EXAMINATION OF TAXPAYERS' RIGHTS IN NIGERIA: THE FEDERAL INLAND REVENUE SERVICE AS A CASE STUDY

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ABSTRACT
Revenue Authorities all over the world are vested with powers which they exercise over taxpayers, to ensure efficiency and voluntary compliance. To ensure balance in the tax system, taxpayers also have some basic rights enshrined in the tax legislation. This paper's main objective is to examine the Federal Inland Revenue Service (Establishment) Act, 2007 (FIRSEA) and some of the tax laws it supervises, to identify the basic taxpayers' rights embedded in it and to see whether these rights' are guaranteed and protected. In carrying out this research recourse was made to theoretical work rather than experiment. Primary sources consisting of taxation statutes were examined. Also, secondary sources such as existing literature on taxation in text books, journals and internet were consulted. The study found out that the FIRSEA, together with all the tax laws it supervises significantly strengthens the FIRS' power and conversely trample upon taxpayers' rights. For example, S. 47(5) of the Personal Income Tax Amendment Act (PITAA), which gave the FIRS absolute power to procure information about the taxpayer from any organization undermines the tax payers' right to privacy, secrecy and confidentiality. Likewise S. 28(1) & (2) of the FIRSEA 2007 which allows the FIRS to break through the bank secrecy regulation. Consequently, the study recommends, amongst others, that all the provisions of the Act which inhibit the exercise of the taxpayers' rights should be amended to mitigate the hardship as well as strengthen tax compliance. The paper concludes that, there is the need for taxpayers' rights to be respected without compromising the FIRS ability to assess and collect tax.

Keywords: Taxpayers' Rights; Revenue Legislation; Revenue Authorities; Nigeria

1. INTRODUCTION

In Nigeria, the body responsible for the administration of Federal Government taxes is known as the Federal Inland Revenue Service (FIRS). It was promulgated by the Federal Inland Revenue Service Establishment Act (FIRSEA) No. 13 2007 which was signed into law on the 16th day of April, 2007. However, prior to this time, the FIRS then known as the FBIR was first created in 1943. When it was carved out of the erstwhile Inland Revenue Department that covered what was then the Anglophone West Africa, during the colonial era. Since then the FIRS has gone through several transformations, Some of which are; The promulgation of FIRSEA 2007, the amendment of some provisions of the Personal Income Tax Act,2007, the introduction of the Presumptive Tax Regime and the introduction of the self-assessment Regime. The one which has the most far reaching effect on tax

administration in Nigeria was the promulgation of the FIRSEA 2007. It came as a result of the clamour in different quarters that there should be a review of the archaic tax system.

At present, there is no separate law specifically addressing taxpayers' right protection in Nigeria. Diverse rights that taxpayers may enjoy can be found in tax statutes such as the Federal Inland Revenue Service (Establishment) Act, (FIRSEA) No 13 of 2007 and some of the other tax statues that the Federal Inland Revenue Service (FIRS) supervises. The rights can also be traced to the Nigerian Constitution, 1999 and the African Charter on Human and People's Rights, 1981 (African Charter). However, this paper focuses on taxpayers' rights enshrined in the FIRSEA, 2007. This is because it is this Act that established the FIRS to supervise all other tax laws in Nigeria. The choice of the paper to examine taxpayers' rights was informed because a good understanding of the concept of taxpayers' right protection will help to improve tax compliance, which will result ultimately in improved revenue generation.

According to Owens (2010), taxpayers who know their rights will most likely comply. Taxpayers should therefore be sensitized on these rights, be fairly treated while their rights are duly respected. The rights to privacy, confidentiality, of access to information and to appeal against decisions of the tax authority are some of the basic rights that taxpayers enjoy in democratic societies. A breach of any of these rights will undermine a taxpayer's perceptions of the fairness of the tax system. Akintoye (2014).

The problem in Nigeria is not lack of good tax laws and policies because there has been several review of tax policies in the country. For instance, the National Tax Policy Implementation Committee recently presented a Memorandum to the Federal Executive Council (FEC) to seek its consideration and approval. The FEC on February 1, 2017 approved the revised National Tax Policy. On Wednesday June, 6, 2018 the FEC approved the report of the National Tax Policy Implementation Committee on Tax Law Reforms. However, there is lack of the required political will to implement the laws and policies. This therefore makes the good tax laws and policies which the country can boast of worthless. After all, the best tax policy is worth little, if it cannot be implemented effectively. Also, even though the Nigerian government has, on several occasions in the past, amended the FIRS powers to strengthen it, little has been done to maintain the balance between these powers and the taxpayers' rights. Ironically, the FIRSEA, 2007 has significantly strengthened the FIRS power, but substantially reduced the safeguards for taxpayers. Unfortunately, these safeguards which can also be referred to as the rights of the taxpayers are rarely claimed and enforced. It is also observed that sometimes, the powers of the FIRS trample on taxpayers' rights.

Another issue seriously agitating the mind is whether, when a Nigerian legislative house (National Assembly or a State House of Assembly) introduces a new tax, a citizen or a group of citizens affected by such action can approach the court to nullify the tax. It has been queried if the court could be justified to nullify such new tax on the ground that, no institution of state should be allowed to be unreasonable as to satisfy

its desire to the detriment of citizens and that an improper imposition is manifestly contrary to the objective of the law in conferring that particular right on the National Assembly or the State Legislature (Abdulrazaq, 2018). Similarly, in the Centro's case (1999, ECR, 1-1459), it was argued that the concept of abuse of right may be used to protect the citizen against a state institution or an exercise of the law.

Based on the above, this paper examines the rights of taxpayers under the Nigerian law. It will be disclosed whether these rights are guaranteed in tandem with the view that the objective of any tax policy can be only achieved when the policy is properly administered. The tax policy encompasses the rights and obligations of the tax payers' vis-à-vis the powers of the taxing authority. It is therefore a good starting point to clarify the classes of rights which tax payers can claim.

2. CLASSIFICATION OF TAXPAYERS' RIGHTS

There is no universal way of classifying taxpayers' rights. Different authors have come up with different classifications. Bentley (1998 and 2007) had stated that a two-tier model of taxpayers' rights contains two categories: (1) Primary Legal Rights and Secondary Legal Rights and (2) Primary and Secondary Administrative Rights. He explained that, primary legal rights are those granted by the constitutions and international legal instruments; secondary legal rights on the other hand, are rights contained in conventional legislation, which comprise both substantive and procedural laws. Primary administrative rights are in the same nature as secondary legal rights, except that they are based on administrative regulations and subsidiary legislation issued by the relevant authorities. Secondary administrative rights, on the other hand, are the rights which the tax administration recognizes as necessary to be respected, but not worthy of being made the subject of a regulation.

In all modern societies, there is a broad consensus among governments on what may be called the basic rights of taxpayers, allowing for some minor variations between countries. In the United States of America, there is what is called the Taxpayer's Bill of Rights passed by the congress on the 3rd day of January, 1996. However, Bentley's two-tier model of taxpayers' rights (legal rights and administrative rights) and the Organization for Economic Cooperation and Development (OECD) classification of rights apply to all taxpayers in most countries, Nigeria inclusive. Notwithstanding this, the rights embedded in the FIRSEA, 2007, which will be analysed in the discussion are as follows:

- Right to be informed, assisted and heard
- Right of Appeal
- Right to pay no more than the correct amount of tax
- Right to be refunded
- Right to Privacy
- Right to Confidentiality and Secrecy
- Right to Object to a Revised Assessment
- Right to seek Remedy of Judicial Review

3. ANALYSIS OF TAX PAYERS' RIGHTS IN THE FIRSEA, 2007

This segment critically discusses the provisions of the FIRSEA, 2007 on the tax payers' rights highlighted above. This will afford a clearer picture of the extent to which these rights have been properly safeguarded, enforced and beneficial to tax payers.

3.1 Right to be Informed, Assisted and Heard

Taxpayers are entitled to have up-to-date information on the overall operation of the tax system, on the way in which their tax is assessed. They can also request for assistance in complying with tax Legislation. They are equally entitled to be informed of their rights (Section 26 (1), FIRSEA, 2007). Even though Section 26 (1) of the FIRSEA, 2007 complies with the provision that the taxpayer has the right to be properly informed of his tax liabilities and also to be assisted and heard, the reality in Nigeria shows that, taxpayers are not adequately sensitized about developments in the tax system. This lack of information therefore makes them run afoul of taxation Laws (Akintoye, 2014).

3.2 Right of Appeal

All tax payers have the right to appeal against any decision of the tax authorities on income tax liabilities and against most other decisions made by tax authorities, whether on the application and interpretation of the law or of administrative rules (Section 59 (1) and (2) FIRSEA, 2007). The Tax Appeal Tribunal was established by section 59 (1) of the Act to adjudicate on disputes and controversies emanating from tax Laws. If taxpayers are displeased with the outcome at the first level of Appeal, they can appeal to the next court vested with jurisdiction on their claim (i.e. the Federal High Court) and they can appeal further up to the highest court (the Supreme Court). It is however observed that, tax cases do not usually go up to the Appellate Courts (i.e. the Court of Appeal and the Supreme Court). This may however change as the Nigerian government is now taking the issue of tax evasion and avoidance more seriously and has promised to prosecute those who are found guilty of tax offences. Sequel to this determination by the government, the Voluntary Asset and Income Declaration Scheme (VAIDS) was introduced in July, 2017. Prior to the VAIDS scheme, the government provided some incentives such as the waiver of penalty and interest on tax liabilities from 2013 to 2015. With this, defaulting taxpayers could come forward to declare their indebtedness within the 45 days window, commencing on 5th October, 2016 and terminating 24th November, 2016. This was done in exercise of the FIRS powers under Section 83(3) of the Companies Income Tax Act (CAP C21, LFN 2004 (as amended) and replicated in Section 32 (3) of the FIRSEA, 2007. The FIRS vowed that all legal means at its disposal would be deployed, including criminal prosecution, against any tax offender who did not take advantage of this special window. Similarly, in 2017, VAIDS was put in place as another special window for defaulting Nigerian taxpayers to work out a flexible way to pay their outstanding tax liabilities in the past six years and obtain genuine tax clearance certificate for all the relevant years without fear of criminal prosecution for tax offences and with the benefit of forgiveness of interests and penalties.

The FIRS has started writing to banks to appoint them as collection agents of tax payers considered to be in default of tax payment. In order to achieve this, the FIRS is directing the relevant banks to freeze the accounts of the tax payers to prevent them from drawing funds from the account. Although section 31 of FIRS (Establishment) Act gives the FIRS power to appoint a person as an agent of a taxpayer for the recovery of the tax that is payable by the taxpayer, the appointed agent will be required to pay any tax payable by the taxpayer from any money held by the agent on behalf of the taxpayer. However, by section 31(5) of the FIRS (Establishment) Act the bank has no legal right to freeze any account at the receipt of the FIRS letter and the bank has a duty to inform the taxpayer before taking any action. See the case of *Emi Vs Skye Bank* SUIT NO. FCT/HC/CV/1676/2016 and *Fidelity Bank Vs Bayuja Ventures Ltd & Anor* (2011) LPELR-CA/L/473/2007, where the banks were held liable for damages on the ground that a tax is not due or payable unless a notice of assessment has been issued and there is no objection within 30 days and the tax has become final and conclusive.

It is arguable that, with all the voluntary means of paying up their outstanding tax made available to tax defaulters, the FIRS has guided against proliferation of appeals against its decisions. Needless to say, this would also make the court less congested with tax cases. Consequently, tax payment would be made more attractive to tax payers. These measures do not however constitute an inhibition to the tax payers to exercise their right of appeal against the decisions of any tax authority in the country, as they may consider necessary.

3.3 Right to pay no more than the Correct Amount of Tax

This right is enshrined as one of the functions of the FIRS in section 8 (1) of the FIRSEA. On this, this section of the Act expressly declares that, *"the Service shall 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 collection of revenue for the purpose of efficient, effective and correct tax administration and to prevent tax evasion or fraud"*. Thus, while it is acceptable to reduce tax liability by legitimate tax planning, governments make a distinction between this form of tax planning and forms of tax minimization which clearly go against the intent of the legislator.

In the English case of *Barclays Mercantile Business Finance Ltd Vs Mawson* (2005, STC 1), it was argued that a practice was abusive if the transactions concerned resulted in a tax advantage the grant of which would be contrary to the purpose of legal provisions. Notwithstanding this, taxpayers are entitled to reasonable measure of assistance from the tax authority to enable them receive all reliefs and deductions which they are entitled to. Most corporate taxpayers however employ the services of tax consultants to help in legally planning their tax affairs to limit their tax liabilities.

3.4 Right to be Refunded

The taxpayer enjoys the right to be refunded if it is discovered, after proper auditing, that he has overpaid. This right is provided for in Section 23 (1) (2) (3) and (4) of the

Act. The right allows the taxpayer to choose either to be refunded or be set off against future tax. Even though sub-section 3 provides that the tax refund should be made within 90 days of the decision of the Service, the practice is that the tax authorities do not make prompt payment of tax refunds. This has the tendency to impact negatively on the business and finances of taxpayers. This is because, when the refund is eventually paid, the value of the money would have reduced due to inflationary factors (Akintoye, 2014)

3.5 Right to Privacy

All taxpayers have the right to expect that the tax authorities will not intrude unnecessarily upon their privacy. In practice, this is interpreted as avoiding unreasonable searches of their homes and business premises. Based on this right, the tax authority cannot request for information which is not relevant for determining the correct amount of tax due. In all countries, very strict rules apply to the entry into a person's dwelling or business premises by a tax official in the course of a tax investigation and on obtaining information from third parties.

Section 29(1) of the FIRS Act provides that an authorized officer of the Service shall at all reasonable times have free access to all lands, buildings, places, books and documents in the custody or under the control of a public officer, institution or any other person. This is allowed to be done for the purpose of inspecting the books or documents, including those stored or maintained in computers or on digital, magnetic, optical or electronic media. Also, any property, process or matter which the officer considers necessary or relevant for the purpose of collecting any tax under any of the relevant enactments or laws for purpose of carrying out any other function lawfully conferred on the Service can be done.

However, by section 29 (5), any authorized officer shall not enter any private dwelling except with the consent of an occupier or pursuant to an authorization issued under subsection (7) of section 29. Section 29(6) permits a judicial officer upon an application by an officer of the Service may authorize the officer by warrant to enter into any premises. In addition, Section 29(7) stipulates that the warrant authorization shall:

(a) be in the form prescribed in the third schedule of the Act;
(b) be directed to a named officer of the Service
(c) be valid for a period of 3 months from the date of its issue or such lesser period as the judicial officer considers appropriate
(d) state its period of validity, or the date on which it expires,

An officer exercising the power of entry conferred by an authorization issued under subsection 29 (6) shall produce the written authorization and evidence of identity, on first entering the private dwelling. This process must also be followed whenever it is subsequently reasonably required to do so. However, Section 26(2) contradicts this rule of privacy by allowing an officer of the Service not below the rank of a Chief Inspector of Taxes or its equivalent to act without giving any of the required notices set out in the section. This section requires review.

3.6 Right to Confidentiality and Secrecy

The right to Confidentiality and Secrecy is one of the basic taxpayers' rights. What this entails is that any information available to the tax authorities on the affairs of a taxpayer should be treated in a confidential manner and will only be used for the purposes specified in tax legislation. Tax legislations impose heavy penalties on tax officials who contravene this provision. Thus, Section 39(1) titled "Information and Document to be Confidential" and Sub Section 2 prescribed the penalty for contravening this provision by any employee of the Service. Similarly, Section 50(1) of the Act tilted "Official Secrecy and Confidentiality" bans unauthorized disclosure of information by an employee.

However, despite the safeguards for confidentiality and secrecy of the tax payers' information noted above, Section 47 (5) of the Personal Income Tax (Amendment) Act (PITA), which gave the FIRS absolute power to procure information about the taxpayers from any organisation, undermines the taxpayers' right to privacy, secrecy and confidentiality. Likewise, Section 28(1) & (2) of the FIRSEA 2007 which permits the FIRS to break through the bank secrecy regulation is another threat staring the tax payers' right to confidentiality and secrecy in the face.

In the same vain, section 49 of the Companies Income Tax Act LFN 2004 and section 28, 29, and 31 of the FIRSEA, No 13 of 2007 ascribed power to the executive chairman of the FIRS to appoint third parties such as banks as collection agents of tax payers considered to be in default of tax payments.
Section 50 (3) however provides an exception if the information is divulged in the process of instituting a prosecution for any offence committed in relation to any tax in Nigeria.

3.7 Right to object to a Revised Assessment and Right not to be subjected to Punitive Assessment

Where FIRS serves a notice of additional assessment on a taxpayer, such a taxpayer is entitled to object to such an assessment. Section 69 of CITA is clear on this and it states that;

(I) If any company disputes the assessment, it may apply for the Board by notice of objection in writing to review and revise the assessment made upon it
(ii) An application under sub Section (1) of this Section shall – be made within thirty days from the date of service of the notice of assessment:

According to Section 57 of PITA, notice is required by law to be served on the taxpayers. This opens a right of objection to the taxpayer to enable him challenge any disputable assessment. In the case of *Okupe Vs Federal Board of Inland Revenue* (2010, 2 TLRN), it was decided that non-service of this statutory notice is a breach of the rights of the taxpayer. In most instances, the law stipulates the time-frame within which a person or an authority is required to comply with clearly stated obligations. However, it is a common practice for the Revenue Authority to flout such binding obligations (See Oando Supply and Trading Ltd vs. FIRS (2011)4 TLRN, 128-129). A typical case in point is the practice of issuing a Notice of Refusal to Amend

(NORA) on taxpayers. In other words, when a Revenue Authority issues a Notice of Additional Assessment on a taxpayer, the taxpayer may, if necessary, respond with a Notice of Objection. The Revenue Authority is thereafter required to either accept the objection and reverse the additional assessment (in part or whole) or issue a NORA.

Prior to April 7, 2011, it was mandatory for taxpayers interested in filing an appeal to wait for a NORA to be issued before the rights of appeal could arise. This conferred on the Revenue Authority a lot of discretionary power which was abused by deliberate delay in issuing NORA to taxpayers. On April 7, 2011, however, the Tax Appeal Tribunal, Lagos Zone, delivered a landmark ruling in *Oando Supply and Trading Ltd Vs FIRS* wherein it was held that a period of 90 days is deemed to be reasonable time within which the Revenue is expected to issue its decision, failure of which will amount to an implied or deemed NORA. In clearer terms, the Tribunal held thus:

> *Where a taxpayer files a Notice of Objection to FIRS, the latter, if they do not agree with the taxpayer's objection in any material particular, must issue their NORA within a reasonable time. We must suggest 90 days. The Tribunal can treat FIRS failure to issue NORA within reasonable time or at all as a "deemed decision". FIRS must treat the complaint fairly, justly and speedily.*

It is a settled law that, taxing authorities must not be capricious and vindictive and the power to impose tax should not be exercised beyond the express provisions of the law. Therefore, in making assessment, the taxing authority must operate strictly within the confine of the enabling law, even where taxpayers are in default. The taxing authority cannot go beyond the express powers conferred by the law to impose anything beyond the due tax, penalty or interest. The courts have also held that tax must not be taken as an instrument for punishment, even where the taxpayer is guilty (*Okupe Vs FBIR). In this Okupe case, the court held that,*

> *"It is my view that though there is abundant evidence that the Appellant was guilty of failure or willful default in the supply of information or disclosure concerning his sources of Income, the officials of the Board have no rights or power under the law to inflict any assessment which is or tends to be of a punitive nature upon him and I conceive that it is my duty in the public interest to ensure that officials of the Revenue Board are discouraged and in fact prevented from using their power of taxation as a punitive measure"*

3.8 Right to Seek Remedy of Judicial Review

One of the remedies available to the taxpayer, as a protection against abuse by the tax authority, is the remedy of Judicial Review. This is a also a right preserved for the tax paper. Judicial Review keeps the taxing authority in check and plays an important part in holding the taxing authorities to account. The Fundamental Rights provisions in the Constitution strengthens the taxpayer's hand in applications for judicial review as well as in the statutory appeals procedure. The taxpayer can also seek redress via non-legal remedies such as the internal complaint procedures.

The remedy of Judicial Review under the tax system promotes the principles of fairness and justice and is in consonance with the intent of Human Rights which advocates for natural justice (Canaan, 2001). It should however be noted that, Judicial Review is not concerned with reviewing the merits of a particular decision, but with the decision making process itself. For instance, it is concerned with issues such as; whether the tax inspector or officer has assumed powers which he does not have; whether he has failed to exercise a discretion, which he does have; or he has exercised a power in a wholly unreasonable way. In exercising the power of judicial review, the court is concerned with procedural impropriety. In proceedings for judicial review, the court can give a wide range of remedies, including injunctions and declarations and, in certain circumstances, damages.

An example of procedural irregularity occurred in the case of *R v. Sevenoaks Commrs* (Ex parte Thome (1989) STC 560*)* where the taxpayer's solicitor produced a medical certificate to the General Commissioners indicating that he was suffering from depression and was unfit to answer questions. The Commissioners adjourned the hearing, but on the new date, a further certificate was produced indicating that the taxpayer's condition remained unchanged. The Commissioners refused an application for a further adjournment. In a proceeding for judicial review, the decision of the Commissioner was quashed and the matter remitted to the Special Commissioners for rehearing.

Despite its benefits, Judicial Review has been described as a comparatively cumbersome and expensive procedure for taxpayers to contemplate. It is therefore not surprising that, Sir Andrew Leggart, in his Report of the Review of Tribunals, August 2001, refers to an increase in both volume and complexity of Judicial Review applications. Some cases reviewed suggest that access to effective justice meant access to the Tribunal rather than the opportunity to commence judicial review proceedings. Notwithstanding this, certain complaints, such as those concerning the operation of an extra statutory concession, must be made by way of judicial review (*R Vs IR Commrs* ex parte Fulford-Dobson (1987) STC 344 and *R v C & E Commrs ex parte Greenwich Property Ltd* (2001) BTC 5, 158). Again, sometimes court proceeding is unavoidable and it is required to determine the correct amounts owed by the taxpayer. The option of judicial review is also a protection available to the taxpayer from abuse from Ministerial Public Notices. Here, the function of judicial review is to control the power exercised by the executive.

Judicial Review is not new in Nigeria (Nigeria Tax Notes). There are series of cases in support of this assertion (e.g. Aboud v Regional Tax Board 1 NTC 124; *Reverend Shodipo v Federal Board of Inland Revenue* 1NTC 273 *and Offshore International v Federal Board of Inland Revenue* (2011) 4 TLRN 59). In these cases, declaratory actions relating to non-liability to tax were brought to courts. While an order of certiorari and prohibition to quash assessment and prohibit payment of taxes was canvassed in the cases of *Alitalia Airlines Ltd vs FBIR (*1 NTC 222*)* and *Okupe v FBIR (*1 NTC 321*)*, an order of mandamus to compel the tax authority to stay action on tax collection was sought in *The Queen v. Urhobo Rating Authority (*1 NTC 76*)*. A recent case is *Lagos State Internal Revenue Service Vs Group 4 Securicor Nigeria Limited* Appeal No. TAT/LZ/006/2013. When, on December 5, 2017, Hon Justice M.S Hassan of the Federal High Court (Lagos Division) issued an appellate decision which exhaustively reviewed the scope of "Best of Judgement" (BOJ) powers of the Nigerian tax authorities. The case arose from an earlier June 19, 2015 decision by the Tax Appeal Tribunal (TAT) in *Group 4 Securicor Nigeria Limited Vs LIRS.*

4. CONCLUSION AND RECOMMENDATIONS

Taxpayers' rights are integral to human rights and relevant to national development. Although the Nigerian tax legislations have an array of taxpayers' rights embedded in them, these are hardly utilized or enforced. The mere fact that legislation requires revenue authority to act reasonably and responsibly in the way and manner they carry out their duties is an important safeguard for taxpayers. However, tax authorities ought to educate taxpayers on their rights under the law and taxpayers too must ensure that these rights are not trampled upon.

It is recommended that, apart from the right to appeal and the remedy of judicial review, taxpayers should organise themselves into pressure groups to challenge some of the tax laws that are in contravention of their rights to privacy, secrecy and confidentiality, and the right to be refunded on time after it is discovered through tax audit that they have over paid. Taxpayers should also ensure that their right of being carried along before any amendment or new law is introduced, is enforced. When this is done, there would be a better tax regime for both the taxing authorities and the taxpayers to enjoy in Nigeria.

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