrazaq[510] defines tax evasion as, a contravention of the tax laws whereby a taxable individual or company neglects to pay the tax due or reduces the tax liability by making fraudulent or untrue claims on the income tax form. He went further that tax evasion denotes all those activities which are responsible for a person not paying the tax that the existing law charges upon his income.[511]

Tax evasion usually involves taxpayers deliberately misrepresenting or concealing the true state of their affairs to the tax authority in order to reduce their tax liability. It includes amongst others, dishonest tax reporting (such as declaring less income, profits or gains than actually earned) or overstating deductions. Tax avoidance, on the other hand, is the legal utilization of the tax regime to one's advantage, to reduce the amount of tax that is payable, by means that are within the law.

Both tax evasion and avoidance can, however, be viewed as forms of tax non-compliance, as they describe a range of activities that are not favorable to a state tax system. Therefore, even though the tax evader and the tax avoider have a similar end, that is, to escape tax liability, their means to the end differ. The evader

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[508] Fifth Schedule to the Act, Section 12, titled Criminal Prosecution.
[509] The Oxford Advanced Learners Dictionary (International Student's Edition) 7th Edition
[510] Abulrazaq M.T. Nigerian Tax Offences and Penalties (Batay Law Publications Ltd. Ilorin Nigeria)(1993), p.2.
[511] Abdulrazaq M.T. Judicial and Legislative Approaches to Tax Evasion and Avoidance in Nigeria. Taxation System in Nigeria. Gravitas Legal & Business Resources Ltd.2016 .p363.

is a criminal, but the tax avoider is just a smart tax payer who exploits loopholes in the tax laws and related laws to reduce his tax liability.

It is pertinent to point out that tax avoiders (who conduct their affairs within the letters of the law) should not be confused with tax evaders (who do not)[512]. Under tax avoidance scheme a taxpayer employs lawful means to reduce his tax liabilities, for example, it is not against the law for him to arrange his tax affairs in such a way that only the smallest size of his trade will be liable to taxation. This can be done through a scheme of "splitting" the income, which divides into several hands the income which would otherwise have been taxed in one hand.[513]

The Federal Inland Revenue Service (FIRS) in June 2012 filed charges of five years tax evasion of ₦4.86 billion and forgery of Tax Clearance Certificates (TCC) against Air Nigeria, at the Federal High Court in Abuja. In that case, FIRS claimed that the Airline failed to deduct and pay taxes accruing to government from Withholding Tax and Value Added Tax (VAT) from 2007 to 2010.

In the charge, FIRS accused officials of the indigenous airline of illegally obtaining TCC and for unlawfully presenting fake TCC to the Minister of Interior for the renewal of expatriate quota positions for 20 pilots and 10 other persons. Although the case received wide publicity at that time, it later fizzled out and the accused were never prosecuted even though the offence carried criminal penalties.

Forgery which is one of the offences for which Air Nigeria was charged is also provided for in the Criminal and the Penal Codes. It attracts punishment ranging from life imprisonment to 14 years imprisonment and fine;[514] while the same

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[512] Famakinwa V.B.A .The Socio-Economic and Legal Foundations of Tax Evasion and Tax Avoidance.in Oluwole Akande (ed), Tax Law and Tax Administration in Nigeria (Nigerian Institute of Advanced Legal Studies. 1999).

[513] See *C.I.T. vs A Ramond & Co.*1968. 167 I.T.R. 11, 17 (S,C). Where Shah J. said ... income which accrues to a trader is taxable in his hand; income which he could have but has not earned, is not made taxable as income accrued to him .... Effectiveness of the device depends not upon consideration of morality but on the operation of the Income Tax Act.

[514] See Section 362- 367 Penal Code Cap.89 LFN.

offence is referred to as false declaration under the Act and attracts a penalty of a fine or three years imprisonment or to both fine and imprisonment.[515] Despite the fact that the penalty for the offence is lower in the Act, the Revenue Authority seldom use it to prosecute tax offenders.

That same year, In England, the British comedian Jimmy Carr,[516] was engrossed in a tax avoidance scandal, when it was discovered by Her Majesty Revenue and Custom (HMRC) that Carr had been using an aggressive tax avoidance scheme, which enables members to pay income tax rates as low as one per cent. The comedian was reportedly protecting about 3.3million Pounds a year by channeling cash through a Jersey-based Company, K2.[517] The comedian later apologized and vowed not to continue with the scheme describing his actions as a "terrible error of judgment" He pledged that he will in future conduct his financial affairs much more responsibly. The British Prime Minister, David Cameron had earlier branded Carr's tax dodging, "morally wrong" adding that it was unfair to the people who pay to watch the comic perform that he is not paying his taxes in the same way that they do.

Carr, according to the report, is one of more than 1,000 beneficiaries who shelter some £168m from the taxman each year using K2 scheme. Cameroon says there is nothing wrong with people planning their tax affairs to invest in their pension and plan for their retirement but argued that some of these schemes are morally wrong. Many people including celebrities had been convicted of tax evasion in the United States of America[518] but the same cannot be said of Nigeria.

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[515] See Sections 42-43 FIRS (Establishment Act) 2007.

[516] Tax Avoidance was Terrible Error – Carr; The Punch Newspaper, June 22, 2012, pg. 27.

[517] K2 is a Jersey-based Company which specializes in a legal, aggressive tax avoidance scheme which enables members to pay income tax rates as low as one percent. HMRC said in the report that K2 is already under investigation.

[518] Historical Tax Evasion cases in the U.S

- 1932 – 1939: AI Capone served seven years of an 11-year sentence in Federal Prison on Alcatraz Island for tax evasion. He was let out of jail early suffering with the advanced stages of syphilis.

- 1933: Gangster Dutch Schultz was indicted for tax evasion. Rather than face the charges, he went into hiding. U.S President Harry Truman pardons George Galdwell and Seymour Weiss for income tax evasion.
- 1963: Joe Conforte, a brothel owner, serves two and a half years in prison, convicted of the crime of income tax evasion.
- 1971: Martin B. Mckneally (R-NY) is placed on one-year probation and fined $5,000 for failing to file income tax return. He had not paid taxes for many years. Cornelius Gallagher (D-NJ) pleaded guilty to tax evasion and served two years in prison.
- 1974: Otto Kerner, Jr (D) resigned as a Judge of the Federal Seventh Circuit Court District after conviction for bribery, mail fraud and tax evasion while Governor of Illinois. He was sentenced to 3 years in prison and fined $50,000
- 1982: Frederick W. Richmond (D-NY) was convicted of tax evasion and possession of marijuana. He served 9 months.
- 1985: Joseph Alioto a lawyer, confessed that he paid no income taxes during the years he served as Mayor of Francisco.
- 1985 – 1986: Iran – Contra Affair – Thomas G. Clines was convicted of four counts of tax – related offences for failing to report income from the operations.
- 1987: Robert Bernard Anderson former United States Secretary of Treasury (1957-1961) pleaded guilty to tax evasion while operating an offshore bank.Harry Clairborn, Federal District Court Judge from Nevada, was impeached by the House and convicted by the Senate on two counts of tax evasion. He served over one year in prison
- 1990: IRS handed country musician Willie Nelson a bill for $16.7million in back taxes and seized most of his assets to help pay the charges. He sued accounting firm, Prince Waterhouse, contending that they put him into tax shelters that were later disallowed. The lawsuit was settled for an undisclosed amount. His debts were paid by 1993.
- 1991: Harry Mohmey, the founder of the Déjà vu strip club chain, begins to serve three years in prison for tax evasion.
- 'Marty the Horse' Lancelot (Mafia) was sent to prison for income tax evasion.
- 1992: Catalina Vasquez Villapando Treasurer of the United States, pleads guilty to obstruction of justice and tax evasion.
- 1993: Sam Roti, a nephew of Alderman Fred Roti, was indicted on Federal tax charges, which were later dropped.
- Nicholas Castronuovo, the owner of (the Florida Pizza parlor where Senator Robert Torricelli was caught on an FBI wiretap soliciting contributions in 1996). and his grandson Nicholas Malone pleaded guilty to evading $100,000 in taxes.
- 1995: Webster Hubbell, Associate Attorney General, pleads guilty to mail fraud and tax evasion. He was sentenced to 21 months in prison.
- 1996: Heidi Fleiss was convicted of charges of tax evasion and sentenced to 7 years in prison. After two months she was released to a halfway house, with 370 hours of community service.
- U.S President Bill Clinton pardons Marc Rich and Pincus Green indicted by U.S Attorney on charges of tax evasion and illegal trading with Iran President. Clinton also pardons Edward Downe, Jr. for wire fraud, filing false income tax returns and securities fraud.
- 2002: James Traficant was convicted of ten felony counts including bribery, racketeering and tax evasion and sentenced to eight years in prison.

Tax evasion was a crime in almost all developed countries and subjects the guilty party to fines and or imprisonment. This is however not the case in Nigeria.

1.5 TAX OFFENCES AND PENALTIES UNDER THE FIRSEA, 2007

All tax offences can be classified as civil, criminal, or administrative offences; most, if not all these offences put together are one form of tax evasion or another. After a careful examination of tax offences and penalty in the Act it was discovered that majority of the offences mentioned in the Act carry both fine and imprisonment and it will not be out of place to classify them as criminal offences.

The reality is that most of these laws are just there on paper, but have never been implemented. Sanni[519] lend credence to this when he said, that no taxpayer has been successfully prosecuted for tax evasion in Nigeria. This according to him is because tax authorities at the Federal and State levels prefer to institute civil actions to recover any tax due with interest and penalty. Obviously, tax authorities are more interested in recovering the tax together with fine and interest than to go to court to prosecute[520] a tax offender who has been accused of contravening any of the tax

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- 2002: The Christian Patriot Association, an "ultra right-wing group", is shut down after convictions for tax fraud and tax evasion
- Duke Cunningham pleads guilty to charges of conspiracy to commit bribery, mail fraud, wire fraud and tax evasion in what came to be called the Cunningham scandal. He was sentenced to over eight years.
- 2008: Actor, Wesley Snipes was sentenced to 3 years in jail for tax evasion
- 2008: Charles Rangel failed to report $75,000 income for the rental of his villa in Punta Cana, Dominican Republic and was forced to pay $11,000 in back taxes.
- 2008: Senator Ted Stevens was convicted on 7 counts of bribery and tax evasion just prior to his election. He continued his run for re-election but lost. However, prior to sentencing, the indictment was dismissed, effectively vacating the conviction – when a Justice Department probe found evidence of gross prosecutorial misconduct.
- Jack Abramoff, a lobbyist,was found guilty of conspiracy, tax evasion and corruption of public officials in three different courts in a wide ranging investigation. Currently serving 70 months and fined $24.7millionj.
- Jared Carpenter, Counsel to the Republicans for Environmental Advocacy, plead guilty to income tax evasion and received 45 days, plus 4 years probation.

[519] Sanni Abiola. The Power to Prosecute Tax Offences: A critique of *Unipetrol Nigeria Plc. v Edo State Board of Internal Revenue*.www.nials-nigeria.org/journals/Abiola Sanni case Review. Accessed 12/07/16

[520]. The process of trying to prove in court that somebody is guilty of a crime.

laws. This action of the tax authority is in consonance with the provision of Section 34(1) of the Act, which provides that "any amount due by way of tax shall constitute a debt due to the Service and may be recovered by a civil action brought by the Service".

This, unfortunately, has brought about a dearth of judicial authority on criminal prosecution of tax offences under the Act. Also, the reliance of the Service on Section 48(1) of the Act[521] which permits the Service to "compound any offence under the Act by accepting a sum of money not exceeding the maximum fine specified for the offence" has not helped matters.

Sanni, however, said that things are now changing as there is an emerging trend, whereby the FIRS and a few states are beginning to show interest in tax prosecution[522]. The decision of the Supreme Court in the case, *Unipetrol Nigeria Plc v Edo State Board of Inland Revenue*[523], pronounced on the capacity of a tax authority to prosecute tax offences in its name.[524] Reliance was placed on the cases of Cooperative Bank Ltd. v Samuel Okekhare & Ors[525] and *Yesuf v. Adewusi Brothers and Co.*[526]

It should be noted that Section 99 Personal Income Tax Act[527], lend credence to the fact that actions that may be initiated are not confined to civil cases, while its Section 100 throws more light when it states that, ''the provisions of this Part of the Act shall not affect any criminal proceeding under any other enactment''.

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[521] FIRSEA, 2007

[522] Sanni Abiola, Ibid

[523] (2006) 8 NWLR (pt. 983) 624; (2006) CLR.28

[524] In that case, the Supreme Court held that the Edo State Board of Inland Revenue could Institute a criminal action in its name by virtue of Section 4(2) of the erstwhile Income Tax Law, Laws of Bendel State, 1976, Cap.71. Vol 111, applicable in Edo State, which vested the Board with power to sue and be sued.

[525] (1996) 8 NWLR (pt. 468) 581

[526] (1991) 7 NWLR (pt.201) 4.

[527] Cap P8 LFN ,2011 provides thus: No prosecution in respect of an offence under this part of this Act may be commenced except at the instance of the relevant tax authority

From the foregoing, one can say that all the offences that are mentioned in section 40 through 49 of the FIRSEA, 2007,[528] which attaches fines, penalties and imprisonment are not civil wrongs because of the attachment of imprisonment as penalty also the use of words such as "upon conviction" and "imprisonment" point to the fact that they are not strictly speaking civil matters. What this means is that these offences can attract both civil and criminal sanctions. However, that has not always been the case. As said earlier, Revenue Authorities in Nigeria prefer to institute civil instead of criminal actions.

Part VI of the FIRSEA, 2007 enumerates various penalties and offence. They will be discussed one after the other:

I. Failure to Deduct or Remit Tax (Section 40)

It is an offence under the Act for any person who is obliged to deduct any tax under the Act or the laws listed in the First Schedule to the Act, to fail to deduct, or having deducted to fail to remit to the Service within 30 days[529]. That person upon conviction, shall be liable to pay the tax withheld or not remitted in addition to a penalty of ten percent of the tax withheld or not remitted per annum, and interest at the prevailing Central Bank of Nigeria minimum re-discount rate[530]and imprisonment for a period of not more than three years[531].

It is important to note that the penalties under Section 40 of the Act are not optional, but run concurrently. However, even though all these laws exist in the Act, the question is how many Nigerians have been visited with the full weight of these laws. For Failure to remit or deduct tax.[532]

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[528] FIRSEA, No. 13, 2007

[529] 30 days from the date the amount was deducted or the time the duty to deduct arose.

[530] The Minimum Rediscount Rate (MRR) is the official interest rate of CBN, which anchors all other interest rates in the money market and the economy.

[531] Section 40 FIRSEA, 2007

[532] see *Commissioner of Internal Revenue v J.A.O. Aworeni*.Adedokun K.A – Enforcement and Recovery of Income Tax in Nigeria (Law Practice and Procedure), Corporate Transactions Limited, Lagos, 2010, p52. Suit No. 1/404/72 in the High Court of Western Nigeria.

The FIRS arrested in the year 2012, the Chief Executive Officers of seven companies in Lagos for alleged failure to remit taxes totaling N2.17 billion[533]. The FIRS said the arrest is a form of warning to other organizations and individuals in the country on the need to ensure deductions and remittance of their tax obligation as provided by Part VI, Section 40 of the FIRSEA, 2007. Even though this happened about five years ago no conviction has been obtained against the defaulting companies.

Going by the definition of a criminal offence together with the use of the word "upon conviction" and the penalties attached to failure to deduct or remit tax which is fines and imprisonment for not more than three years, refusal to deduct and remit taxes could be classified as criminal offences.

II. Obstruction (Section 41)

It is an offence under the Act for any person to obstruct, hinder, molest or assault any person or authorized officer in the performance of any function or the exercise of any power under the Act. Any person who does any action which impedes or is intended to impede the carrying out of any search, seizure, removal or distraint, is guilty of the offence of obstruction. Also any person who rescues, damages or destroys anything so liable to seizure, removal or distress or does anything intended to prevent the procuring or giving of evidence in connection with anything that is liable to seizure, removal or distraint is equally guilty of this offence.[534] Similarly, anybody who prevents the arrest of any person by a person duly engaged or acting, or who rescues anybody so arrested, commits an offence and shall be liable on conviction to a fine not exceeding N200,000 or imprisonment for a term not exceeding 3 years or both[535]. The offence of obstructing an authorized officer falls

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[533] The Companies involved in that enforcement drive and the amounts are:

i. Pivot Engineering Ltd, N609,911,992.36
ii. Reliance Telecommunications Ltd, N592,756,627.00
iii. HITV Ltd, N309,500,065.55
iv. UTC Nigeria PLC. N277,589,163.74
v. Sweet Sensation Confectionary Ltd, N155,483,013.00
vi. Entertainment Highway Ltd, N197,444,964.55 and
vii. John Holt Nig. Ltd. N33,073,487.52

[534] Sec. 41 (a)(b) & (c) FIRSEA, 2007

[535] Sec. 41(d) Ibid

under criminal offence, thus the penalty of a fine or three years imprisonment, or both.

III. False Declaration (Section 42)

It is equally an offence for any person to make, sign or deliver or cause to be made, signed or delivered to the Service or any officer of the Service, any document which is false or untrue[536], or to make any statement in answer to any question or inquiry put to him by an officer which he is required to answer by or under the Act or any other enactment or law, being a document or statement produced or made for any purpose of tax, which is untrue in any material particular[537].

Where the full amount of any tax payable is not paid or any overpayment is made in respect of any repayment of tax, as a result of any false declaration, the unpaid tax or the overpayment shall constitute a debt due to the Service[538]. Anybody who commits an offence under Section 42 of the Act[539] (that is involved in false declaration) is liable on conviction to a fine not exceeding N200,000 in addition to payment of the amount of tax unpaid or overpayment made in respect of any repayment or to imprisonment for a term not exceeding 3 years or to both fine and imprisonment. Although false declaration is a criminal offence under the Act and under our criminal code, none of the chief executives of the companies charged with forgery or false declaration have ever been imprisoned.

IV. Counterfeiting Documents (Section 43)

Counterfeiting or falsification of any document which is required by or for the transaction of any business under the Act or any law listed in the First Schedule to the Act is an offence under Section 43(a) of the Act. Anybody who therefore knowingly accepts receives or uses any document so counterfeited or falsified commits an offence[540]. Anybody who alters any such document after it is officially

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[536] Sec. 42 (1) (a), Ibid
[537] Sec 42 (1) (b), Ibid
[538] Sec. 42 (2) Ibid
[539] Sec. 43 (3) Ibid
[540] Sec. 43(b) Ibid

issued,[541] or counterfeits any seal, signature, initial or other marks of or used by any officer for the verification of such a purpose relating to tax, also commits an offence.[542]

Likewise, an employee of the Service who conspires connives or participates in the commission of any of the offences under this section[543], commits an offence. All offenders under Section 43 (a – d) of the FIRSEA, 2007 are liable on conviction to a fine not exceeding N200,000 or to imprisonment for a term not exceeding 3 years or to both the fine and imprisonment. This offence can also be categorized as a criminal offence.

V. Offences by Authorized and Unauthorized Persons (Section 44)

Section 44 of the Act provides that any person who is appointed for the due administration of the Act or employed in connection with the assessment and collection of a tax who;

(a) demands from any company an amount in excess of the authorized assessment of the tax;
(b) withholds for his own use or otherwise any portion of the amount of tax collected;
(c) renders a false return, whether orally or in writing, of the amount of tax collected or received by him;
(d) defrauds any person, embezzles any money or otherwise uses his position to deal wrongfully with the service;
(e) steals or misuses the documents of the Service
(f) Compromises on the assessment or collection of any tax.

Commits an offence and is liable on conviction to a fine equivalent to 200 per cent of the sum in question or to imprisonment for a term not exceeding 3 years or to

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[541] Sec. 43 (c) Ibid
[542] Sec. 43(d) Ibid
[543] Sec. 43 (a-d)

both fine and imprisonment.[544] Each of the above stated offences is a criminal offence and so attaches fine or imprisonment or both.

VI. Where Offenders are Armed (Section45)

Any person who, in the commission of an offence under the Act, is armed with any offensive weapon commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years[545].

When a person who is armed with an offensive weapon, causes injury to any officer or authorized officer of the Service in the performance of any function or duty under the Act, he commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 10 years[546]. Where the motive or intention of causing injury to an officer is to deprive the officer of going away with vital documents money or objects, such acts will amount to voluntarily causing hurt or grievous hurt to deter public servant from carrying out his duty. This offence is also provided for under Section 252 (1) & (2) of the Penal Code and attracts punishment of imprisonment for a term which may extend to ten years and fine. This is a criminal offence, and a serious one at that, thus the attraction of 10 years imprisonment with no option of fine.

Unlawful Assumption of Character of an Authorized Officer (Section46)

Any person who is not an authorized officer of the Service but who assumes the name, designation or impersonates the character of an authorized officer, for the purpose of gaining admission to any building or other place or in order to do any act which he is not entitled to do, commits an offence and shall be liable on conviction to a fine not exceeding N200,000 or to imprisonment for a term not exceeding 3 years. Impersonation of the character of an authorized officer is a crime.

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[544] Sec. 44 a-f FIRSEA, 2007 Ibid
[545] Sec. 45 (1) Ibid
[546] Sec. 45 (2) Ibid

VII. Failure to File Tax Returns by Banks in Nigeria

Banks are required to file their tax returns like any other company. Where there is a failure to do so, the administrative penalties imposable under sections 41 (3) and (5) of CITA, 2004 are applicable[547]. Any officer of the company who gives his consent for, or encourages the non-filing of the tax returns is liable on conviction to a fine of N100,000 or two years imprisonment or to both fine and imprisonment.

VIII. Unauthorized Disclosure

Any unauthorized disclosure by any employee or former employee of the Board or the Service, or any person appointed by the Service as its agent or representative is an offence under section 39 (2) of FIRSEA, 2007. This offence on conviction attracts a fine of N200,000 or a term of imprisonment for three years or both fine and imprisonment. All the above mentioned (that is employee, former employee or any person appointed by the Service as its agent or representative) are required to keep as secret and confidential any information or document that comes into their possession in the performance of their duties[548].

An employer or former employers in possession of or control, of any document, of any document, information, return of assessment list or copy of such list relating to the income or profits or losses of any person, who at any time communicates or attempts to communicate such information or anything contained in such document, list or copy to any person, other than a person to whom he is authorized by the Service to communicate it, commits an offence under the Act[549]. Likewise if he communicates or attempts to communicate such information other than for the purpose of the Act or of any enactment in Nigeria imposing tax on the income of persons also commits an offence under the Act[550]. This offence falls under general penalty and attracts a fine of N50,000 or a term of imprisonment not exceeding six months. (See section 49(1) of the Act.

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[547] That is, N25,000 in the first month in which the failure occurs and additional N5,000 for each subsequent month in which the failure continues.
[548] S.50 (1) FIRSEA, 2007
[549] Sec. 50(2) (a) FIRSEA, 2007
[550] Sec. 50(2) (b) FIRSEA, 2007

Section 50(3) of the Act which gave an exception to this general rule states that an officer can only divulge information at his disposal only when it is necessary in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to any tax in Nigeria.

He may also communicate information that comes into his possession in the performance of his duties, where under any law in force in respect of any double taxation treaty with any country; provision is made for the allowance of relief from income tax in respect of the payment of income tax in Nigeria. The obligation as to secrecy imposed by this section[551] shall not prevent the disclosure to the authorized officer of the Government in that country of such facts as may be necessary. This is to enable the proper relief to be given in cases where relief is claimed from the tax in Nigeria or from income tax in that country[552].

Likewise subsection (5) of the same Section provides that the Officer is allowed to disclose information, where any agreement or arrangement with any other country with respect to relief for double taxation of income or profits includes provisions for the exchange of information with that country for the purpose of implementing that relief or preventing avoidance of tax. The obligation of secrecy imposed by this section will not prevent the disclosure of such information to the authorized officers of the Government of such country.

The immunity that an officer of the Service enjoys from action does not cover the offence of unauthorized disclosure. The immunity covers an officer of the Service in the performance of his duties under the tax laws as an agent of the Service, so that in any action which arises as a result of such performance, it is the Service and not the officer[553]. that should have proceeded against[554],

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[551] S. 50 FIRSEA, 2007 titled "Official Secrecy and Confidentiality"
[552] S. 50 (4) FIRSEA, 2007
[553] S. 55(1) & (2) Ibid & S. 38(1) Personal Income Tax (Amendment) Act, 2011
[554] Officer includes The Executive Chairman, Board Members, or any Officer or employee of the Service.

IX. GENERAL PENALTY UNDER THE ACT

Where there are contraventions of provisions of the Act for which no specific penalty was provided, Section 49 (1) of the Act entitled "General Penalty" addressed such issues. It states that:

> *Any person who contravenes any provisions of this Act for which no specific penalty was provided, commits an offence and shall be liable on conviction to a fine not exceeding N50,000.00 or imprisonment for a term of imprisonment not exceeding six months or to both fine and imprisonment.*

Subsection 2, of the same section said, where an offence under the Act is committed by a body corporate or firm or other association of individuals, then every Director, Manager, Secretary or other similar officer of the body corporate, every partner or officer of the firm and every person concerned in the management of the affairs of the association commit an offence[555].

> *Similarly, anybody who was purporting to act in any capacity commits an offence and is liable to be proceeded against and punished for the offence in the same manner as if he had himself committed the offence unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance.*[556]

Offences that fall under General penalty are in respect of both criminal and civil cases because they attract both fine and or imprisonment.

X. OFFENCES FOR WHICH NO SPECIFIC PENALTY WAS PROVIDED

Part VII, Section 50 titled General Provisions, treats offences for which no specific penalty was provided. These offences bother generally on official secrecy and

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[555] Sec. 49 (2)(a)(b)&(c) FIRSEA, 2007
[556] Sec. 49 (2) (d) Ibid

confidentiality. It provides that every person who is employed in the administration of the Act shall deal with all documents, information, returns, assessment list and copies of such list relating to the profits or items of profit of any company, as secret and confidential[557]. If any of such persons who are acting in official capacity communicates or attempts to communicate such information or anything contained in such document, return, list or copy to any person, other than a person to whom he is authorized by the service to communicate it, or otherwise than for the purpose of the Act or of any enactment in Nigeria imposing tax on the income of persons, commits an offence under this Act.[558].

A person appointed or employed under the Act is therefore not required to produce any return, document or assessment or to divulge or communicate any information that comes into his possession in the performance of his duties except as may be necessary in order to institute a prosecution, or in the course of a prosecution for any offence committed in relation to any tax in Nigeria.[559]

1.6 CONCLUSION

In Nigeria, tax offenders are generally treated as special types of offenders who enjoy special immunity which protects them from facing the consequences of their criminal acts. This is because tax offences are handled administratively or with civil proceedings even when the criminal proceeding would have been apt. The enabling tax laws encourage this practice. For example Section 92 (3) of the Companies Income Tax (Amendment) Act, 2007, allows the Magistrate to dispense with personal attendance of the defendant if he pleads guilty, while Section 92(4) allows the Board of the FIRS to in lieu of the institution of proceedings under Section 92(2) impose a penalty upon the company for the preceding year of assessment. In Nigeria, tax defaulters are made to pay fines for tax crimes, and no one is yet to be imprisoned for getting incriminated in tax crimes, such as forgery, false declaration, obstruction, aiding and abetting, assisting, counseling, inciting or inducing a

[557] Sec. 50 (1)
[558] Sec. 50 (2) (a) (b), Ibid
[559] Sec. 50 (3) Ibid

taxpayer to make or deliver false returns, even when such fraudulent intents are established. This is a bad signal to the taxpaying public. Borrowing the words of Kabera,[560] the non-enforcement of the law coupled with the use of civil rather than criminal penalties has, in the past allowed the taxation system to decay and fall into disrepute. By allowing major illegalities to go unsanctioned, enforcement authorities have allowed the development of general disrespect for taxation.

Since the goal of the tax system is overall tax compliance, penalties should serve as, incentives for compliance or, alternatively disincentives for non-compliance[561]. Serious tax offences should not be treated administratively. Prosecution of an accused tax offender in a criminal court is one of the major sanctions which the government of the developed countries employs to discourage their citizens from evading tax.

A major finding of this paper is that there is a correlation between increase in prosecutions and increase in tax compliance and the type of penalty imposed. People in the United States of America, Great Britain and Canada are more tax compliant than Nigerians because of the fear of prosecution and the gravity of penalty imposed which is not only to punishing the offender, but more importantly, to send a message to the entire population of taxpayers or would be taxpayers that they have to comply with tax laws by fulfilling their tax obligations or else they could be visited with the most stringent punishment of imprisonment.

This paper, therefore, recommends the following as the way forward;

Enlightenment of the Judiciary on the adverse effect of lenient sanctions.

Some judges do not see tax evasion as a serious crime and perpetrators are often let off the hook, with lenient penalties or sentences of fine. These have, unfortunately, encouraged tax evasion. It is therefore suggested that the FIRS should enlighten the judiciary of the adverse effects of imposition of weak sanctions on tax offenders.

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[560] Kabera Charles. A Critical Analysis of Effectiveness of Tax Offences Control Mechanism under Rwandan Law .LL.B 2008 www.memoireonline.com google search. Accessed 21/07/15.
[561] Kabera Charles, Ibid

Continuous Enlightenment of the Taxpaying Public

The Nigerian taxpayers also need to be continually sensitized that they need to fulfill their tax obligations to enable the government to fulfill its social obligations to the citizens and that failure to do this will earn them commensurate punishment which is not limited to payment of fines but can be imprisonment, to serve as deterrent to others

Amendment of Section 48 (1) of the FIRSEA, 2007

Section 48 (1) of the FIRSEA, 2007 should be amended to provide that only minor offences should be compounded.

Repealing of Section 92(3) and Section 92(4) of CIT(A)Act 2007

Section 92 (3) of the CIT(A)A should be repealed because it treats a tax offender as a special offender. Also, Section 92 (4) of the CIT(A) Act 2007 should be repealed because it encourages imposition of penalty in lieu of the institution of proceedings.