AN APPRAISAL OF THE PROBLEMS OF TAX EVASION AND AVOIDANCE IN NIGERIA*

Abstract
Every country in the world needs revenue to run its affairs. The revenue is needed for infrastructural development, provision of essential services such as education, health care; etc. One of the major sources of revenue for the government in living up to its obligations in this regard is taxation. Taxes constitute a building block of civilization as they pay for public services which benefit all and sundry. It is further established that taxation is a fundamental social obligation in the modern epoch as well as the cornerstone of all economies. Flowing from the above, it is crystal clear that taxes are necessary for the effective running of a country. Therefore, anything which assails against its collection or leads to a diminution in the amount collected must be frowned at by all. In Nigeria at the moment, it is common knowledge that the economy has been decimated by dwindling oil revenues. This has led to a debilitating reduction in the amount of revenue generated, a problem exacerbated by the chronic problems of tax evasion and tax avoidance amongst Nigerian taxpayers. This unfortunate situation stimulated the interest of the researchers to review the aforesaid problems, their causes and most especially, practical solutions to aggressively tackle them. In doing this, the authors have adopted the doctrinal research methodology which necessitated a review of statutes, case laws and the opinions of scholars on the issue. It is the finding of the authors that the Nigerian tax system needs a total and complete overhauling in order to achieve its tax target. On the basis of this finding, recommendations are made which, if implemented, would lead to a significant repositioning of the Nigerian tax system and thereby, improve the revenue generated from tax in Nigeria.

Keywords: Taxation, Tax Evasion, Tax Avoidance, Revenue Generation, Taxpayers.

1. Introduction
As the point of discussion in this paper is tax, it is pertinent to begin with some definitions relating to the issue at hand**.** Tax is essentially a compulsory levy imposed on subjects or upon their properties by the government to provide security, social amenities and create conditions for the economic well-being of the society with the main purpose of raising funds for government expenditure and for the redistribution of wealth and management of the economy[1]. It may also be defined as a charge, usually monetary, exacted by the government on persons, entities, transactions or property to generate public revenue.[2] Taxation itself is the imposition or assessment of a tax and the means through which the state derives the revenue it needs for its activities.[3] Simply put, taxation is the system through which taxes are imposed, assessed and collected. While tax evasion is the willful attempt to defeat or circumvent the law so as to illegally reduce one's tax liabilities,[4] tax avoidance has been defined as the act of taking advantage of legally available tax-planning opportunities in order to reduce one's tax liability.[5] It has also been defined as a transaction which:

a. Avoids tax;
b. Is engaged in for the purpose of avoiding tax or adopts some artificial or unusual form for the same purpose;
c. Is carried out lawfully; and
d. Is not a transaction which the legislature has intended to encourage[6].

Furthermore, it has been stated to be 'the lawful carrying out of a transaction which was either entered into, or which took a particular form, for the purpose of minimizing taxation'[7]. Within the precincts of this work, tax avoidance is perceived as any means of evading tax liability which is not illegal. This view is similar to that of the court in *Akinsete Syndicate v Senior Inspector of Income Tax*[8] which stated that tax avoidance by lawful means is acceptable. Whatever the distinction may be between tax evasion and tax avoidance, the importance of a good system of tax administration cannot be over emphasized. This is so because an effective system of tax

***By EOC OBIDIMMA, BA, LLB, LLM, PhD, BL**, Professor of Law, Faculty of Law, Nnamdi Azikiwe University, Awka. Email: eocobidimma@gmail.com, Phone Contacts: 08034003436, 08090255555; and
***DC NWUZOR, LLB, LLM, BL,** Lecturer, Faculty of Law, Ebonyi State University, Abakaliki and Doctoral Student, Faculty of Law, Nnamdi Azikiwe University, Awka.

[1] CS Ola, *Income Tax Law and Practice in Nigeria* (Ibadan: Heinemann Educational Books PLC, 2001), p.350.
[2]BA Garner, *Black's Law Dictionary*, (St. Paul: Thomson Reuters, 2014), p.1685
[3]BA Garner, *op cit*p. 1688
[4] *Ibid*, p. 1690
[5]BA Garner, *op cit*, p. 1689
[6] GSA Wheatcroft, 'The Attitude of the Legislature and the Courts to Tax Avoidance', 1955 18 *Modern Law Review*, 209
[7] MC Flesh, 'Tax Avoidance- The Attitude of Courts and the Legislature', 1968 21 *Current Legal Problems*, 215
[8] FSC 164/63 Unreported decision.

administration enhances the amount of tax collected from tax payers which means more revenue for government in executing its affairs of infrastructural development, provision of essential services such as security, health care, education etc. As tax is one of the major sources of revenue generation for the government, it expresses the dire need for an effective tax administration in order to harness and maximize the revenue collected from taxation. In doing this, it must be borne in mind that payment of tax by individuals and entities is a fundamental social and civil obligation in the social contract scheme. Citizens pay tax which government uses in the provision of amenities for the good of citizens. Any breach of the foregoing scheme will result in a misbalance which government must do everything in its powers to ensure that it does not occur. The breach in the obligation to pay tax is expressed in terms of either 'tax evasion' or 'tax avoidance'

This paper discusses the problems of tax evasion and tax avoidance as they affect revenue generation for the government. The problem is a gargantuan one and must be tackled head- on in order to avoid the unpalatable consequences of its continued existence.

2. Reasons for Tax Evasion and Avoidance

It is pertinent to ascertain why people refrain from paying tax because it is only when one knows this that one can systematically and purposefully set out to tackle the problem. Although it has been correctly stated that nobody, no matter how rich, wants to pay tax[9], the Constitution makes it an obligation for every eligible citizen to pay tax. It stipulates that every citizen of Nigeria has a duty to truthfully declare his income to the relevant agencies and to pay his tax promptly.[10] Furthermore, failure to pay taxes is usually sanctioned with penalties.[11]. In spite of the above statutory provisions mandating people to pay taxes, people evade or avoid same due to a concatenation of reasons. In a recent survey of taxpayers,[12] many taxpayers stated their reasons for not paying tax to include ignorance, including not knowing they were meant to pay tax at all or if they knew that, not knowing whom to pay to or the specific tax to pay; unwillingness to pay because in their view, government was not doing anything for them; the perception that both tax authorities and the government are very corrupt and would only siphon any taxes they pay; the notion that they could get away with non-payment of taxes as well as poverty as in not having any money to pay taxes. In an interview with a top tax consultant at Anderson Tax, Nigeria,[13] he advanced some of the reasons people fail to pay tax to include: the lack of trust in the government; the perception that the government does not use the revenue generated to better the lot of the people; the fact that very little technology is utilized in tax administration in Nigeria; the fact that many tax statutes are outdated and can no longer support an effective tax regime and the ineffective dissemination of information regarding tax such as what tax to pay, where to pay it, when to pay it, etc. Other reasons adduced by him were the fact that people still have to go to the offices of the tax agencies to file returns or pay tax; the high level of corruption associated with tax administration in Nigeria; the chronic bureaucracy in tax administration in Nigeria; the high level of unemployment in Nigeria and the high level of illiteracy in Nigeria. In the same vein, a leading tax law scholar has outlined the reasons for tax evasion in Nigeria to include: excessive corruption by government officials; problems encountered in tax assessment; problems encountered in the collection of tax; the incompetence of tax authorities and general dishonesty among Nigerians.[14] Other reasons he adduced are lack of patriotism, inequity in the tax system, unfairness of the tax system and ignorance.[15] Elsewhere, he has also stated that the high tax rate is another factor as well as the existence of legal loopholes which are susceptible to exploitation[16]. From the experience of the researchers, it is safe to add that other reasons include the inefficiency of the tax authorities; insufficient capturing of the informal sector for tax purposes; inadequate dissemination of information relating to tax such as who should pay tax, what taxes should be paid, when they ought to be paid, to whom they should be paid as well as substantial non-conformity to the Taxes and Levies (Approved List for Collection) Act which clearly delineates the tax authorities which should collect the different taxes. Having examined the above, this work now proceeds to look at the various forms through which tax evasion and avoidance are perpetuated.

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[9] Y Osinbanjo, 'Property Taxation as Catalyst for Development – Land Use Charge Law of Lagos State' (2003) Vol 22 *JPPL*, 1.

[10] Constitution of the Federal Republic of Nigeria (2010) As Amended, s 24 (f)

[11] See for instance, Companies Income Tax Act, Cap. C 21, Laws of the Federation of Nigeria (2010), s 92(1) *;* Personal Income Tax Act, Cap. P 8, Laws of the Federation of Nigeria (2010), s 94 (1).

[12] Carried out in the course of this research on 21st August 2021 in Enugu

[13] Olanrewaju Afuye, ACCA, ACA via linkedin on 29th October, 2019

[14] MT Abdulrazaq, *Nigerian Tax Offences and Penalties* (Lagos: Princeton & Associates Publishing Co Ltd, 2014), p 40

[15] *Ibid*

[16] MT Abdulrazaq, 'The Legal Nature of Tax Avoidance', *Nigerian Financial Review* (1992) Vol. 4, No. 3, 72.

3. Forms of Tax Evasion and Avoidance

It is perhaps inexorable in an acquisitive society that taxation is perceived as a burden from which those subject to it will try to escape by any possible legal means.[17] Furthermore, according to Blackstone, everyone is entitled to absolute right to the use, enjoyment and disposition of all his property without any control, except as stipulated by the laws of the land.[18] In spite of the above views, the researcher agrees with Ola that however legal tax avoidance may seem, it is unpatriotic and may increase the tax burden of the majority.[19] Flowing from the above, tax avoidance (and evasion) must be resisted and in order to do so, it is imperative to discern the forms through which they manifest. It is only when one succeeds at this that one can proffer solutions to stop same. There are many methods through which tax evasion and avoidance manifest. According to Millet:

> … Tax avoidance comes in different forms, some of which are socially acceptable and desirable, while others are not. At one end of the scale, it includes taking advantage of fiscal incentives offered by Parliament in order to encourage a particular activity erecting a new factory in an enterprise zone or development area, for example, rather than elsewhere for fiscal reasons. It covers making full use of exemptions and concessions deliberately granted by Parliament, even if only for reasons of administrative convenience, the making of small annual gifts, for example, below the level at which capital transfer tax becomes chargeable. Such activities are sometimes aptly described as 'tax planning' rather than tax avoidance. In a less acceptable form, tax avoidance extends to taking advantage of statutory exemptions in situations for which they were never intended by Parliament, and the exploitation of 'loopholes', that is to say, situations clearly within the intended scope of the tax but in fact falling outside the ambit of any relevant charging section.[20]

Essentially, according to Slade, J in *Eilbeck v Rawling,*[21] tax avoidance schemes have to possess two attributes, first, it must give rise to a substantial loss allowable for capital tax purposes; secondly, the loss has to be real in commercial terms. Similarly, Lord Wilberforce in *Ramsay (WT) Ltd v Inland Revenue Commissioners*[22] enthused that:

> In each case, two assets appear like particles in a gas chamber, one of which is used to create the loss other of which gives rise to an equivalent gain which prevents the taxpayer from supporting any real loss and which is intended not to be taxable. Like the particles, these assets have a very short life. Having served their purpose, they cancel each other out and disappear. At the end of the series of operations, the taxpayer's financial position is precisely what it was in the beginning, except that he has paid a fee and certain expenses to the promoter of the scheme.

According to Abdulrazaq, the effect of the above is that the taxpayer unwittingly ends up paying part of what he should have paid as tax to the tax consultant.[23] Can this then not be said to be a case of robbing Peter to pay Paul and would the taxpayer not be better served in utilizing the whole money he has to settle his tax obligation instead of dividing it into two and paying some of it to a tax consultant? Be that as it may, the schemes of perpetuating tax avoidance have been stated to include:

1. Manipulating the marginal tax rate in such a manner that a high income taxpayer reduces his tax liability by creating a trust settlement for the benefit of his children or other relations who either are not subject to tax at all or who pay at a very low rate;
2. Incorporating the taxpayer's sole proprietorship or partnership into a limited liability company, thereby substituting the lesser marginal tax rate of the company for the otherwise higher marginal income tax rate of the sole proprietor or partner;
3. Converting what would ordinarily accrue to the taxpayer as income into capital gain (i.e compensation for loss of office) to the tax advantage of the employer and the employee, the former because the compensation thus paid constitutes allowable deductions for tax purposes and the latter because he thereby substitutes the

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[17]*Peate v Commissioner of Taxation* (1963-64) 111 CLR 443 at 445
[18] W Blackstone, *Commentaries,* Book 1, Chapter 1, quoted in A Ipaye, *Nigerian Tax Law and Administration: A Critical Review*(London: ASCO Prime Publishers, 2014), p 98
[19] CS Ola, *Income Tax Law for Corporate and Unincorporated Bodies in Nigeria* (Ibadan: Heinemann Educational Books (Nigeria) Ltd, 1981), p. 383
[20] PJ Millet, 'A New Approach to Tax Avoidance Schemes', (1982) LQR Vol. 98, 210
[21] (1979) STC 16
[22] (1981) 2 WLR 455-456
[23] MT Abdulrazaq, 'Legislation against Tax Avoidance: The Nigerian Experience', *Journal of Contemporary Legal Problems*, (1991) Vol. 2, No. 9, 37

lower marginal tax rate applicable to capital gains for the higher rate which would otherwise apply to his taxable income;

4. Leasing property at a large premium with a much reduced monthly or annual rent, thereby substituting the lower marginal tax rate applicable to the lump sum premium payment (i.e capital gains) for the higher marginal income tax rate which would otherwise apply to the income earnings from the monthly or annual rent;
5. Manipulating the marginal tax rate by transferring income from a high marginal tax rate, for example, by appointing the taxpayer's wife, child, other relation or very close associate as a director in the company with nominal duties;
6. Manipulation of charitable organizations whose affairs are controlled and dominated by its founders, thus taking advantage of income tax exemption;
7. Reducing income tax liability by ensuring that much of the taxpayer's expenditure incurred qualifies as deductible expenses for income tax purposes;
8. Outwitting the Revenue, Residency and Taxability rules by stating that the taxpayer and/or his property is outside the jurisdiction of the Nigerian tax laws, for example, where the taxpayer intentionally stays in Nigeria for a period not exceeding 183 days during the year of assessment or transfers his property to foreign trustees;
9. A person ordinarily resident in Nigeria avoiding tax liability by means of assets transfers as a result of which either alone or in conjunction with associated operations , income becomes payable to persons ordinarily resident outside Nigeria;
10. Reducing liability to tax by investing in capital asset, for example, via equipment leasing and thereby hiding some of the taxpayer's income from taxation through capital allowance claims;
11. Reducing the rate of taxation by acquiring a business which has sustained a heavy loss so as to set off the loss against future profits;
12. An orchestrated scheme where payment for work done in Nigeria is made abroad (preferably to a tax haven) and the money is remitted directly by the payer to the payee's foreign account;
13. Manipulation of a new business's activities in such a way that it takes advantage of the statutorily prescribed exception to the preceding year basis of assessment, such that initial expenses are made as high as possible thus keeping net profits substantially low in order to attract low or no assessments in the first 3 years of the new business;
14. Manipulating the business activities of an old business which is to be discontinued so as to take advantage of the statutorily prescribed exception to the preceding year basis of assessment;
15. Reducing the incidence of high companies tax particularly in the case of private or public companies where the controlling shareholders are themselves directors and top executives, by fixing high remuneration and expensive benefits which qualify as deductible expenses for them; and
16. Sheltering part of the company's taxable income from income tax by capitalizing profits through the issue of bonus shares to the existing members at the deductible expense of the company.[24]

Other methods are:

1. A company setting up a new agricultural factory or equipment in order to obtain the additional rate of investment grant;
2. Assets being transferred immediately prior to their sale from a subsidiary to holding company to avoid attributing the profit to the subsidiary thereby increasing the value of subsidiary's share capital and therefore the company tax payable by the holding company on the disposal of that share capital;
3. A company delaying the holding of its Annual General Meeting until its directors sign a contract to purchase additional plant and machinery in order to increase the amount it needs to retain to meet the current requirements of its business;
4. A new partner joining or an existing partner retiring from a partnership on a date fixed to obtain the maximum benefit from the 'new business' or 'discontinuance' rules relating to assessments;
5. An individual returning to Nigeria on completing the duration of his employment abroad and selling his investments before becoming resident and keeping the proceeds abroad in order to avoid capital gains tax;
6. Shares received on a bonus issue being transferred while they are in 'allotment letter form' and prior to the share certificates being issued in order to escape stamp duty;
7. Engaging in a pioneer industry and appointing outside associates as buying agents entitled to commissions;

[24] MT Okorodudu, 'Measures against Tax Evasion and Avoidance: Some Equity Questions and Suggested Reforms' (Being a Paper Presented at the 15th Annual Senior Staff Conference of the Federal Inland Revenue Department, December 1985) 21-24

8. Purchasing a house and allowing a dependent relative to live there rent free instead of transferring same to him either to enable him to purchase the house or have sufficient income to rent a property, thereby avoiding capital gains tax; and
9. Engaging in a pioneer industry and appointing outside associates as buying agents entitled to commissions[25].

Finally, tax avoidance can also be carried out through:

1. Incorporating a company to take over property in order to pay less taxes;
2. Making an ordinary discretionary settlement in favour of dependents in order to reduce estate duty or property tax;
3. Creation of trust; and
4. Sharing income amongst several parties so that each is taxed on a separate basis, thereby diminishing their tax liabilities[26].

Tax evasion, on the other hand, can be orchestrated through the following means:

1. Making misrepresentations about earnings in order to pay less taxes;
2. Making misrepresentation about payment purposes, such as charity, in order to evade paying taxes on certain sums;
3. Intentional misrepresentation of material facts which affect the amount of tax obligation;
4. Failure to furnish tax returns;
5. Failure to keep proper tax records; and
6. Failure to report income, earnings, profit, etc[27].

Other methods are:

1. Failure to pay tax by a taxable individual or company;
2. Making false claim with the aim of obtaining allowances in respect of children when in reality, the taxpayer either has no children or has fewer children than he claims;
3. Making false claim in respect of allowance for a wife when in reality, the taxpayer is a bachelor, widower or divorcee;
4. Making false claim in respect of capital allowances when in reality, the taxpayer never owned any capital assets or if he owned them, such capital assets had become defunct due to transfer of ownership or sale thereof or the taxpayer had already exhausted full claim thereon;
5. Making false claim with the aim of obtaining allowance for fictitious dependent relatives or where they are real, the taxpayer is not responsible for their maintenance;
6. Making false claim for allowance in respect of premiums on life insurance policy, when in reality, the policy is defunct either because the taxpayer has not paid his premiums regularly or is yet to execute a legally binding life insurance policy contract;
7. Understating income receipt from trade, business, profession, vocation or employment;
8. Omitting to declare gross amount of dividends received from Nigerian companies;
9. Omitting to declare income receipts, including rent from realty;
10. Omitting to declare state income received in or brought into Nigeria from sources outside Nigeria.
11. Omitting to declare state income received in or brought in from other sources not expressly specified in Part 8 of the Income Tax Form;
12. Making false claim of contribution to a pension scheme, National Provident Fund or charitable fund when in reality, the taxpayer has never made any such contribution;
13. Failure to declare all benefits in kind received such as cost of utilities paid or subsidized by an employer or other perquisites of office; and
14. Failure of a taxable person to file tax returns to the appropriate tax authorities within the stipulated period.[28]

Having seen the forms through which tax evasion and avoidance are fashioned, this work now turns to the effects of both.

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[25]CS Ola, *Tax Planning and Auditing in Nigeria* (Ibadan: University Press Limited, 1985), pp 19-20

[26] G Etomi, 'Law of Taxation', in G Etomi ed, *An Introduction to Commercial Law in Nigeria: Text, Cases and Materials* (Lagos: MIJ Professional Publishers Limited, 2014), p. 337

[27]*Ibid*, p. 336

[28] MT Okorodudu, *op. cit,* 27-29

4. Effects of Tax Evasion and Avoidance

It is quite obvious that the evil duo of tax evasion and avoidance has undesirable effects and this is particularly injurious in a developing country like Nigeria[29]. The first and most obvious of course is that they seriously reduce the revenue obtainable from taxation. According to Adebisi and Gbegi, they have 'created a great gulf between actual and potential revenue'.[30] In addition to seriously reducing government revenue derived from taxation, the above have been said to cause low rate of employment in Nigeria.[31] It is submitted that the low rate of employment caused by the aforesaid evils is a consequence of the distortions inflicted on the economy by them. Furthermore, it affects the distribution of resources between individuals as well as different activities and sectors.[32] This is because money ought to be paid by tax evaders is not made available for distribution. Another effect of the above is that it undermines the legitimacy of government in the sense that disrespect for tax statutes may lead to disrespect for other laws.[33]Moreover, it could potentially discourage previously willing taxpayers to stop paying tax when they keep seeing their fellow citizens evade or avoid paying tax especially without sanctions. This causes terrible ripple effects because the people who pay at all then have to pay at higher rates to make up for the lapses. Furthermore, the redistribution of income, which is a major function of taxation, is constrained by tax evasion and avoidance and this grossly exacerbates the inequities in income distribution in the country. In the light of the fact that both tax evasion and tax avoidance have similar effects, this work now proceeds to ascertain whether the legal distinction between them is justified.

5. Is the Legal Distinction between Tax Evasion and Tax Avoidance Justified?

To start with, it is important to reiterate the legal distinction between tax evasion and tax avoidance. Whereas tax avoidance is lawful,[34] tax evasion is unlawful and prohibited.[35] Similarly, whereas the former does not lead to payment of fines or sanction, the latter does[36] but is this legal distinction justified, having regard to the fact that both result in the same consequences as seen above? There are different views about this. One school of thought is of the opinion that it is justified. First, there is the often-cited dictum of Lord Tomlin in *IRC v Westminster*[37] where he asseverated as follows: Every man is entitled if he can to order his affairs so that the tax attaching under the appropriate Act is less than it otherwise would be. If he succeeds in ordering them so as to secure this result, then however unappreciative the Commissioner of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax. Similarly, in *Commissioners of Inland Revenue v Duke of Westminster*[38], Lord Atkin, referring to devices for avoidance, articulated that: **'**I do not use the word device in any sinister sense, for it has to be that the subject, whether poor and humble or wealthy and noble, has the legal right so as to dispose of his capital and income as to attract upon himself the least amount of tax. The only function of a court of law is to determine the legal result of his disposition so far as they affect tax'.

Furthermore, in *Ayrshire Pullman Motor Services Limited v CIR*,[39] Lord Clyde echoed the above perspective when he pontificated that 'a taxpayer can be astute to prevent so far as he honestly can, the depletion of his means by the Revenue.' Yet another endorsement of this view came in *CIR v Fisher's Executors*[40] where Viscount Sumner espoused that: 'My Lords, the highest authorities have always recognized, that the subject is entitled so to arrange his affairs as not to attract taxes imposed by the Crown, so far as he can do so within the law, and that he may legitimately claim the advantage of any express term or of any omissions that he can find in his favour in the taxing Acts. In so doing, he neither comes under liability nor incurs blame'. Finally, in *Levene v IRC*[41], Viscount Sumner also harped, *inter alia*, that:

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[29] MN Umenweke, *op. cit*, p.176

[30] JF Adebisi and DO Gbegi, 'Effect of Tax Avoidance and Tax Evasion on Personal Income Tax Administration in Nigeria', *American Journal of Humanities and Social Sciences*, Vol.1,No.3, 2013, 125. See also, SA Rabiu, 'Tax Evasion and Offences', (Being a Paper Presented at the National Conference on State Taxation: Problems and Possibilities, under the auspices of the Institute of Administration, Ahmadu Bello University, Zaria, 1984), 1-2

[31] VN Onyeka and C Nwankwo, 'The Effect of Tax Evasion and Avoidance on Nigeria's Economic Growth', *European Journal of Business and Management*, Vol. 8, No. 24, 2016, 165.

[32] MT Abdulrazaq, 'The Legal Nature of Tax Avoidance', *Nigerian Financial Review* (1992) Vol. 4, No. 3, 76

[33]DO Folayan and AG Adeniyi, 'Effects of Tax Evasion on Government Revenue Generation in Oyo State, Nigeria', *European Journal of Accounting, Auditing and Finance Research,* 2018 Vol.6, No.1, 79

[34] MN Umenweke, *op. cit*, p. 171

[35]*Ibid*, p. 174. See also, OH Auru, *Principles and Practice of Taxation* (Abuja: Klinx Press, 2008), p.7

[36]*Ibid.* See also, *7up Bottling Company PLC v Lagos State Internal RevenueBoard* (2000) 3 NWLR (Pt. 650) 565 at 591

[37] (1936) AC 1, 19-20

[38](1936) 19 TC 490

[39] (1929) 14 TC 754

[40](1926) 10 TC 302

[41] (1928) AC 217

> … it is trite law that His Majesty's subjects are free, if they can, to make their own arrangements, so that their cases may fall outside the scope of the taxing Acts. They incur no legal penalties and, strictly speaking, no moral censure if, having considered the lines drawn by the legislature for the imposition of taxes, they make it their business to walk outside them…

On the other end of the spectrum are those who posit that tax evasion and avoidance are unjustified. Perhaps the most forceful presentation of this perspective was advanced by Ayua when he asseverated that:

> Of course, at first sight it might seem difficult to see why a taxpayer should not get the benefit of statutory provisions which are part of tax structure by adopting its legal position for that purpose. But the matter is not as simple as this may appear. Where there are manipulations of various kinds which have the effect of reducing considerably the revenue that is due to the government, such practices should be prevented. No one says that a person should so arrange his personal affairs that the Revenue Authority can put the largest shovel in it, however, the tax law requires and expects the observance of its rules, the underlying purpose of which is to ascertain the true amount of taxable income. Where a taxable person embarks on artificial arrangements for the purposes of escaping or reducing tax liability otherwise due, such arrangements would be circumscribed and condemned as reprehensible or obnoxious. There is an even greater justification in a developing country like Nigeria where capital formation is badly needed for penalizing tax avoidance schemes[42].

This work respectfully agrees with the latter school of thought. The reason is simple. Even though, within the strict sense of the law, it is not illegal to take advantage of loopholes in the various tax statutes, encouraging such a practice will lead to widespread avoidance of tax especially bearing in mind that most people do not like to pay tax in the first place[43] and taxpayers remain very creative in finding avenues to avoid or evade tax.[44] In buttressing the prevalence of tax evasion and avoidance, Toby aptly stated, *inter alia*, that:

> … the insistent attempts at tax evasion and tax avoidance are as prevalent today as they were in early times. These attempts will continue to be even more intensified as incomes increase and the plague of inflation continues unabated. Faced with higher living standards and increasingly higher costs of goods and services, the citizen is of necessity concerned to minimize his personal incidence of direct taxation.

Although the above scholar was talking about the situation in Trinidad and Tobago, he might as well have been referring to Nigeria, especially at this point in time. It also bears reiterating that tax avoidance and evasion have the same consequences and neither of them augur well for the country especially considering the fact that Nigeria is a developing country with debilitating economic challenges. In the light of the above, it is submitted that the legal distinction between tax evasion and tax avoidance is unjustified and unjustifiable. Taxpayers must therefore be patriotic enough to file their tax returns and pay their taxes. This work will now to see what measures are in place to arrest these problems.

6. Anti-Tax Evasion and Avoidance Measures

The Legislature has not been docile in the war against tax evasion and avoidance and has adopted several measures to tackle them.[45] One measure is by enactment of sanctions against tax evasion.[46] Thus, the Federal Inland Revenue Service Board[47] is entitled to distrain and sell off the assets of a company which fails to pay tax within the stipulated period.[48] Similarly, the Board may distrain and sell off the assets of a taxable individual who fails to pay tax within the stipulated period.[49] Furthermore, there is a penalty for filing incorrect tax returns,[50] for making false statements and returns[51] and for obstructing a tax collector in the performance of his duties.[52]

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[42]IA Ayua, 'The Problem of Tax Evasion and Avoidance in Nigeria', Being a Paper presented at the First National Seminar on Commercial Laws at the Ahmadu Bello University, Zaria, 1982, 47.

[43]Y Osinbanjo, *art cit*, 1

[44] A Ipaye, *op. cit*, p. 101

[45] MN Umenweke, *op. cit*, p.191

[46] MT Abdulrazaq, 'Civil Sanctions under the Nigerian Income Tax Acts', *Journal of the Indian Law Institute* (1990) Vol. 32, No. 4, 478

[47] Hereinafter simply called 'The Board'.

[48] Companies Income Tax Act, Cap C21, Laws of the Federation of Nigeria (2010), hereinafter called 'CITA', s 86(1)

[49] Personal Income Tax Act, Cap P8, Laws of the Federation of Nigeria (2010), hereinafter called 'PITA, s 104(1)

[50]PITA, s 95(1). Note that this offence may be compounded.

[51]PITA, s 96 (1); CITA, s 94(1)

[52] PITA, s 105

There is also the general provision on penalty for offences against tax which stipulates thus:

> Any person guilty of an offence against this Act or any person who contravenes or fails to comply with any of the provisions of this Act or of any rule made thereunder for which no other penalty is specifically provided, shall be liable on conviction to a fine of N20,000.00, and without prejudice to section 55(4) or (5), where such offence is the failure to furnish a statement or information or to keep records required, a further sum of N2,000.00 for each and every day during which such failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order[53].

It is submitted that the above provision is highly commendable because it does not leave any escape route for tax offenders. There are still other measures in place to combat tax evasion. For instance, where a taxable person or company fails to deliver a return within the stipulated period and the relevant tax authority is of the view that tax is chargeable on that person or company, it may, according to its best of judgment assessment, determine the amount assessable and make an assessment.[54] Furthermore, the relevant tax authority is entitled to make additional assessment where such is warranted.[55]Where tax is not paid within the stipulated period, a sum equal to 10 percent of the amount of tax payable shall be added thereto[56]. Moreover, where income tax assessed has been sued for and recovered in a court of competent jurisdiction, the full cost of the action may be recovered from the defaulter as a debt due to the Government of the Federation or the relevant tax authority.[57]

Another measure is the enactment of anti-avoidance provisions. To start with, there is the general anti- avoidance provision which stipulates as follows:

> Where a tax authority 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 or fictitious, the tax authority may disregard the disposition or direct that such adjustments shall be made as respects the income of an individual, an executor, or a trustee, as the tax authority considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be affected by the transaction[58].

Thus, where a tax authority considers a transaction to be artificial or fictitious, or in other words, to have been contrived in order to avoid tax, it is empowered to do whatever is necessary to prevent such avoidance. The word, 'Disposition' has been defined to include any trust, grant, covenant, agreement or arrangement.[59] A transaction between persons one of whom either has control over the other or in case of individuals who are related to each other or between persons both of whom are controlled by some other person, shall be deemed to be artificial or fictitious where, in the opinion of the tax authority, those transactions have not been made on terms which might fairly have been expected to have been made by independent persons engaged in the same or similar activities dealing with each other at arm's length.[60] A transaction could also be said to be fictitious where it is a sham, that is, where it is not intended to be acted upon but is merely used as a cloak to conceal a different transaction.[61] As to what the term 'artificial' means, Umenweke[62] has opined that there are two ways of viewing at same. According to him, the first is by looking at the object of the transaction. Thus, a transaction will not be perceived to be artificial if the taxpayer can show that it was carried out for genuine commercial purposes and not only to secure tax advantages. The second is by examining the form. Thus, where unusual features have been added to an otherwise simple transaction in order to produce a particular result, it may be perceived thereby that the transaction is artificial. While the above view is commendable, it is submitted that a combination of the two approaches will prove far more potent in identifying artificial transactions and lead to a more successful war against tax avoidance.

Apart from the aforesaid general anti-avoidance provision, there are certain specific provisions. For instance, a relevant tax authority is entitled to tax a business on such a fair and reasonable percentage of the turnover of the business as the relevant tax authority may determine where the said business produces either no assessable income

[53] CITA, s 92(1); PITA, s 94 (1)
[54] PITA, s 54 (3); CITA, s 65 (3)
[55] PITA, s 55(1); CITA, s 66(1)
[56] Federal Inland Revenue Service (Establishment) Act (2007), s 32(1) (a)
[57] PITA, s 78(1); CITA, s 87(1)
[58] PITA, s 17(1); CITA, s 22(1); Capital Gains Tax Act, Cap C1, Laws of the Federation of Nigeria (2010), s 20(1); Petroleum Profits Tax Act, Cap P13, Laws of the Federation of Nigeria (2010), s 15(1)
[59] PITA, s 17(3) (a)
[60] *Ibid*, s 17 (3) (b); CITA, s 22 (2) (b);
[61] *Johnson v Jewitt* (1961) 4 TC 231
[62] M.N Umenweke, *op cit*, p.192.

or an assessable income which, in the opinion of the relevant tax authority, is less than might be expected to arise from that business or where the true amount of the assessable income from that business cannot be readily ascertained.[63] Another example is that funds accruing to trustees under a unit trust scheme are made subject to taxation[64]. A further instance is the following provision:

> Notwithstanding any other provision of this Act, where by virtue or in consequence of a settlement and during the life of the settler, an income is paid to or for the benefit of a child of the settler in a year of assessment, the income shall, if at the time of payment, the child was an infant and unmarried, be treated for the purposes of this Act as the income of the settlor for that year and not as the income of any other person.[65]

In addition to the above, the following anti-avoidance measures are utilized to cover international transactions: a). Transfer pricing rules; b). Anti-haven or anti-deferral measures; c). Thin capitalization rules; d). Anti-treaty shopping provisions; and e). Exchange of information[66].

As illustrated above, the Parliament has taken steps to fight the twin problems of tax evasion and avoidance but are these measures sufficient? It is submitted that though they are commendable, more needs to be done to win this battle. In the ensuing paragraph, certain recommendations will be advanced to vanquish these problems.

7. Conclusion and Recommendations

It is fervently believed that the aforesaid problems are not insurmountable and a faithful implementation of the above recommendations as well as the statutory measures will significantly address the said problems and thereby, improve the revenue collected from tax. Although the incidents of tax evasion and avoidance remain wide-spread, they do not defy solutions. In addition to the existing measures outlined above, the following recommendations, if adopted, will significantly aid the tackling of the aforesaid problems: The tax authorities should conduct a widespread campaign to educate the populace about tax such as the different types of taxes, when to pay, whom to pay to, why to pay them, what they are used for, how to file tax returns; etc. It is suggested that different media types be used including billboards, television and radio adverts, facebook and instagram adverts, sharing hand bills in public places; etc. The tax authorities should consult frequently with the general populace through means such as town hall meetings to interact with them and find out what their problems are. The government should be more prudent in using public funds. Instances where politicians lead ostentatious lives and drive luxurious vehicles at the expense of taxpayers alienates taxpayers and suggests to them that the taxes they pay are being squandered. The tax authorities should conduct frequent training and retraining of its staff to keep them abreast with new developments in taxation. The tax authorities should make a systematic attempt to capture the informal sector to make them pay tax. *Ad hoc* staff could be used frequently (such as NYSC corps members) to reach out to informal workers and capture their data and educate them about tax. The Taxes and Levies (Approved List for Collection) Act should be scrupulously adhered to since it clearly delineates the tax authorities which should collect each tax and this will aid efficiency in tax collection. Resolution of tax disputes should be accelerated by making the tax appeal tribunals to be at par with the High Court (just like election petition tribunals) and by making greater use of alternative dispute resolution mechanisms to resolve tax disputes. The tax authorities should leverage the use of technology in tax administration in capturing data of taxpayers, in filing tax returns, in paying tax and in dissemination of information regarding tax. There must be greater synergy among people involved in tax including tax agencies, the Legislature, the Judiciary, tax practitioners; etc to eradicate the problems of tax evasion and avoidance.

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[63] PITA, s 7(1)
[64] CITA, s 17(1)
[65] PITA, Second Schedule, s 4(1)
[66] R Rohatgi, *Basic International Taxation,* (Richmond: Richmond Law and Tax Ltd, 2005), pp 5-6.