

AN APPRAISAL OF ORDINARY LAW PROCEEDINGS OF TAX COLLECTION UNDER CAMEROON'S LAWS

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ABSTRACT

One of the primary objectives of an effective tax enforcement in any country is to attain the degree of tax compliance best capable of reducing tax gap while maximizing tax revenue to the topmost. Enforcement in administration of taxes plays very crucial role in enhancing tax compliance. However, the apathy many Cameroonians (including corporate bodies) show towards payment of tax coupled with the increase in government spending is presumably the reasons for tax authorities to dust up tax statutes to find legitimate ways like ordinary law proceedings of tax collection which help in shoring up revenue accruing to the country. In this article we appraise the ordinary law proceedings of tax collection under Cameroon's legislative instruments. In carrying on this research we made use of existing literature on the subject, coupled with consultation with expert and taxpayers. Both methodologies led us to the conclusion that effective enforcement through ordinary law proceedings of tax collection is being challenged by the fact that the controlling laws themselves may be extremely difficult to locate. that very often there is a tangled nuance of laws, regulations, decrees, jumbled together with amendments and modifications. The country also suffers from the fragmentation of taxing power between ministries, which participates to the complexity and the multiplicity of actual tax regimes. Consequently, we propose among other recommendations that the annual amendments that are incorporated into the yearly budgets should be aligned with the principal legislation (Cameroon's General Tax Code) to avoid confusion. Also, tax measures should remain the exclusive competence of the government, more particularly of the Ministry of Finance, which is better placed to take a more holistic view on what rates could serve the economy best.

Keywords: Enforcement, Tax, Ordinary Law Proceedings, Cameroon.

INTRODUCTION

The obligation to pay taxⁱ under Cameroon's laws has as its basis the preamble of Cameroon's 1996 Constitutions, as amended in 2008 which is to the effect that, "Every person shall share in the burden of public expenditure according to his/her financial resources. The same constitution has vested powers on the legislature in article 26(d), which stipulates that the creation of duties and the determination of their basis of assessment, rates and methods of collection shall be decided by the House of Representative. Article 27 of the same constitution provides that in situations where tax matters are not reserved to the legislative power, it shall come under the foundation of the authority empowered to issue rules and regulations. We can therefore say that, everyone has a duty within his rights to pay taxes.ⁱⁱ However, relevant tax authorities, in trying to put the defaulting taxpayers into their net, adopt the use of some techniques and procedures of enforcement, which are, but not limited to ordinary law proceeding to compel the payment of the overdue taxes. Those procedures will not bar the authority from taking advantage of the other procedures, if it becomes necessary and expedient. It should however be noted that ordinary law proceeding, like any other tax enforcement proceedings is always an area of complexity and subject of controversy between the taxpayers and the taxing authorities, hence, are always marred with problems that hinder tax compliance.ⁱⁱⁱ

On the basis of the present legal frameworks on taxation^{iv}, the article brings out the position of the Cameroon's laws with respect to ordinary law proceedings of tax collection. It explores the phases of ordinary law proceeding of tax collection in Cameroon, it dwells on the relevance, the drawbacks of the procedures and recommends some solutions for a way forward.

CONCEPTUAL CLARIFICATION

Tax enforcement ordinarily refers to an act of ensuring that tax payer comply with tax laws or rules.^v In Cameroon, tax enforcement with tax administration takes two forms, namely; enforcement of tax laws and enforcement of judgment. There is enforcement of tax laws which is the application of all those relevant laws that will assist the tax authorities in carrying out their duties, not laws necessarily relating to the taxation but are relevant to the enforcement of tax laws.^{vi} Enforcement of judgment on the other hand represents already decided court case against defaulted tax payment^{vii}

A taxpayer may unintentionally fail to adhere to tax rules while filling his tax form/returns, or better still deliberately decided to pervade tax rule to suppress his tax liabilities even right from the onset. The outcomes are the same whether an honest or dishonest mistake are made. Underreporting or over reporting may result. Theory submitted that tax evasion is the deliberate act of noncompliance with the tax law with the aim of reducing tax liability. Better still, failure to comply with tax reporting requirements could be as a result of mistakes, negligence, misinformation, or misunderstanding, or all.

GENERAL PRINCIPLE OF FORCIBLE MECAHNISM OF TAX COLLECTION

Forcible collection is the enforcement of the collection of taxes that the taxpayer failed to indicate in their tax return or pay on a voluntary basis^{viii}. It presupposes the regular completion of tax auditing and the failure of the taxpayer to execute the payment of tax determined by the tax authorities within such framework. The consequence is the collection of taxes against any possible resistance of the taxpayer, also up to the point of seizing their belongings in order to execute the assessment of taxes determined by the tax authorities. This manner of tax enforcement generally requires a formal act by the tax authorities that reflects the legal and factual entitlement to forcibly collect and may be preceded by formal reminders by way of notice of issue followed by warning, distraint and seizure which are generally classified as the ordinary law proceedings of tax collection spelt out under Chapter II Division I of the 2021 General Tax Code dealing with Ordinary Law Proceedings and procedures here below x-rayed.

NOTICE OF ISSUE FOR COLLECTION AS ENFORCEABLE DEED FOR FORECFUL COLLECTION OF TAXES

In line with the ultimate goal of securing the collection of taxes, taxpayers and third parties may be asked to provide the tax authorities with an indication of relevant facts and/or the payment of taxes before the actual moment at which the assessment of due taxes takes place. The most typical act issued by tax authorities during this first phase of tax procedures is a so-

called “tax notice”. Tax notices (i) elaborate the facts presented by the taxpayer and the tax paid on such basis; (ii) compare them with possible additional facts discovered by the tax authorities themselves or by ancillary bodies with inspective functions; and (iii) determine the final amount of tax due that corresponds to such facts as the outcome of a tax audit. Tax authorities also issue additional acts in the framework of tax procedures with a view to secure the collection of tax in conformity with the requirements established by law. When addressing facts predicted by the taxpayer that have not occurred yet, the tax authorities may give their interpretation of the applicable rules through so-called “advance rulings”.^{ix} Such rulings constitute the expression.^x The general framework of tax procedures of an anticipated start of tax procedures and may not be disconnected from the later developments that concern the actual facts expressed by the tax-payer and the levying of tax in conformity with the requirements established by law. After the notification of tax audits, the tax authorities may need to take additional action in order to request the payment of tax whenever the tax notice does not automatically produce that effect or taxpayers do not proceed in that direction. Such additional actions may have the function of directly or indirectly leading to the forced collection of tax collection. Thus according to the Manual of the 2021 Tax Code^{xi} a notice of issue has to be served to the taxpayers, to file their annual returns, allowing for objection to the assessment, if any, amendment of the assessment, where necessary, appeals, then, collection and administration of those taxes so assessed .

The notice of issue for collection is considered to be an enforceable deed for the forceful collection of taxes, dues and levies.

It is usually drawn up and notified to the taxpayer where written declaration is not accompanied by the means of payment or following a non-market value return or the former procedure document in the case of a control. The notice of issue for collection rendered enforceable by the Head of the Competent Tax office of the area shall be handled by the relevant Tax Revenue Collector. The Tax Revenue Collector shall notify the taxpayer of the issue for collection who shall have 15 (fifteen) days to pay his debt.

When voluntary compliance proves difficult, there are collection proceedings, which include, but not limited to ordinary law proceedings of enforcement.^{xii}

PROCEDURE FOR ORDINARY LAW PROCEEDINGS OF TAX COLLECTION UNDER CAMEROON'S TAX LAWS

Ordinary law proceedings comprise three phases: the warning representing an order to pay, distain and sale.^{xiii} The competence to rule on the validity of these three phases exclusively rests with the courts.

Warning Representing an Order to Pay

Where the taxpayer fails to pay the sums mentioned in the notice of issue for collection within the time limit, and subject to respite of payment defined in Section 121 of the Manual, the competent Tax Revenue Collector of the area concerned is required to issue a warning. Warning is provided by section M. 56 of the Tax Code and represents an order to pay which must be delivered to the taxpayer or his representative or, in case of absence, the head of the competent administrative unit of the area.

Such warning must contain the references of the notice issued for collection by virtue of which the proceedings are instituted, with the detailed listing of the sums claimed, showing the principal, the penalties and costs^{xiv} Where the warning representing an order to pay is not followed by payment within eight (8) days, following its receipt by the taxpayer, the law demands that the competent Tax Revenue Collector of the area should take other measures, namely, distraint and sale.^{xv}

Distraint^{xvi}

The confiscation of the taxpayer's properties can be affected if the taxpayer fails to pay the tax debt within 8 days after receiving the reminder letter of notification for tax collection, the tax administration can confiscate the taxpayer's properties to guarantee the payment of the tax debt as well as the expenses for the collection of the tax. For the purpose of this law the term "confiscation" means the confiscation by all means and the sale of the taxpayer's properties by the tax administration but the confiscation of properties shall not exceed the tax debt and expenses for the collection of the tax debt.

The statutory authority that permits taking the taxpayer's property does not authorize the collector to do so by breaking the law.^{xvii} Thus, the collector may not trespass onto the

taxpayer's property to take items subject to distraint. For example, Thus, the collector may not trespass onto the taxpayer's property to take items subject to distraint.^{xviii}.

The 2020 Tax Code provides for that distraint to be carried out upon expiry of the 8 (eight) days following receipt by the taxpayer of the order to pay of which the process server shall proceed to seize the movable property belonging to the debtor.^{xix} In this case distraint shall be governed by the conditions laid down by the OHADA Uniform Act to Organise Simplified Collection Procedures and Executions.^{xx}

Section M. 61 states that distraint shall be executed notwithstanding opposition. However, where the taxpayer offers to pay wholly or partially, the competent Tax Revenue Collector of the area is authorized to stop the execution.

Any claim for the movable property and effects seized, may be entertained in court only one month after the claimant submitted it to the Tax Revenue Collector who instituted the proceedings. Pending the ruling, all measures of conservation shall be taken by the Tax Revenue Collector.^{xxi} Where the collection officer cannot discharge his duties because the doors are locked or due to a refusal to open them, he shall post a guard at the door and forthwith notify the administrative authority who shall order the premises to be opened. The head of the administrative unit or his representative must be present during the opening and seizure, and sign the report recording the incident. The law protects seized object by providing those measures of conservation must be taken to prevent the secret removal of objects constituting the guarantee of the debt.^{xxii} In case of failure to pay the taxes and fines due by the debtors, the Tax Revenue Collector may have to proceed with the attachment of the said sums being held by trustees or debtors of the taxpayers themselves. The attachment shall be executed at the instance of the Tax Revenue Collector without prior authorization and in the manner provided by the OHA-DA Uniform Act to organize simplified collection procedures and executions. Section 28 of the OHADA Uniform Act Organising Simplified Procedures for the Recovery of Debts & Measures of Enforcement provides that, "in default of voluntary execution, any creditor may, regardless of the nature of his claim and under the conditions provided for in this Uniform Act, compel the defaulting debtor to honour his obligations towards him or take protective measures to secure his rights." Section 50 of the same Act further provides that, "all

property belonging to the debtor may be the subject of attachment, even where the said property is held by a third party, save where it has been declared inalienable by the national law of each State party. Attachments may also be carried out on conditional claims, immature debt or debts paid in instalments. The terms applicable to each of these obligations shall be binding on the distrainor.”

The OHADA Uniform Act further provides that persons enjoying immunity shall be exempted from distraint and sale. Such exemptions for State corporations and enterprises may only be considered as unquestionable, where they arise from an acknowledgement by the said corporations and enterprises of the debts.^{xxiii}

Thus, in *SHN Cass. civ. 1, 14 November 2007*,^{xxiv} whereas according to the judgment challenged that, on the basis of two judgments of the High Court of Justice of London, subject to exequatur, having filed against the Republic of Cameroon, (which had waived its immunity from enforcement) on the issue of payment, the Winslow B & T Company proceeded with a saisie-attribution (arrest of the bank account) of the funds in the accounts and a saisie-de droits d’associés (contributors’ fees belonging to the National Oil Company (SNH)).

Whereas the judgment was challenged for having held that the SNH was a State instrumentality of the Republic of Cameroon and, accordingly, the arrest of the bank account at the Crédit Lyonnais by the Winslow company, a creditor of the State of Cameroon, was valid, and thus, according to the pleadings herein that by virtue of the principles of international private law governing immunity from execution, the authority, even the control exercised by a State over a public, industrial or commercial instrumentality of which it is the principal stockholder, it does not suffice to consider the institution in question as a State instrumentality of the State; that after having pointed out that the SNH, is a distinct legal person, having its own patrimony that is privately administered, the Court of Appeal should not have refused to draw the proper conclusions from its own findings which summarily precluded it from holding the SNH as a State instrumentality of Cameroon; in deciding as it has, the Court of Appeal has violated the aforementioned principle in Article 2 of the Law of 9 July 1991;

Also, that independent professional Canadians, charged with rendering an evaluation, have denounced the “hegemonist” position of the judge and of the SNH company; that of its arguments and sovereign judgments, the Court of Appeal, which did not have to follow the parties in the detail of their line of argument, could infer that, since the SNH company was not statutorily in a condition of sufficient functional independence to enjoy legal autonomy and thus with respect to the State that its patrimony was commingled with that of the State, it should be considered as a State instrumentality of the Republic of Cameroon; that this pleading is unfounded; the court ordered the National Oil Company SNH to pay the costs; having regard to Article 700 of the new Code of Civil Procedure, dismisses the claims.

In case of manifest insolvency, the tax collection officers are required to drawn up a report of insolvency by in two copies one of which is sent to the Tax Revenue Collector to be used as a document supporting the statement of irrecoverable assessments.^{xxv}

Sale

One of the most common method of collecting delinquent taxes from taxpayers who will not pay voluntarily is by selling the distrained property at tax sale. If the tax administration has a sound basis to believe that the collection of taxes can suffer, the tax administration can require the taxpayer to pay tax immediately and if the taxpayer does not comply with this requirement can proceed with the sale of the confiscated properties which must be carried out by auction. This means that the delinquent tax collector must allow ten days from seizure to sale of the property at public auction. The relevant tax authorities are empowered to sell the property distrained after eight (8) days and at the expiration of the time contained in the warrant and deduct the amount due in respect of the tax and the costs and charges that are incidental to the process of distraint and the sale. Such sale must be expressly authorized by the Director General of Taxation and conducted by the auctioneer or, in his absence, the process server, in the manner in which sales by court order are conducted.^{xxvi}

The delinquent tax collector is not required to hold the sale at the end of the eight-day period, but must do so “within a reasonable time” after the eight days have expired. The law authorises the Director General of Taxation to expressly authorize the sale of seized property, to be conducted by the auctioneer or, in his absence, the process server, in the manner in which sales

by court order are conducted. The sale is interrupted once the proceeds are sufficient to pay the duties, taxes and fines due on the day of such sale, as well as the legal costs. The proceeds are paid to the Tax Revenue Collectors who issues a receipt to the detainee and keeps the surplus until total payment of the costs. Each sale is conducted in the presence of the collector of taxes and shall entail the drawing up of a report. The allowable costs of the sale include legal expenses actually and reasonably incurred up to a maximum of 15 % of the uncollected tax.

The writs and documents relating to orders to pay, distraints and sales and any writ aimed at collecting taxes, duties and penalties due, as well as writs and documents relating to legal proceedings shall be exempted from stamp duty and registration formalities. Such exemption is usually extended to originals and copies of incidental deeds and also applies to the stamp on bills required for the sale by the OHADA Uniform Act to organize Simplified Collection Procedures and executions. Any distraint or sale conducted contrary to the formalities prescribed by this Manual may entail legal proceedings against those who conducted it and they shall bear the costs thereof.

Only payment arrangements that will pay the bill in full before the due date of next year's bill will be accepted.

The law provides that the sale be conducted in the presence of a collector of taxes and interrupted once the proceeds are sufficient to pay the duties, taxes and fines due on the day of such sale, as well as the legal costs. The proceeds are required to be paid forthwith to the Tax Revenue Collectors who is entitled to issue a receipt to the detainee and keep the surplus until total payment of the costs.

Each process served must indicate the amount of the legal costs fixed at 1% of the amount of the debt, including penalties, not exceeding CFAF 100,000, intended to remunerate writ servers under conditions laid down by order of the Minister in charge of finance.^{xxvii} Failure to do nullifies the sale writs and documents relating to orders to pay, distraints and sales and any writ aimed at collecting taxes, duties and penalties due, as well as writs and documents relating to legal proceedings shall be exempted from stamp duty and registration formalities. Such exemption shall be extended to originals and copies of incidental deeds and shall apply to the

stamp on bills required for the sale by the OHADA Uniform Act to organize simplified collection procedures and executions. ^{xxviii}

With respect to seizure and sale at the Municipal level section C.130 of the Tax Code is to the effect that the cost inherent in the conservation of seized perishable goods and foodstuffs shall be borne by their defaulting owners. Such sale of seized goods shall be authorised by the chief executive of the council and executed by the bearer of the coercion in the form of sales carried out by legal procedure. Also, each sale shall be carried out by the municipal revenue collector and shall give to a report. And that any seizure or sale contrary to the formalities prescribed by this book may give rise to legal proceedings against the perpetrators and the cost borne by them.

PREREQUISITES FOR ORDINARY

From the provisions of the statutes, we can discern some prerequisites for tax authority to exercise the power of distraint and sale as follows:

The power becomes exercisable only when assessment raised against the taxpayer becomes final and conclusive. That is, when the tax payable has been decisively determined; and no valid objection or appeal has been lodged against the assessment within the time limited by the Tax Code.

Apart from that condition, a demand notice to pay tax must be served upon the taxable person. If those conditions were not met, then there would be no power to warn or levy distress. Where the tax authority levies a distress without due compliance with the above conditions, then, the taxpayers shall be at liberty to contest the act of the taxing authority. In the U.S Supreme Court case of *Cummings vs. Holt* ^{xxix}; it was held that the sale of distrained property will be illegal unless the taxing authority levying the distress strictly complied with all the requirements of the law with respect to notice and Sale.

Therefore, where there is non-compliance with the above procedures, the taxpayer may sue the tax authority to invalidate the sale or where the purchaser has taken possession he may join him in the suit. However, it was held in the case of *Chester Motors vs. Koledo* ^{xxx} that so long

as these purposes are met, substantial compliance rather than exact compliance, with the notice requirements will be sufficient. It has been observed that, even though there are provisions in the relevant tax laws that the balance should be refunded to the taxpayer, the tax authorities, occasionally, do not observe those provisions, they, either in ignorance of the law or because corruption have eroded their minds, retain the balance, mostly, converting same to their personal pockets.

Competent Tax Authority of the area must authorize distraint officer. The implication of this provision is that, for distraint and sale of property both a warrant and an order of the court must be sought. This provision has clearly reduced the wide powers of the tax collectors with respect to distraint and sale of immovable property. The court has, therefore, been conferred with powers to check likely abuse of powers by Revenue Authorities.

Distraint is available only to a creditor who can show an unquestionable debt due for immediate payment, subject to the provisions relating to the apprehension and claim of movables.

Distraint shall be executed notwithstanding opposition. However, where the tax payer offers to pay wholly or partially, the competent Tax Revenue Collector of the area shall be authorised to stay execution.

Any distraint or sale conducted contrary to the formalities prescribed by this Manual may entail legal proceedings against those who conducted it and they also bear the costs thereof.

Property belonging to a third party cannot be levied upon for taxes due by the taxpayer, even if the property formerly belonged to the taxpayer, and is still in the possession of the taxpayer. In the case of *Albert Che Niba vs The State of Cameroon*) 2) *the treasurer of Llimbe*) 3) *Niba Automobile Company*^{xxvi} Mr. Albert Che Niba filed an originating summons on 29th of May 1995 praying the determination by this court of four questions and certain reliefs in the form of court orders to be directed at 1st and 2nd defendants i.e. the state of Cameroon and the treasurer of Limbe, respectively.

The 3rd defendant Niba Automobile Company, a limited liability company entered appearance to the originating summons within time 1st and 2nd defendants entered appearance after being granted an enlargement of time by this court 1st and 2nd defendants raised an objection in limine contending that the procedure of originating summons was not proper for these proceedings The objection was overruled.

The question was whether the 1st and 2nd defendants acted legally or validly when they purported to execute the provisions of the tax code by sequestering and distraining the properties found at the residence of the plaintiff, not belonging to the 3rd defendant whether 1st and 2nd defendants can seize and sell property of the plaintiff for taxes owed to them by the third defendant, a limited liability company, when plaintiff has no liability towards all the defendants jointly or severally held 1. Sections 301 to 315 of the Tax Code are to be directed primarily at tax defaulters themselves. Section 311 provides for such action to be directed at anybody who owes tax. It was therefore decided that it is wrong to levy execution on, to distrain or to attach the property of third party who is not indebted to or in any way in possession of funds belonging to the tax defaulter concerned.

In order to bring a property to sale, the delinquent tax collector must send out notices of delinquency to the taxpayer and lien holders of a property.

Sometimes, the relevant tax authorities abuse their power to distrain by levying same before the expiration of the time provided in the demand notice. The statutory authority that permits taking the taxpayer's property does not authorize the collector to do so by breaking the law.

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This may amount to trespass and violation of the taxpayer's constitutional rights. An entry without warrant by the service onto private property of a person in which that person has a reasonable expectation of privacy for the purpose of seizing property to satisfy a tax liability is a violation of that person's rights, therefore, permission is required. Only payment arrangements that will pay the bill in full before the due date of next year's bill will be accepted.

RESPECT OF RULE OF LAW DURING TAX DISTRAINT AND SALE

The compliance of tax procedures with the Rule of Law requires tax authorities to exercise their activities in line with the foundation principles that preserve tax fairness. It is a fundamental principle in law that in interpreting a statute which encroaches on a person's proprietary right, the courts' attitude must be to adopt the principle of strict construction, *fortissimo contra proferentes* (strictly against any one claiming benefit), which leans in favour of the citizen whose property rights are being denied against the interest of the lawmaker.

It is also trite that any tax which is not prescribed by law is illegal and unenforceable because tax distraint and sale of a person's property deprives that person of a constitutionally protected property interest, the delinquent tax collector must closely follow the provisions of the statute, to ensure that the delinquent taxpayer is afforded the necessary due process. Failure to abide by statutory requirements may void the sale but perfection isn't required.

In principle the taxpayer must be informed of his right at the commencement of any assessment or audit, the tax department should deliver a comprehensive description to taxpayers of their rights. However, these rights need not be unique to tax administration. Wherever possible, they should be accorded with other procedural rights guaranteed under law. Some of the principles and rights are examined below;

Respect of the key principles and rights of a delinquent taxpayer during distraint and sale

Such principles relate to the main features of fairness of tax procedures and are as follows:

The principle of proportionality *with* a purpose to check whether the actions of tax authorities are consistent with the ultimate goal of tax collection in compliance with the Rule of Law. The prohibition of double jeopardy also known as the prohibition of *bis in idem*.

The prohibition of double jeopardy is connected with the fundamental right to protection, according to which a person may not be legitimately asked to defend themselves twice. It is essentially a principle developed in criminal law, which has significant implications for tax procedures, covering both the administrative and judicial phases. In general terms, administrative and judicial tax procedures must be seen as a single block of measures that secure the right of the tax authorities to assess and collect taxes in conformity with

the actual situation of the taxpayer while protecting the rights of taxpayers by means of an effective legal remedy. Accordingly, the repetition of procedural measures during the judicial phase that were already the object of the administrative procedure should rather be seen as a continuation of the latter measures before a third impartial person within the framework of the due process of law.

The right to be heard also known as the *audita altera parte* principle. The right to be heard prior to a measure adversely affecting the legal sphere of a person has fundamental importance within the principles that secure the foundational values of fair procedures and the right to a fair trial. The implications of the right to be heard in tax procedures are more complex. They have to take into account the existence of administrative and judicial procedures, the connection between them and the circumstance that in most modern tax systems, the taxpayer usually has the right to present their facts before the tax authorities and may start the actual administrative procedure that may lead to the issuance of a tax notice, and hence may generate a controversy that will result in tax litigation.

The right to Confidentiality to which taxpayers should have the right to have their personal financial information accorded the greatest possible confidentiality within the taxation authority. This confidentiality should be breached only (1) during criminal investigations, when criminal investigators outside the taxation authority must view the information, (2) when so required during adjudication of a controversy, when an adjudicator must view the information, and (3) in certain other cases provided by law (e.g., disclosure of information pursuant to a treaty to the competent authority of a foreign government).

- The right to *Notice* which enables the taxpayer to be notified of an assessment, a decision on an adjudication, or any collection action against the taxpayer's assets.
- The *right to reasonable Audits* according to which *taxpayers* should have the right to have audits held at a reasonable time, in a reasonable place, and within reasonable limits.
- The *right to explanation* according to which taxpayers should have the right to an explanation of why their tax is being assessed the way it is and to an explanation of the reasons for a decision by an adjudicator.
- The *right to counsel* which enables taxpayers should have the right during any dealings with the tax authority to be represented by a qualified professional.

- *The right to appeal which enables* taxpayers should have the right to an independent administrative appeal and a final judicial appeal.

Taxpayer's Defences

There are a few specific defenses that a taxpayer can use to invalidate the sale of his or her property. One defense is the failure to conform to the statutory requirements of notice, reporting and sale. However, so long as the purpose of the notice requirements has been met, the failure to strictly comply with the notice requirements will not render the sale void.^{xxxiii} Article 109 any person can make a protest to the tax administration requesting the removal of the lien on his own property as stated in paragraph 1 of this article by alleging an error in imposing that right. If the tax administration has determined that the imposition of the lien on that property was in error, the tax administration must issue a certificate confirming the removal of the lien on the property within 10 days after the determination together with a statement in the certificate that the imposition of the lien was erroneous.

However, the taxpayer cannot dispute the validity of a tax sale by disputing the validity of the tax or assessment process. The statutes are clear that a taxpayer who disputes the validity of a tax must file an objection to the head of the Principal Taxation Centre of the place of assessment within 90 days from the day of assessment.^{xxxiv}

Also, if the taxpayer objects to the lack of notice and opportunity to be heard, with respect to the levying of the tax, including the making of the appraisal and the setting of the grand list, this defense must be asserted within 90 days from the date that the tax was to be collected against him or her.

The general framework of tax procedures generally establishes clear deadlines for carrying out specific acts and exclude the perpetual exposure of acts to the possibility of amendments, in line with the concept of the so-called "statute of limitation" rules. In the framework of tax procedures, such rules apply to tax authorities by setting a deadline for the exercise of the power to carry out acts of auditing and collection, but also to taxpayers, who may not request refunds and reimbursements or alter their tax assessments after a certain point in time. The existence of deadlines in tax procedures also reflects, more in general, the need to reconcile the

effective collection of tax with the need to have a certain legal framework within which taxpayers and tax authorities may exercise such activities^{xxxv}

Protection of public officers

The law also provides for protection of public officers under section M. 70(1) by stating that officials responsible for the collection of taxes, duties and fees provided for in this Manual shall benefit from the regulations governing the protection of public officers stipulated in Sections 152 to 158 of the Penal Code. In case of insults and resistance, they shall draw up a report on such resistance and forward same to the State Council through official channels. Also, section 130(10) is to the effect that Council tax recovery officers shall benefit from the regime of protection of public officials provided for by the Penal Code. In case of insult, they shall submit a report to the State Council

THE RELEVANCE OF ORDINARY LAW PROCEEDINGS OF TAX COLLECTION

The essence of Ordinary law proceedings of tax collection enforcement is to ensure strict compliance to payment of tax liability as at when due. Ordinary law proceedings of tax collection like any tax enforcement mechanism is one of the important ways to raise revenue for the state needed to satisfy the needs of the government that is, to meet its current expenditures.^{xxxvi}

The realization of the power to distraint and sale as an expeditious means of enforcing payment of tax has undoubtedly increased the tempo and drive for revenue generation by different tiers of government in Cameroon.

- Distraint and sale generate part of the revenue which is used for the execution of all expenditures in the state budget.

It is a mechanism to raise revenue for the provision of law and order, health services, education, security and external services of the state.

- It is one of the tools used in creating social and economic infrastructure that will improve on the social life of the people and also enable the economy of the country to grow in future.

-will contribute to the redistribution of income and wealth.

By enforcing tax laws through distraint and sale tax authority not only catches tax cheats, but also enhance taxpayers confidence in the taxation system, as everybody is paying his/her fair share.

-When conducted in accordance with the statutory requirements and a local tax collection policy, tax sales reinforce public trust in fiscal policy in the sense that every property owner is aware of his or her obligations and the resulting consequences in case of failure to meet up with his or her tax obligations. Regularly held tax sales can reduce delinquencies and ultimately the need to conduct more sales.

-It can be used as a means of stimulating the manufacturing sector, by increasing the value-added content of domestic output in some key industries in Cameroon.

Finally, enforcement by distraint and sale deters future tax delinquency. But the ordinary law enforcement proceedings, like any other area of tax policy is also bugged down by some factors.

PROBLEMS

Despite the well-arranged proceedings for ordinary law enforcement in Cameroon and the enabling tax laws and regulations to that effect, there are still persisting non-compliance and defiance of payment of delinquent taxes by the defaulting tax payers.^{xxxvii} This research attributes such setbacks to the following:

-Enforcement is costly (eats up around 10% of taxes collected in the US) when combining costs for government (tax administration) and private agents (tax compliance costs)

- constant and arbitrary abuses of powers as well as the procedures of enforcement by the relevant tax authorities. Sometimes, the relevant tax authorities abuse their power by levying distress without warrant or even forcefully removing the taxpayer's property, without due compliance with the relevant provisions of the tax laws. This may amount to trespass and violation of the taxpayer's constitutional rights. For example, it was held in the American case of *G. M. leasing Corp vs. United States*^{xxxviii} that an entry without warrant by the service onto private property of a person in which that person has a reasonable expectation of privacy for the purpose of seizing property to satisfy a tax liability is a violation of that person's rights, therefore, permission is required.

- Frequent amendments: Every year, the Finance law introduces new measures and procedures, and amended, or repeals the existing ones. Those frequent amendments make the Cameroonian tax laws confusing, as well as complicated. The amendments has become numerous such that the willing taxpayer finds it difficult to know which laws are current and applicable and which laws are repealed.

It is difficult for the common taxpayer to understand some provisions of the Cameroonian tax laws which are problematic, even to the tax officials.

Some provisions of the laws are obsolete and outmoded, other provisions create ambiguities, instead of clearing them. This puts in doubt the applicability of the fair hearing principle of *nemo judex in causa sua*.

-the porosity of decided cases in Cameroon has an adverse impact on effecton tax collection especially as most tax words do not have a precise meaning and need interpretation from the courts.

- Irresponsible behaviour on the part of some tax authorities and taxpayers has eroded the income tax system in Cameroon. Both the taxpayers and taxing authorities are involved in tax cheat, either in the form of evasion or avoidance. Many taxpayers do not want to pay the correct tax even in the face of clear information available to the taxing authorities about their true earnings and income. They prefer to pay farless than they ought to. This hinders enforcement through ordinary law proceeding o tax collection and therefore causes enormous losses of revenue to Cameroon.

The tax officials very rarely use the criminal penalties. No one is known to have been convicted and imprisoned for giving incorrect information, for aiding, abetting, assisting, counselling, inciting or inducing non respect of the procedures even when such unauthorised acts are established. The tax authorities mostly opt for civil litigation to recover taxes than to prosecute defaulting tax payers even though criminal prosecution does not debar them from recovering delinquent taxes through civil actions.

Further, the controlling laws themselves may be extremely difficult to locates very often there is a tangled nuance of laws, regulations, decrees and the like reaching far into the past, jumbled

together with amendments and modifications. It has been observed that Cameroon possesses no such clear picture of their tax systems. Instead, there often exists a bewildering array of overlapping and contradictory taxes. Many of these taxes overlap so that a single commodity of transaction may be subject to a number of taxes imposed at different or supplementary rates involving different tax bases with different times of payment, different returns and separate administrative and judicial procedures. The statutory picture is so confused it is extremely difficult an effective compliance with any tax enforcement proceedings.

Often, the country suffers from the fragmentation of taxing power between ministries, which participates to the complexity and the multiplicity of actual tax regimes. These acts culminate in the imposition of illegal and inappropriate taxes and levies as a result of extra-legal mode of collection of such taxes.

SUGGESTIONS/RECOMMENDATIONS

The article recommends the following:

Tax laws enacted in Cameroon should be reformed on a timely basis to ensure that, the tax principles produce social change, ambitious and progressive growth challenges without creating excruciating pains. The national interest must not be damaged with high tax rates comparatively.

-Imposition of stiff penalties for the various offences as prescribed in the tax instruments. As mentioned earlier on, no one is known to have been convicted and imprisoned for giving incorrect information, for aiding, abetting, assisting counselling, inciting or inducing a taxpayer to make or deliver false returns even when such fraudulent intent is established. Government at all levels should ensure the enforcement and implementation of stiff penalties and punishments provided by the provisions of the relevant tax laws against any person caught and, such person shall be exposed and publicized through media stations.

The gap created by low tax compliance is enormous. Since the tax revenue desirable by government to meet social and developmental need of citizenry depends largely on the degree of tax compliance by taxpayers, the government should adopt every workable strategy to ensure

voluntary compliance or otherwise its time it uses the big arms of the law inherent in penalty to compel compliance.

- Constant tax audit will assist to detect fraudulent, incorrect and or underreporting of taxable incomes is recommended. Although it would not be feasible to conduct tax audit on all tax payers, the fear of a regular tax audit instils fear in tax defaulters.

-Tax education is recommended to further enlighten people about the need to fulfil tax obligations even right from the schools.

-Staff training especially in the area new technology is very important.

-In all, tax officers' welfare should be reviewed upward to motivate them for transparency.

-The Cameroonian fiscal laws have provided the various kinds of measures which state money can be collected but we advisedly recommend sound measures which can be considered without generating painful, excruciating and biting hard harms suffered by Cameroonians which exist in the fiscal revenue collection process.

In order to achieve a reputable tax system in Cameroon. Tax measures should remain the exclusive competence of the government, more particularly of the Ministry of Finance, which is better placed to take a more holistic view on what rates could serve the economy best.

- Designing taxes that are simple to administer is the way to go.

Lastly, tax laws must be amended or enacted with clauses and words that are simple to be understandable to all: they should be expressed simply, clearly and intelligibly. The annual amendments that are incorporated into the yearly budgets should be aligned with the principal legislation to avoid confusion. Efficiency and effectiveness of the tax authority are essential for ensuring the collection of taxes.

PROSPECTIVE

One of the new flagship measures contained in the related circular, signed on December 30 2020 by the Minister of Finance, Louis Paul Motaze, concerns securing the revenue of the State.

Accordingly, the Minister of Finance has prescribed the prohibition of the payment of taxes and duties in cash to the tax network and has thereby introduced computerised means of

revenue collection, namely, payment by bank transfer or electronically. Also, electronic payment has been established as a method of compulsory payment of taxes and duties for large companies.

The circular exceptionally authorizes the payment of taxes in cash only at bank counters, but not with the tax officials who have often been in the news in cases of embezzlement of public revenues. In addition, the circular enshrines the issuance and notification of receipts by electronic means, with the consequence of eliminating manual receipts which are sources of “various fraud.” Thus, the previously issued manual receipts are purely and simply replaced by electronic receipts.

The 2021 Finance fiscal measure has the advantage to reduce tax abuses, delayances and fraud. Based on this and coupled with the recommendations already proffered, we hold high the view that policies should be designed to enhance online tax collection which is not only cost and time effective, but also guarantees transparency,^{xxxix}.

ENDNOTES

ⁱ A tax is a compulsory contribution imposed by a public body upon the authority of the legislature and for a public purpose

ⁱⁱ Tax compliance is the level at which a taxpayer complies or default the tax rules of their country. See Law No. 2004/18 of 22nd July 2004 and Law No. 2004/19 of 22nd July, 2004 on the rules applicable to regional and local councils respectively empower the local council authorities to levy taxes in Cameroon.

ⁱⁱⁱ See for example Circular No.001/C/MINFI of 2nd January 2018 Instructions relating to the Execution of Finance Laws, the Monitoring and Control of the Execution of the Budget of the State, Public Corporations and Public Establishments, Regional and Local Authorities and other Subsidised Bodies, for the 2018 financial year.

^{iv} Law No 2021/010 of 21 June 2021 on the Ratification of Ordinance N° 2021/002 of 26 MY 2021 to Modify and Complete certain Provisions of Law N° 2020/018 of 17 December 2020 on the Finance Law of the Republic of Cameroon for 2021: See also the General Tax Code OF 2020

^v Edder, R. K., & Gallaway, L. E. (1998). Some underlying principles of tax policy. Washington, DC: Joint Economic Committee. Retrieved from <http://www.house.gov/jec> Last visited May 2021

^{vi} see Section M. 55-

^{vii} Ames, S., & Nobes, C. (1999). The economics of taxation: Principles, policy, and practice. Birmingham: Fiscal Publications.p.123

^{viii} Lyon, H. (1914). *Principles of taxation*. Boston: Houghton Mifflin Company, the University Press Cambridge.p. 354

^{ix} Ibid .

^x Fambon S.(2006) “Taxation and TAX Reforms In Developing CountriesASE Study Of Cameroon” UNU-WIDER; Resarch Paper No.2

^{xi} Herein abbreviated as M

^{xii} See the the 2021 General Tax Code Secton M. 55

^{xiii} Ibid section M. 55.

^{xiv} Ibid Section M. 57

^{xv} Ibid Section M.59.-

^{xvi} Distraint is the oldest method of sanction for delinquent taxes and is defined as “The seizure of personal property to enforce payment of taxes, to be followed by its public sale if the taxes are not paid voluntarily.”

^{xvii} Lyon, H. op cit at 8 p: 358

^{xviii} Accordingly, see Articles 30 to 56 of OHADA Uniform Act to Organise Simplified Collection Procedures and Executions

^{xix} op cit 12 Section M. 60

^{xx} See sections 2 to 56 of the OHADA Uniform Act to organise simplified collection procedures and executions.

^{xxi} op cit 12 , Section M 62.

^{xxii} Ibid Section M.64

^{xxiii} Ibid Article 30

^{xxiv} Cass. civ. 1, 14 november 2007, n° 04-15.388

^{xxv} op cit 12 , section M.66

^{xxvi} Ibid Section M.67

^{xxvii} Ibid section M.68

^{xxviii} Ibid Section M. 69

^{xxix} 1905. 74 N.E. 297

^{xxx} 146 Vt. 357

^{xxxi} (1997) 1 CCLR 127-254

^{xxxii} Weston, S. F. (1903). Principles of justice in taxation. New York: The Columbia University Press.p.206

^{xxxiii} Wise, K., & Berger, N. (2010). “Understanding our tax system: A primer for active citizens”.

Massachusetts: Massachusetts Budget and Policy Center.

^{xxxiv} op cit 12 Section M.115 and M.116 of the Tax Code

^{xxxv} See generally Weston, S. F. op cit 33 pp 265 to 280

^{xxxvi} Ambe, Kingsley Ndonwi, *The Tax Regime in Cameroon and The Responsibilities of Cameroonians Towards Fiscal Tax Allocations* (November 30, 2019). Available at SSRN: <https://ssrn.com/abstract=3495917> or <http://dx.doi.org/10.2139/ssrn.3495917> last visited june 2021

^{xxxvii} Ibid

^{xxxix} OECD. (2014). *Fundamental principles of taxation. In Addressing the Tax Challenges of the Digital Economy* (pp. 29-50). OECD Publishing. doi:10.1787/9789264218789-5-en