ENFORCEMENT OF INFORMAL SECTOR TAXATION TO EXPAND REVENUE BASE IN NIGERIA: A REVIEW

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ABSTRACT

This paper evaluates the enforcement of informal sector taxation. It shall focus on the self-employed and Small and Medium-Scale Enterprises (SMEs) in order to expand revenue base in Nigeria. It attempts to answer the main question - how to bring into tax net, the hithertho untapped segment, called ‘’informal sector economy’’. Taxation sensitization of informal sector is of recent origin in consonance with the current wave of revenue mobilization and maximization.[i] It has important potentials to achieve optimum tax collection as additional source necessary to argument government revenue to fund development projects, infra-structural rehabilitation and enhancement of economic growth. This paper articulates measures necessary to effectively bring informal sector participants into taxation ambit. To achieve this,

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the study employs doctrinal research - library-based analysis utilizing the primary and secondary sources of tax law and information. The primary sources of taxation law are the constitution, statutes and tax law reports. The secondary sources include textbooks, journal articles, policy statements and legal sources in internet.

The institutional frameworks necessary for development of informal sector taxation, the strategies necessary to achieve tax compliance such as lowering the costs, strengthening incentives are presently in its embryonic stage. The formalization of registration of all the Trade Unions and Works/Occupations-Related-Associations to facilitate the collection of taxes from this informal sector, is necessary.[ii] The functionality of the Revenue Courts for enforcements of this presumptive-informal-tax regime is also necessary. In this paper, discussions are centered on three categories of informal sectors viz: informal sector of self-employed traders and small and medium scale enterprises (SMEs) on one hand, the community levies on the second part and the incomes of the ecclesiastical authorities and their employees on the third part and how to bring all of them into tax net. The paper concludes with eradication of challenges of corruption, lack of observance of rule of law and the troubles involved in collection processes in informal sector, make it very expensive to collect. It is not-costs-effective. The proposal for reform is centred on the formalization of registration of all the Trade Unions and Works-Occupations-Related-Associations, the use of its membership registers/diaries of events to facilitate the collection of taxes in the urban towns, rural communities and the conferment of percuniary-reciprocal-benefits to the taxpayers-inhabitants-of that particular community/area/locality where higher quauntum of taxes, were collected. In this way tax-revenue would properly be utilized and be visibly seen to improve service delivery in many areas especially, in education, health-care services and entrepreneurship development programmes for the citizens

Keywords **-** Informal Sector Taxation of Self – Employed, Small Scale and Medium Enterprises (SMEs).

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GENERAL INTRODUCTION

The Nigerian economy is believed to be the largest in Africa, with Gross Domestic Product (GDP) size of USD510 billion, as at 2015 (N81 Trillion) almost double the size of the South-Africa economy or Egypt and 18 times the economy of Ghana or Ivory Coast. However, the Tax GDP ratio for South Africa, Egypt, Ghana, Ivory Coast and Zimbabwe are 26.9%, 15.8%, 20.8%, 15.3% and 49.3% respectively while Nigeria's 6.1% Tax-GDP.[iii] Clearly, this suggests that work has been cut out for the taxman as well as other stakeholders in the tax system and economy to achieve an appreciable Tax-GDP ratio comparable to other economies.[iv] A casual enquiry, presents sizeable chunk of potential taxpayers in the informal sector who are not under the radar of Relevant Tax Authorities[v] (RTAs) and had remained so for a long time.[vi] Presumption tax was introduced by Nigerian Parliament (National Assembly) to bring this self-employed informal sector into tax-net.[vii]

The paper is targeted at the enforcement of presumptive-tax regime, enhancement of its compliance – the seaming difficulties, inability, capacity of RTAs – how best to administer it (with the least inconvenience to taxpayers) and measures which RTAs would adopt to tax the informal sector generally. The paper propose to utilize comparative materials from jurisdictions with identical common law such as Caribbean States of Jamaica, Barbados, Guyana, Saint Lucia, Trinidad and Tobago in contradistinction with international best practices obtainable from USA, UK, Ireland, Canada, Malaysia, Singapore, New Zealand, Australia, Kenya, Uganda, Tanzania, Zambia, Zimbabwe and Malawi. Before delving into these issues, a general introduction to the Constitutional Obligation to pay taxes/levies, conceptual clarifications on the definition/meaning of taxation, the observations on informal sector self-employed Small and Medium Enterprises (SMEs) and the processes of the enforcement of informal taxation in the Revenue Courts, thus;-

(i) The Constitutional Obligation to pay Taxes/Levies by All Residents
(ii) The Conceptual clarifications – definition/meaning of taxation,
(iii) The Nature and Features of Informal Sector,
(iv) Informal Sectors Identified/Categorized by RVSG BIRS
(v) The Most Vibrant Examples of Selected Informal Sector
(vi) Legislative Framework Governing Taxation of Informal Sector
(vii) Appraisal of 3(three) Selected Categories in Informat taxation Sector

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(a). Self Employed, Medium Scale Enterprises (MSEs) and Liabilities to Taxation

(b). Taxation of Ecclesiastical Authorities – Churches, Mosque, Temples, Shrines and its Employees/Personnels.

(c). Taxes/Levies imposed by Monarchs, Chiefs, Towns, Villages Unions to actualize Self-help Communities Developments Projects,

viii. Taxation Processes in the Informal Taxation Sector
ix. Determination of Taxpayers' Residence in the Informal Sector.
x. Absence of Evidence of Residency of Taxpayer is Fatal
xi. Filing of Annual Returns
xii. Assessments to Taxes - Administrative Assessments, Default Assessments and Best of Judgement (BOJ) Assessments,
xiii. Utility of Field-Tax Audit and Additional Assessments and its sustainability?
xiv. Notice of Assessment must be served on taxpayer
xv. Failure to Serve Notice of Assessment Accompanied by Field-Tax-Audit is Fatal to Recovery of Tax
xvi. RTAs must Determine Objection and issue NORA (Notice of Refusal to Amend) before taxpayer can Appeal to Court
xvii. Obligation to pay Tax Suspended until Objection is Determined
xviii. Time-Limit to issue NORA, International Best Practices Obtainable from Foreign Jurisdictions
xix. Functionality of Revenue Courts, Tax Appeal Tribunal, State High Court, Federal High Court and Hierachy of Court to Enforce Taxation of the Informal Sector
xx. Conclusion and Proposals for Reforms.

Ansaldo Nigeria Ltd v National Provident Fund. Management Board (1993) 3 *NWLR* (Pt 174) *392* at 365

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CONSTITUTIONAL OBLIGATION TO PAY TAXES AND LEVIES BY ALL RESIDENTS TO FUND GOVERNMENT PROJECTS

The reporting of income is a constitutional matter imposed on individuals, corporate citizens and foreign residents, including informal taxpayers. **S.24 (F) NIGERIAN CONSTITUTION 1999** provides that: -

> ….it shall be the duty of every citizen/resident to declare his/her income honestly to the appropriate and lawful agencies and pay his/her tax promptly.

The violation of this obligation is despicable act which strips the defaulter of protection afforded by law.[viii] In **AFRICAN INDEPENDENT TELEVISION/RADIO (AIT) v. EDO STATE BOARD OF INTERNAL REVENUE**[ix] the Court of Appeal condemned the scuffle generated between the taxpayer (AIT) and EDSBIR, over the non-remittance of the taxes which AIT deducted from its employees' salaries. CA was emphatic that this misconduct in payment of taxes is despicable, detrimental to the development of the nation and violated S.24(F) Nigerian Constitution of 1999.

CONCEPTUAL CLARIFICATIONS

The Federal, States and LGAs governments of Nigeria[x] are to raise sufficient revenue for developmental purposes and stabilization of the economy. By definition, taxation is a pecuniary burden[xi] imposed on properties, income, commodities, activities and transactions[xii] of individuals, companies, trustees and other bodies including those in the informal sectors, in order to generate revenues and channel them to support important government projects and infra-structures beneficial to the public.

In **FBIR v. AMERICAN INSURANCE LIMITED**[xiii] **BELGORE CJ** held that the payment of tax is not only a duty but an obligation imposed on the citizens, residents, it is a burden placed on them by the law and the language placing such burden must be clear without any implication or inference of the intention of legislature (which is not expressed) nor must the expressed provision of such law be given unduly wide and strained meaning.

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Apart from being a compulsory extraction of money by a public authority for public purposes, element of compulsion is predominant. In **MICHIGAN STATE COMMISSION v. PATT**[xiv] tax was also defined as non-voluntary/non-donation but an enforced and compulsory contribution exacted pursuant to legislative authority and tax is therefore, a price one has to pay, for living in an organized and orderly society**. Nigerian National Tax Policy** catalogue defines tax as monetary charge on a person's income or entity's income, property or transaction and is usually collected by defined authorities at Federal, States and Local Government levels (LGA) respectively.[xv] Tax is not voluntary or a donation but rather enforceable and coerced contribution imposed by government and exerted pursuant to legislative authority.[xvi]

Element of compulsion is an ingredient of taxation. Strictly, it is a compulsory extraction of money or its equivalent by the public authority[xvii] for the purpose of public utilities, enforceable by law and it is not a payment for services rendered.[xviii]

In **TRINIDAD ISLAND-WIDE SUGAR CANE FARMERS ASSOCIATION v. SEEREERAM**[xix] it was held that a compulsory deductions of money on sugar canes supplied by farmers by Sugar Canes Manufacturers Association – a private body, is not a tax because it is not imposed by the State for public purpose but rather an unconstitutional deprivation of proprietary right of citizens without payment of compensation. Similarly, in **KOPADA v. LAGOS STATE DEVELOPMENT & PROPERTY CORPORATION**[xx] the payment of 5 percent of the consideration or capital value of interests in the land comprised in the assignment of titles by assignees to the assignor of a leasehold interest, was held not a tax because it was not paid to the FGN/State/LGA but to the Claimant/Corporation/head-lessor/assignor, though as an artificial person.[xxi]

Taxation has certain functions and objectives. It is in effect a contribution designed to reduce a private expenditure, raise revenue in favour of public expenditure to enable government to obtain funds necessary to provide goods, social services, amenities, infra-structures, to redistribute income, wealth,[xxii] fiscal attributes such as the management of economy viz;- to clear market imperfection, promotion of investments, reduce inflation and stabilization of the economy.[xxiii] Taxation is incapable of infallible definition because not all taxes are compulsory[xxiv] (indirect taxes) e.g., National Lotteries[xxv] and not all taxes are imposed to support government. It is obvious some taxes are imposed to protect domestic industries and to improve welfare of the people, security of lives and property. Taxation policy may

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modify/affect people's behaviour[xxvi] such as to discourage destructive habits by subjecting such to heavy taxation such as cigarettes,[xxvii] tobacco, alcoholism[xxviii] and other hard beverages.[xxix]

Apart from being a compulsory extraction of money by a public authority for public purposes, element of compulsion is predominant. In **PALM OIL RESERCH DEVELOPMENT BOARD OF MALAYSIA v. PREMIUM VEGETABLE OIL LIMITED**[xxx] the Federal Court of Malaysia held that since the element of compulsion is evident in the Order of 1979 made pursuant to parent statute **S.14 (1) Palm Oil Research Development Act 1979 (Malaysia)**, which makes non-payment of research cess as an offence punishable by a fine of €1000 or imprisonment not exceeding 6 months or both as punishment, accordingly the research cess is a tax. Here element of compulsion for the payment and penal/punishment attached for violation are attributes which it qualify it as tax.

Although, there are other sources of States' non-tax revenue such as revenue from government owned corporations, rents from leases of government assets, sale of government assets, in addition to taxation. Strictly, taxation has superior advantages over other sources of government sources of revenue because the States' government needs larger funds to meet its multifarious expenditures and taxation constitutes major means of generating required funding to develop, maintain and nurture social and economic programmes and as such government of a nation and taxation are essential bed-fellows.[xxxi] Tax administration and revenue generation are vital in the life of a nation because the primary responsibility of any government is to improve the welfare of the people and the government cannot fulfil this in absence of adequate finance and funding.[xxxii]

NATURE AND FEATURES OF THE INFORMAL SECTOR TAXATION

In modern economy, growing proportion of work-force is self employed.[xxxiii] Informal sector covers individuals, small and medium scale enterprises (SMEs). They are involved in trades, profession or vocation such as traders, professionals, artisan and generally independent - not covered formally by tax legislations, until 'presumptive tax' was promulgated. Principally, business activities of informal sector are not well-captured in the scheme of taxation since their operations, visibility are not strictly regulated by government and hence their contributions to national economy may be missing, in spite of profits, allegedly made. The employees in

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government departments, ministries, public service, banks, finance-houses, limited-liability-companies, which constitute the formal sector of the economy. The latter businesses, activities transactions are regulated by tax legislations and attract commensurate taxes. The formal sectors are monitored by government agencies because their activities, transactions are captured through their pay-roll-records and documentations. Strictly, the formal sectors are included in the computation of Gross National Products (GNP) of Nigeria. Informal-sectors are oftentimes called **"participants in hidden economy"**. They basically engage in income generating activities, transactions which are profits-making but they are not within the ambit of formal taxation. These informal sector-groups constitute about 40-70 percent of the work-force; they earn their own living outside the formal economy. Infact they are not in anybody's pay-roll. They live and work in this sector either by preference or personal disable-circumstances of fruitless job search or oftentimes by lack of opportunity to be hired by an employer in the formal sector.[xxxiv]

INFORMAL SECTOR IDENTIFIED AND CATEGORIZED BY RVSGN BIRS

The self-employed individuals in informal sector are many but cannot exhaustively be enumerated here. The Rivers-State-Government-of-Nigeria-Board-of-**Internal Revenue-Service** (RVSGN BIRS) **Informal-Sector-Presumptive-Tax-Chart** (ISPTC) database[xxxv] is annexed in Appendix 'A'. Its summaries although inexhaustible, classified them into 46 depending on the categories of their businesses-works-occupations-related groupings thus;-

1. Bakers/Confectioneries – bread, beans cakes etc, 2. Blooks Moulding industries, 3.BuildingMaterials/Traders,4.Beer/SpiritsOn/Off-Licenses/Shops,5.Bookshops/ StationariesStores,6.Business/Centres/Computers/Internet/Cafees/Secretarites 7.Pools/Agents,8.Cinema/NightClubs,9.Electronics/Dealers,9.Fashion/Designers Tailors/Hair/Derrsing/Saloons,10.Gaming/Casinos/Pools/Betting/Agencies/Companies,11.Vehecles/Spare/Parts/Stores,12.Interior/Decorators/Furniture/Stores, 13.General/Merchants/Distributors,14.Artisans/MasonBricklayers/Carpenters/Electricians/Automobile/Mechanics/Welders/Vulcanizers,15.Launderies/Drycleaners,

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16.Health/Firms/Fitness/Gym/Centres,17.Patent/Medicine/Provision/Stores,18.Resturants/Canteens/Mama/Put/Bukas/Homes,19.Maternity/Homes,20.Pharmaceutical/Companies/Chemists,21.X-Ray/Radiographic /Services, 22 Optical Services,23.Medical Laboratory Services,24. Physiotherapists,25.Embalment/Centres/Morturies,

26.Herbalists/Homes/Bones/Setting/Centres,27.Publishers/Printers,28.Sawmills, 29.Mechanized/Farms.30.Timber/Dealers,31.Heavy/Plants/Hire,32.Computers' Firms/Soft/Hard/Wares, 33.Traders/Table/Markets/Food/items/Grocers, 34. Traders- in-New/Second/Hards/Clothes,35.Traders/Boutiques/Cosmetics, 36. Cold Rooms Operators,37.Horticulturists/Florists/Gardens/Flowers, 38.Poultry/Meat/Dealers,39. Photographic/Videos/Operators,40.Baraka/Goldsmith/Silversmith,41.Forex/Merchants/Mallams/Black/Market/Traders-in-Dollars/Pounds/Sterlings/Euros/International Foreign/Currencies,42.Bike/Keke/Wheel-barrows/Drivers, 43.Taxi/Buses/Drivers /Conductors, 44. Heavy/Trucks/Tankers/Tippers/Drivers, 45.Soft Drinks/Table/Water Traders, 46. Suya/Meat/Roasters/Association, 46. And Others.

MOST VIBRANT EXAMPLES OF SELECTED INFORMAL SECTOR

Strictly speaking, the most notable informal sector constitutes the black markets Mallams trading in the foreign currencies such as dollars, Euros, Pounds Sterling, CFA franc under the umbrella of the trees or around the five stars Hotels in the big cities of Nigeria, table-water/fruit-juice-manufacturers, cottage-industrial-outfits-enterprises largely manned by one-man, grocers in villages, timber-traders, bricklayers, sawyers, fishermen, fresh/dry-fish-traders, sands-dredgers-marketers, aquaculture/fish farmers,chicken/turkey/goats/sheep/cattle[xxxvi]rabbits-grass-cutter-piggeries-Farmers/ breeders/rearers' who generate income and make-quick-returns-on-capital.

In **KNOCKHALL PIGGERIES v. INSPECTOR OF TAXES**[xxxvii] the partnership/taxpayers utilized empty lands, purposefully-built houses for the purpose of **rearing, fattening pigs** and maintain their health. The **High-Court-Ireland** held the **activities were farming/trading** and the profits generated were captured under income tax trading-profits but it enjoyed exemption to boost-agriculture through the express provision of **S.13 (1) (3) Finance Act 1974.** The agricultural activities such as crops, livestock's, fruits, fish farmers in Nigeria is exempted from

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tax. This is an incentive[xxxviii] granted to both formal and informal sectors to enable farmers boost food sufficiency via higher agricultural productivity.

Other taxable activities in the informal sector are security outfits, artisans such as carpenters, motors and tractors mechanics, electricians, transporters (buses/taxis), tailors/fashion designers and the **entertainment sector like the artists' who create movies.** There are also domestic servants in households, the Ecclesiastical Authorities such as the Churches, Mosques, Shrines, Eckists Temples and its employees such as pastors, Imam, chief Priests and so many others who generate income and ought to be captured in taxation. Further categories are the **community levies** collected by the **Chiefs, Obas, Emirs, Amanyanabos and Ezes/Obis in the informal sectors.** FGN, States and LGAs can nolomger be universal providers as witnessed either with non-availability of governments subventions to infra-structures and projects to all the deserving communities or poor implantation of some of its programmes. Communities must as of necessity impose levies and contribution from their indigenes which are used to develop villages/towns with left-over balance (if any), as taxable profits.

LEGISLATIVE FRAMEWORK GOVERNING TAXATION OF INFORMAL SECTOR

Taxation of informal sector is of recent origin. Its legislative framework is traceable to

S. 36 (6) PERSONAL INCOME TAX (AMENDEMENT) ACT (PITAA) NO. 20 (2011) which provides thus:

… "Not withstanding any of the provisions of this Act, where for all practical purposes the income of the taxpayer cannot be ascertained or records are not kept in such a manner as would enable proper assessment of income, then such a taxpayer shall be assessed on such terms and conditions as would be **prescribed by Minister in regulations** by order of gazette under a **presumptive tax** regime.

By virtue of the above, **Minister of Finance** is empowered to make rules, guidelines in order order to tax informal sector. Since the **Nigerian National Tax Policy** (NNTP) emphasizes more greater benefits of indirect taxation and de-emphasizes on higher rate of personal income tax[xxxix] - a shift from direct to indirect taxation for economic growth, it is suggested that the

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Minister in exercise of his/her power should impose minimum tax - flat rate of N2, 000 (unlike Lagos State the center of commerce which is currently pegged at N2,500 for apprentices) on all the taxable adults as inducement to bring them into tax net, disregarding all manners of assessments and computation of tax liabilities. This proposed liberal attitude in tax collection would facilitate convenient and voluntary tax compliance by individuals and organizations in the informal sector. It would promote certainty, equity, convenience, flexibility ensure fairness, reduce harshness of the burden of taxation and promote administrative efficiency. This is the basis of the success story in tax collection and compliance of Governors Tinubu/Fashola, Ambode/San Nwolu administrations in Lagos State Internal Revenue Drive 1999 - 2022, higher collection and maximization. The revenue fortunes of Lagos State blossomed to extent where the Lagos State is self-sustaining and as the only one in 36 States of Nigeria(apart from Kano and Rivers) that have the capacity to disburse the workers wage bills without recourse to the monthly subventions from the Federal Allocation Committee Accounts[xl].

The applicability of S.**36 (6) PITAA 2011** would facilitate important capture of eligible taxpayers into tax net, the profits made in respect of **Palm Oil** and **Palm kernel Milling Industries**[xli] and **timber trading activities** in Edo, Delta, Ondo, Bayelsa, Cross Rivers, Akwa-Ibom and Rivers States of Nigeria. These trading profits are clearly taxable within the ambit of PITAA. In **SYARICAT JASA BUMI LIMITED v. NEGERI**[xlii] the **Court of Appeal** held that the incomes from **operations of timbers extracted under the government licenses** were liable to income taxes as trading activities under **S.38 (1) Income Tax Act 1967(Malaysia)** and therefore the expenses and outgoings incurred wholly and exclusively in the production of the gross income, were allowable deductions.

The applicability of **S.36 (6) PITAA 2011** may likely create problem in as much as it gives the Minister of Finance power to make subsidiary legislation or order as regards the rules, guidelines on the amount or rate of tax to charge. **S.36 (6) PITAA 2011** did not specifically provide a percentage or rate of tax charging provision on a particular type of income or profits of the informal sector. If the Minister makes order in form of subsidiary legislation under this section, it may likely be nullified by the court as excessive infringement. This is because the court is under a duty to give taxing statute purposeful approach in its interpretation so that it could produce neither injustice nor absurdity in order to promote the object underlying the particular legislation and not to accommodate objects that are not expressly stated therein[xliii].

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In **PALM OIL RESEARCH DEVELOPMENT BOARD v. PREMIUM VEGETABLE OIL LIMITED**[xliv] the Respondent was engaged in the extraction of Crude Palm Oil (CPO) and Crude Palm Kernel oil (CPKO). Under the Palm Oil Research Cess Order 1979 made by the Minister pursuant to the **Palm Oil Research Development Act (PORDA) 1979**, Palm-Oil-Millers were required to pay cess (tax) for every metric ton of crude oil. Respondent did not dispute the imposition of tax on CPO but contended that of CPKO was invalid because the appellant was not empowered to impose tax on CPKO and sought the refund of the monies paid. High-Court rejected this and held in favour of appellant. On appeal, the Court-of-Appeal reversed the decision in favour of the Respondent. On further appeal, the **Federal Court** granted the Appellant leave to determine (i) whether or not, the PORDA 1979 is a taxing statute and what approach it deserves in its interpretation (ii) and whether or not the 1979 order which provided for the levy and collection of cess/tax from palm oil millers in respect of both CPO and CPKO, were ultra –vires the parent Act. It was argued SS.2 and 14 of PORDA 1979 did not contain power to levy cess/tax on CPKO and that the definition of palm oil under S.2 does not include kernel and therefore the 1979 order was an unauthorized enlargement of SS.2 and 14 thereof by the use of "and / or" which purports to define palm oil miller.

The **Federal Court Malaysia** upheld the argument in favour of Respondent and held (i) that the 1979 order made by Minister complied with S.14 (1) PORDA 1979 as regards the imposition of tax/cess on CPO and not on CPKO. (ii) that the kernel is merely part of the seed. In the circumstances, there was sufficient merit in the contention of Respondent's counsel that the levy of tax/cess on CPKO was by itself ultra- vires of PORDA 1979 and the order made thereunder only made reference to the seed and not the kernel.[xlv] An ambiguity has arisen, if kernel was intended and not the whole seed, then the Act and the orders… would have contained clear words to that effect. Indeed, by way of analogy, the Act and the order have for the purpose of levying of tax/cess, accentuated the distinction between oil palm fruits and their seeds. The distinction between the seed and the kernel had to be expressed in clear terms for the purpose of imposing tax/cess on CPKO. In absence of clear words, it would be unfair and inappropriate to construe the relevant provisions as having the effect of imposing tax/cess on CPKO. Imposing tax/cess by means of subsidiary legislation on a person not identified in the parent Act produces an absurd and unjust results and therefore does not promote its object/purpose [xlvi]

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APPRAISAL OF THREE SELECTED CATEGORIES IN THE INFORMAL SECTOR

The three categories of informal sectors selected for this review are the self-employed traders in small and medium scale enterprises, the community levies and the incomes of the ecclesiastical authorities and their employees.

(a). Informal sector of self-employed traders/small and medium scale entrepreneurs and their liabilities to taxation

The self-employed traders, small/medium scale businesses and other categories of interprenuers (as opposed to Limited-Liability-Companies), are subject to personal income tax as individuals, for their activities of trade, profession or vocation under **S. 3 (1) (a) PERSONAL INCOME TAX ACT 1993**[xlvii] in respect of their income which accrued in, derived from, brought into and received in Nigeria arising from trade, business, profession or vocation.

In **MGBEMENE v. BOARD OF INTERNAL REVENUE**[xlviii] the taxpayer has two residences, one was his family-home-at-Owerri-Imo State and the other at Aba-Abia-State where he actually resides while trading at Aba. Consequently BIR assessed his income at One thousand (N1000.00) Naira and tax of fifty-six Naira (N56.00) which he paid at Aba. Meanwhile the Owerri-tax-office also sought to tax him based on his ceremonial-family-house-at-Owerri. The Court held that it is an offence to evade tax but not an offence to avoid it and under the Finance Law of 1963 (Eastern Nigeria) taxpayer is liable for additional assessment if he was under-assessed, the law fawns at double taxation, which is regarded as double punishment. The Judge was emphatic that it is not business of the court to read into the statute more than it is expressly imposed and the court quashed the additional assessment to tax him at Owerri.

Similarly, in **ADERAWOS TIMBER TRADING COMPANY LIMITED v. FBIR**[xlix] the taxpayer received N60,000 from a company called African Timbers and plywood (Nigeria) limited as a result of an agreement for concession to fall timbers from the foest-land in which the taxpayer had license. The agreement also included another amount to be paid per cubic foot of the area of concession. The taxpayer had originally treated the N60, 000 as rent and apportioned it over 5 years and paid N14, 000 tax on it for 3 years of assessment i.e., 1962/63

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to 1964/65 to FBIR. Subsequently, the taxpayer sought to treat the N60, 000 as capital and demanded the refund of N14, 000 tax already paid from FBIR. The taxpayer contended that the receipt was a windfall by way of sale of the capital and not profit as it was to secure an agreement over a certain period. FBIR contended that since the taxpayer was in the business of selling timber, all the receipts in that respect should be treated as income revenue receipt. The Supreme Court held that the lump sum payment was derived from the trading activity of selling timber which constitute income or trading receipt and not capital and therefore dismissed the appeal.

In spite of the above, the general scope for the self-employed or small and medium scale enterprise's liability to pay tax on gains or profits on income arising from trade, business, profession or vocation, is **limited-by-geographical-location** - the income must be located in Nigerian or has Nigerian source. If the gains or profits arose from income from abroad and is remitted or brought into Nigeria, it is taxable unless exempted.[1] However foreign income from resident or temporary visitors to Nigeria is exempted. In Ghanaian case of **KARAM v. COMMISSIONER OF INCOME TAX**[li] the taxpayer/appellant as member of English firm carrying on business in Ghana and England. From 1944 to 1946, the firm shipped some goods to Nigeria and the goods were received and sold on his behalf in Nigeria and was assessed on income tax on the profits of the transaction. The question was whether he was liable to pay tax on the goods because Income Tax Ordinance (1943 Ghana) provides for profits or gains arising from income accruing in, derived from, brought into or received in Ghana, from any trade, business, profession or vocation. He appealed against the assessment on the ground that the profits in question was an income accruing in, derived from, brought into and received in Nigeria and not in Ghana and therefore not liable to taxation in Ghana. The West African Court of Appeal by a majority of two to one held that the meaning of these words is that the liability to pay income tax is limited in the geographical sense to the transactions carried on in Ghana and not outside it. The Court seems to be saying that foreign income is not liable to tax.

The geographical location of the transaction and source of the income are vital. In **COSMOS v. BOARD OF INTERNAL REVENUE**[lii] the taxpayer alleged he confused his overseas assets with his income in Nigeria. The court held that there is no evidence that he brought into or received in Nigeria the income of N6000 and his pea of mistake must be accepted **NWOKEDI CJ** held that there is no obligation to pay tax on foreign income not brought into or received in Nigeria. His lordship has this to say: -

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> …. the question in the affidavit evidence is whether the taxpayer confused his Overseas assets with his actual income? Looking closely at Notice of Assessment under the heading source of income brought into or received in Nigeria; N6000 appeared therein. **There is nothing** anywhere to show that he either brought into or received this amount of N6000 in Nigeria. There is also nothing in the reply by **BIR to show that he either brought into or received this additional figure of N6000 in Nigeria. BIR did not file counter affidavit in denial or** disproof this allegation. **No doubt, Tax Assessment Authority (TAA) may make its deductions but in my own view such conclusions must be based on facts.** The counsel for TAA has stated in his reply that what operated in the mind of TAA was the form filled in support of his Application for Allocation of State's Plot of Land to build residential house but the taxpayer stated he made a mistake. In absence of **any evidence to the contrary, it was a genuine mistake** and therefore there is no valid basis for the acceptance of the allegation of N6000 by TAA and any assessment based on that figure in the form filled for the State Land Allocation would **be invalid and unacceptable.** The **additional assessment based** on the figure supplied in the form filled for the allocation of state land **is hereby set aside".**[liii]

Similarly, in determining the taxable profits or gains arising from the income accruing from, derived from, brought into and received in Nigeria; income derived from the overseas commission of Self-employed Agency Company, are excluded. This is the position in **REISS & COMPANY (NIGERIA) LIMITED v. FEDERAL BOARD OF INLAND REVENUE**[liv] where the company taxpayer is resident at Amsterdam in Holland. The Agency is remunerated on commission of 50 percent for all the businesses introduced in Nigeria. The court held the profits are not derived from Nigeria because all the operations relating to the transactions and the earning of the commission were performed outside Nigeria.[lv]

The legal effect of the above, is that incomes which accrued from overseas source are not derived from Nigeria and therefore not taxable. In **RE: BISHOP BERTRAM LASBERY**[lvi] the Bishop was assessed to pay tax on his leave allowance he received during his annual vacation in England. The salary was paid from funds subscribe from England and not contributed in Nigeria. His leave allowance was neither from Nigeria nor received in Nigeria even though the employment was in Nigeria. The court held that the income is derived from

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employment in Nigeria but since it is neither derived nor received in Nigeria it is not a taxable income.[lvii]

(B). Taxation of ecclesiastical authorities; - churches, mosque, temples, shrines and its employees/personnels

The ecclesiastical authorities such as churches, mosques temples, shrines and other places of worship enjoy tax exemptions by virtue of their positions and classification as entities established for charitable and educational purposes[lviii] whose activities facilitate the religious well-being, training, welfare and morality of their members. However, if they make profits in the disposition of their properties; they are liable to personal[lix] income tax[lx]. The employees of the ecclesiastical authorities such as Pastors, Bishops, Imam, Chief priest, clergy and ministers of religion are liable to tax in respect of their own income or profits in the nature of their emoluments[lxi] and perquisites of employments. Some of the gifts made to the clergy are taxable as perquisites or benefits in kinds arising from employment, while others are exempted. There is a clear distinction from the two categories of gifts. One aspect is that gifts arising from the employment are taxable as perquisites under[lxii] while the second aspects such as gifts made to them on personal grounds even though as employees of the church, are not taxable.[lxiii]

It is a question of facts and degree to determine whether gifts made to the clergy, priest or ministers of religion sufficed for taxable perquisite of office (benefits in kind) or gifts made to an employee on personal grounds. These two categories were considered in the case of **BLAKISTON v. COOPER**[lxiv] where the Court distinguished gifts and emolument paid to the Clergy and held that Easter offerings which by the custom and **Episcopal prompting** were used for the **general purpose of the Church** and other offerings given to the Clergy were held to be taxable emolument because they constitute taxable emoluments and that the gifts constitute income or profits obtained by virtue of employment in the hands of the Clergy.

If on the other hand, the income accrued from overseas outside Nigeria it is not taxable. In the case of **RE: BISHOP BERTRAM LASBERY**[lxv] the Bishop was assessed to pay personal income tax on salary he received during his leave in England. The salary was paid from funds subscribed from England and not contributed in or from Nigeria. His leave salary (bonus) was neither from Nigeria nor receives in Nigeria even though the employment was in Nigeria. The West African Court of Appeal held that even though the income was derived from employment in Nigeria but it was neither derived nor received in Nigeria and it was therefore not a taxable

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income within the tax legislation. The **LASBERY's** case would be decided differently today because the employer is in Nigeria and also has fixed base in Nigeria[lxvi] by virtue of **S. 10 (1) (a) PERSONAL INCOME TAX AMENDMENT ACT 2011** which provides that the gains or profits from an employment shall be deemed to be derived from Nigeria, if the duties of the employment are wholly or partly performed in Nigeria. There is no doubt that the Bishop performed all his duties in Nigerian even though he decided to spend his annual leave or vacation in Britain outside Nigeria. It is also not proved that he was absent in Nigeria for 183 days in the 12 months period and there was also no proof that the remuneration (leave bonus) suffered or was liable to tax in England to be entitled for exemption under avoidance of double taxation treaty between Nigerian and United Kingdom[lxvii]. In respect of the just concluded National Conference, there is a general consensus that churches, mosque and temples in Nigeria should pay income tax because their activities earn a lot of income that should be captured into our tax net[lxviii]

In spite of these authorities, it is suggested that the TINUBU, FASHOLA, AMODE and SANWOLU's flat rate of taxation is N2, 500 - N5.000 in Lagos State for apprentices should be adopted in other States of Nigeria in respect of all the Clergymen to ensure manageable or bearable taxation which could eventually lead to mass compliance. It is suggested flat rate of N2, 000 taxes would be ideal for Clergymen in the States outside metropolitan Lagos. This suggestion is at least tenable since the present Nigerian tax policy lays more emphasis on indirect taxation and de-emphasizes on direct taxation.

(C). Taxes & levies imposed by monarchs, chiefs, towns, villages' unions to actualize self-help community developments.

Informal sector taxation may possibly include income or profits arising from businesses which the Communities engage into, such as harvesting of timbers logs from their forests, sands dredging from their Streams/Harbours/Rivers. These incomes[lxix] were not[lxx]. exempted from taxation. From the interpretation of **S.36 (6) PERSONAL INCOME TAX (AMENDMENT) ACT 2011**, it is obvious that tax could validly be levied on the communities in respect of its incomes or profits arising from its Communal activities or transaction as stated above.

1. Some of the taxes/levies the traditional rulers such as Obas, Ezes/Igwes/Obis, Emirs Amanyanabos, Atah Igala, Ehinoyi, Obong and others impose on their subjects in form of **Zakkat** on Moslems for educational, charitable and religious purposes,

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Kurdin-Kasa - a form of agricultural taxes on utilization of land equivalent to land-ground-rent, **Shuka-shuka** – crops-yields taxes depending on the varieties planted, **Jangali** – lives stocks taxes based on the number of cartles, **Ishakole** - land tax in exchange for use of land for agricultural purposes payable to Families/Communities heads, **Owo ori** - individual taxes payable in cash or kind in return for services, **War-tax-** payable by the vanquished communities to the victorious ones,[lxxi] **Community-tax-** payable by all adults males and females in order to execute projects beneficial to community. **Osusu Imachi-Nkwu-** levies for Palm-Oil-Fruits tax payable by those who harvest and they are expected to contribute certain sum or a proportion of the palm-fruits, palm-oil and palm-kernel. In Rivers, Bayelsa and riverine States, **block-hunting-and-fishing** are also other forms of taxation whereby male adults contribute services such as canoes, boats, nets and other fishing equipment engage in joint-fishing, while the females market the fishes and the proceeds are utilized to finance community projects. The groups of hunters in the villages organize block hunting-expeditions and contribute highly-trained dogs to hunt and capture wild animals as bush-meat. The proceeds of the sales are used to finance community projects. The **enforcement** of these taxes takes very brute methods of seizure of all the properties of the defaulters[lxxii] until the taxes are paid. Auctioning of the seized properties are rare. The age grades constitute the monarchs' policemen and act as tax administrators/revenue collections authorities. Sometimes the President of the town may resort to court action against defaulters to enforce payment of community development tax. This is the position in the case of **JAMES v. OKEREKE THE PRESIDENT UTUTU DEVELOPMENT UNION**[lxxiii] where Appellant was changed before Arochukwu customary court for failure to pay customary development levy. The complainant was the President of Ututu Development Union (PUDU) who prosecuted in representative capacity. The customary court held appellant liable to the levy of N400 and option fine of N50 or 2 weeks imprisonment. **OGBUAGU J**. upheld the judgment that a community member who enjoys utilities executed through communal efforts of levies imposed by Community Development Union, has no justification to refuse to pay such levies. Failure to pay such levies does not make such member guilty of criminal offence but liable to penalty imposed by the community. There is nothing repugnant

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> to natural justice equity, good conscience or public policy because Town Union levy is one of the subject matters within the jurisdiction of customary court.

Although this decision was upturned on the ground of breach of fundamental human Rights,[lxxiv] crude method of enforcement deprecated, it remains a good law if customary levies are enforced in civilized manner to aid the development of rural towns and villages.It is submitted that this case is logical, sensible and preferred in spite of the case of **AGBAI v. OKAGBUE**[lxxv] where it was held that contributions such as the community development levies are voluntary and do not constitute offences for failure to pay. **JAMES v. OKEREKE**[lxxvi] is preferable and meets the justice of Nigerian situation; even though refusal to pay levies not criminal offence, it creates civil liability. What is more, in the modern world, the government is unable to become universal provider. With declining government subventions, developing economy in the third world category; the Nigerian governments at every level is unable to develop every community. Members of particular community are obligated to pay community development levies otherwise there would be under-development. It is inconceivable, members who enjoy community amenities would refuse to pay the levies used for such communal efforts? Communities should invoke equitable doctrine of **Mutual Burden/Benefits** in **HALLSALL v. BRIZZELL**[lxxvii] to the effect that members who take community benefits, must also shoulder corresponding obligation to pay levies and also question expenditures.[lxxviii]

These levies are obligatory and have the characteristics of taxation even though they are not properly listed under the **Taxes & Levies (Approved lists for Collection) Act 1998.**This is so even though these Communities[lxxix] Taxes/Levies are not collected by FBIRS for FGN or SBIR for States' or Finance Committees Revenue Collector for LGAs.[lxxx] In spite of the fact that tax law is entirely statutory, it can hardly be denied that these Communities/Segments in Nigeria constitute the **4TH TIER OF TAX COLLECTION AUTHORITIES**. This is equivalent to taxation in the districts' which is presently classified as informal sector. The Districts' level taxation was already known to Nigerian tax jurisprudence, since the colonial era. The Local Government Revenue Collector could rely on the powers conferred under S. **36(6) PTAA 2011** to appoint a "**Community-Tax-Collector"** to collect these taxes/levies[lxxxi] in the Districts' existing today in the villages and clans.

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These categories of **Community Taxes/Levies**, after the deductions of the proportion of the income used to execute Community projects would leave net balance which would amount to taxable profits. It is suggested that the same flat rate of 5 percent of the personal income taxes should be imposed on such profits so as to bring the informal sector into the tax net.

INFORMAL SECTOR TAXATION METHODS

The incomes derived from informal sector, constitute taxable gains/profits within **SS. 2 (1) (a), 36 (6) PERSONAL INCOME TAX AMENDMENT ACT 2011** and the State Board of Internal Revenue (SBIR) of 36 States of Nigeria and Abuja, are empowered to assess and collect them in every financial year as personal income tax of individuals who are resident in that State.[lxxxii]

The major problem for taxation of informal sector is the lack of tax identification number ("TIN") for all the Taxable persons' resident within that area. This has hampered the identification, assessment and collection. **S. 8 (1) (q) FEDERAL INLAND REVENUE SERVICE ESTABLISHMENT (FIRSE) ACT 2007** enjoins FIRS to issue TIN to every company, enterprise and individuals in collaboration with SBIR and LGAs RCs. This is a bold statutory attempt to tract down tax defaulters'.[lxxxiii] The mandatory implementation of TIN commenced on 1st February 2008 to improve taxation and FIBR is required to issue 14 digits TIN as part of the process of registration of tax payers. This is in form of electronic card which an individual is required to obtain from any bank to facilitate on-line payments of taxes by logging-on to the website www firs.gov.ng and www.rvbirs.gov.ng

TIN has been implemented in the formal sector and inspite of difficulties, it is gradually being implemented in informal sector. Secondly, the business transactions in the zones identified as informal sector are carried out in cash and they refused to accept banks cheques as medium of payments and in so doing, they conceal taxable profits.[lxxxiv] Due to lack of documentary evidence of the various transactions, the prospective taxpayers may be able to manipulate records, turnover figures and also eliminate third party information relating to the purchasers and sales. There is lack of records keeping which inhibits proper accounting and determination of gross and net income in the computation and determination of tax liabilities. These processes

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may eventually lead concealment of taxable profits. Business activities thrive in the informal sector and eventually lead to concealment of huge taxable profits.

This problem may likely be eradicated in near future by **cashless policy being implemented by Central Band of Nigeria ("CBN")** whereby individuals can be taxed based on the banks statements of accounts. The customers' payment receipts would become the best records/evidence for the tax assessment. The **Registration Policy of Nigerian National Identity Management Centre (NIM),** gave every taxable individual national identity Card/Number. Now every persons' NIMC's data-base could be accessed and addressed for the purpose of tax assessment and collection. A Company - **Infrastructural Global Services (Nigerian) Limited** had been incorporated in Nigeria, to install ICT (Information & Communication Technology) which would provide ICT network software. Information can be electronically accessed at the remotest part of Nigeria.

Alternatively, the States' Government can also use the **INEC (Independent Electoral Commission) Voters'-Registration-particulars to access information relating to taxable-adults engaged in informal sector's business activities in that area.** The use of the Voters-Lists registration particulars would eventually lead to Tracking/Assignment of "TIN" and formalization of taxation-data to facilitate proper identification, assessment and effective collection.

ADOPTION OF LAGOS STATE METHODS BY ALL STATES IN NIGERIA?

Furthermore, FIRS, SBIRS, LGAsRC may possibly adopt deliberate policy of **Lagos State Board of Internal Revenue Service (LSBIRS**) which classified the informal sector economy into three fundamental categories namely **Informal Sector-market**, **Informal Sector-Professionals and Informal Sector-Artisan**. The LSBIRS held series of meetings with all these sectors such as the registered professional bodies like the Nigerian Bar Associations, Nigerian Medical Associations, Guild of Editors, Architects, Society of Engineers, Accountants, Market traders, artisans comprising Automobile mechanics, electricians, panel beaters vulcanizers, hairdressers, printers, tailors, hotels and catering services, night clubs and entertainment centers etc. The LSBIRS used the registered-lists of members, as data to bring

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majority of Lagos State informal Sector into the tax net and thereby impose flat rate of N2500 per individual per annum.

The Lagos State developed more prudent methods of taxation was the product the Law passed in 2006 which made the LSBIRS an autonomous and self-accounting agency – making it the first in the whole country to get this type of status. Its first Chief Executive[lxxxv] and his team with the will to work, removed all the obstacles to voluntary tax compliance by establishing over 40 mini-tax offices[lxxxvi] in different markets locations. The tax administrative arm of LSBIR is the "Lagos State Internal Revenue Service" (LSIRS) which introduced the "Self-Assessment Filling System" for individuals to pay according to income. This is in the form of "electronic tax clearance cards" (e-tcc) which tax payers make payment of taxes on-line at designated banks. These collecting banks and the tax LSBIR tax-offices are electronically linked to facilitate issuance of receipts and the tax payers are able to get access to database for their records via internet. These innovations increase the Lagos State internally generated revenue in the years[lxxxvii] 2008 – 2010 its rose to N189.9 billion, 20111 – N202.76 billion and in 2012 – N219.2. The Lagos State earned the highest revenue from PAYE N172.44 billion, Roads N4.36 billion, direct assessment N1.89billion and N49.513 billion from other sources.

The other States of Nigeria can emulate the **"taxation success stories of Tinubu, Fashola, Ambode and Sanwo-Olu Governors of Lagos State** and encourage the informal sectors to form and register their association so that the lists of their members can be brought into tax net. This experience of the Lagos State in dealing with the associations which enhanced taxation, presents one potentially compelling route for other States in Nigeria to develop and replicate the more institutionalized links between the states and the informal sectors' associations, thus leading to effective taxations and potentially broader governance revenue gains. The Delta State of Nigeria had sent its team of experts to under-study the **Lagos State "tax-collection model"** which had enhanced its self-reliance beyond oil revenue. The other States can also utilize the support and assistance of Manufacturers' Associations and Chambers of Industries, Mines, Powers, Mines and Agriculture facilitate the registration of these informal sectors and liberate itself from the shackles of the excessive dependence Federal Government statutory monthly revenue allocation and also develop its economy. The flat rate of N2000 is recommended for other States' informal sector.

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DETERMINATION OF TAXPAYERS' RESIDENCE IN THE INFORMAL SECTOR

The question of taxpayers' residence[lxxxviii] (not necessarily the source of the income) is the determinant factor for taxation of personal income because individuals pay taxes in the State of residence. RTA is a government agency recognized by a tax statute and charged with the responsibility to administer – assess and collect tax. The separation of tax collection powers is manifest, FIRS' collects FGN taxes from Companies, there are 37 RTAs - the Internal Revenue Service of each 36 States' and Abuja-FCT. The relevance of a Tax Authority is determined by the type of tax and the jurisdiction over which it is empowered to administer – assess and collect and a particular tax. The tax Offices in the 37 geographical-tax-zones-in-Nigeria and the LGAs Revenue-Committees, (where the taxpayer resides), all have jurisdictions to collect taxes and levies allocated it/them by **Parts 11 and 111 Taxes & Levies (Approved lists for Collection) Act 1998.** ,

Residence is judged as a place available for taxpayer's domestic use as dwelling or living place where he/she performs domestic duties in a particular State in Nigeria excluding temporary housings, hotel, rest house[lxxxix] or other places of temporary lodging unless no permanent house is available for his/her use on that day; except where the taxpayer has no permanent place of abode, at a relevant date. The relevant date for tax purpose is 1st of January of every year and the place of residence on this date determines which of the Tax Authority, the taxpayer is accountable to. Where the taxpayer has two or multiple places of residence on a relevant day, "the principal place of residence" - the principal place of business - where he/she spends a **minimum 183 days** in the financial year, would be adjudged as the principal place of residence. The residence of the informal taxpayer is not determined by his/her nationality, State of origin or his/her LGAs but by his/her residence. In **MGBEMENE v. COMMISSIONER OF INCOME TAX**[xc] the payer had Family-House address at Owerri Imo State of Nigeria but carries on his business of trading at Aba in Abia State. The taxpayer was adjudged resident at Aba - his principal place of residence wherein he paid tax of N56 under Finance Law 1963(Eastern-Nigeria) having spent the minimum 183 days there in that financial year. The court nullified the sum of N1000, second assessment of his tax liability for his Owerri Family-House address, as it constitute double taxation.

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The general rule is that income is taxable if it accrued in, derived from, brought into or received in Nigeria (ADBR), and even if it accrues from abroad, it is remitted or brought into Nigeria[xci] but not foreign income of non-resident,[xcii] temporary visitors.[xciii] Informal sector's income satisfies the requirement of ADBR from Nigerian residents and is therefore subject to personal income tax. There is the presumptive tax regime introduced to formally bring "informal sector" participants into tax net. In **KARAM V. CIT** (above) the profits derived from income earned in Nigeria and not in Ghana was held not subject to Ghana taxation because the income was not brought into Ghana. It could not be taxed in Nigeria too because the individual was resident in Ghana.

The self-employed traders, small, medium scale businesses are subject to personal income tax as individuals depending on their economic circumstances consistent with the revenue authorities' computation, assessment and enforcement. Their net income is arrived at by the deduction of allowable expenses wholly, exclusively and necessarily incurred[xciv] in the production of the income from aggregate earnings or gross income. The balance (after the deduction of allowable expenses) would constitute the chargeable gain or profit[xcv] arising from the trade, business, profession or vocation[xcvi] activities carried on, for that particular financial year spreading from 1st January to 31 December.

ABSENCE OF EVIDENCE OF TAXPAYER RESIDENCE, IS FATAL?

The general rules is that the RTA must specifically request for information about taxpayers' residence before tax assessment is imposed on them. In otherwards, there must be evidence that the taxpayer is resident in its jurisdiction before RTA, can levy tax. Absence of evidence of residence, is fatal. In **ECODRILL (NIGERIA) LIMITED v. AKWA-IBOM STATE BOARD OF INTERNAL REVENUE SERVICE**[xcvii] the Appellant (A) was arraigned in Revenue-Court Akwa-Ibom-State(AKS) on 3 (three) counts charges for failure to remit PAYE Tax under PITA, withholding tax and economic development levy. At the trial, the only witness to AKSBIR did not adduce evidence relating to the residence of A's employees and under cross-examination, admitted there was no document which showed AKSBIR requesred such information from A. The evidence before the triat RC was that A had some expatriate employees working in two **Marine Vessels ''Agbani-and-Taggart''** and it was **not established** that the **two boats were within Akwa-Ibom's territory.** A's witnesses testified

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that none of its expatriate employees were resident in AKS and sought to tender document which showed lists of its Nigerian employees and their residential addresses but the trial RC rejected the document. At the close of evidence, the RC struct out counts 2 and 3 of the charge and relied on the concept of '**deemed residence'** and held A liable on count one, as its employees on two-Marine-Boats were resident in AKS at the material time. The High Court dismissed the appeal, affirmed A's conviction and held RC's reliance on the concept of deemed residence, was right in respect of the expatriate employees. Dissatisfied with the judgement, on further appeal, A contended that under **S. 10 (1) (a) PITA**, the gains or profits from employment shall be deemed to be derived from Nigeria, if the duties of the employment are wholly or partly performed in Nigeria.

The **Court of Appeal unanimously set aside** the decisions of both the Revenue Court and High Court decision and held thus;-

(a) the basis of imposition and collection of personal income tax in Nigeria are two folds – **residence and source**. One of the bases of tax liability on the part of taxpayer and appropriate RTA to collect personal income tax, is ''residence''. Here, the only issue involved is ''residence'' and by virtue of First Schedule PITA, the place of residence in relation to individual means **a place available to him for domestic use** in Nigeria on a relevant day but it does **not include hotel, rest-house or other place like temporary lodging** unless no more permanent place is available for his use that day. As rgards the definition of the place of residence, it is used to describe the residence status of taxpayer who has **only one residence**. [xcviii]

(b). The **Court of Appeal** was emphatic that the **principal place of residence is used** to determine the residence of a taxpayer who claims to have **more than one place of residence.** Here A did not claim any or two other places of residence as the status for or on behalf of the expatriate workers. The imposition and collection of personal income tax, primarily relates to the existence of sufficient connection between RTA and a taxable person and by virtue of **S. 2(2) PITA**, if it is shown that a taxpayer resides in a particular State in Nigeria, that State's BIR is the appropriate authority conferred with power to collect personal income tax from such taxpayer in that State.

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(c)The **Court of Appeal** was emphatic that the **183 days** is the **traditional rule to determine deemed residence**. Did evidence presented show the points where **the expatriates stayed in the vessels for the period(s) amounting to 183 days?** Above all, did **AKSBIR prove the points at high sea where the vessels were stationed, were within the Akwa-Ibom's boundary?** It is **a question of facts to be established by evidence as to whether the expatriates' employees, are resident in Akwa-Ibom**. Here there is no such evidence and High Court was wrong when it affirmed that the expatriates were deemed resident of Akwa-Ibom State.[xcix]

FILING OF ANNUAL TAX RETURNS

It is obligatory for all taxpayers including those self-employed traders' in informal sector[c] to file[ci] and deliver annual returns[cii] in a prescribed form titled '**Informal Sector Taxpayers Registration Form[ciii](ISTRF)'**. This involved completion of the ISTRF with passport-photograph attached thereto and other personal information thus;- Name, Sex, Nationality, **TIN – tax-identification-Number**, Means of Identification such as Drivers'-License, Voters-Card, National-ID (NIM), International Passport etc (with its photocopies attached), Residential Address (excluding POBox), Mobile Telephone, WhatsApp-Contact, Electronic Mail, Association/Union, Business Name, Business Registration No,(with photocopy of registration certificate), type(s) of Business – Specific Business, location of business, shop(s) and its addresses, estimated daily sales, estimated monthly sales, number of staff employed in the shop(s), signature-thumb-print and date on the attestation clause confirming and declaring that all the information given are true and correct to the best of taxpayers' knowledge and belief.

Depending on the economic circumstances consistent with the revenue authorities' assessment, computation and enforcement of the informal sector self-employed traders' tax liabilities, their gross income are aggregated from all transactions and net income is arrived at, by the deduction of allowable expenses wholly, exclusively and necessarily incurred[civ] in the production of the income/earnings. The balance – net income (after the deduction of allowable expenses) would constitute the chargeable gain or profit[cv] arising from the trade, business, profession or vocation[cvi] activities carried on, for that particular financial year spreading from 1st January to 31 December.

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The annual tax returns must contain details/particulars of their taxable income,[cvii] proper books of account kept with records of transactions from trade, business, profession or vocation to RTA - States Board of Internal Revenue Service (SBIRS) for taxation of income of individuals. The above information would aid assessment as a tax-charge on income – the chargeable gains/profits of every chargeable person for an accounting period – that particular year of income.[cviii]

On submission, RTA/SBIRS may accept the returns and issue notice of assessment.[cix] The compliance with this legal stipulation is strict. In **ROBERT v. COMMISSIONER OF TAXES**[cx] it was held that annual return of income must be filed by the end of the financial year and the assessment must reflect the computation of income for the 12 months ending on 31 March in the year in question. Similarly, in **INFRA QUEST LIMITED v. NEGERI**[cxi] it was held that the law expects reasonable taxpayers to use due diligence to submit their returns, the court found that the present taxpayer complied by filing its returns within time-frame in year 2003-2004 and that the impugned notices issued by RTA's officials were invalid, wrong in law and therefore of no effect whatsoever.

This process has been replaced by **on-line electronic filing via-e-tax-website** together with **TIN** – **tax identification number**. The obligation to file a return subsists whether a profit is made or loss was incurred.[cxii]

ASSESSESMENTS TO TAXES – ADMINISTRATIVE ASSESSMENTS, DEFAULT ASSESSMENTS AND BEST OF JUDGEMENT (BOJ)

If the taxpayer fails to deliver self-assessment returns, the RTA would normally issue **"Administrative Assessment**" in **default,**[cxiii] based on estimates on the basis of information generated from the access to taxpayer's books and documents. This may also be in form of the **"Best of Judgment**" **(BOJ) assessment** which determines or estimates the total amount or chargeable income.[cxiv] Where the taxpayer defaulted in supplying the relevant information, the RTA issuing the BOJ must not act capriciously but exercise his judgement honestly – fair estimate of proper figures attributable to the taxpayers' income taking into consideration his previous returns. In **BI-FLEX (CARIBBEAN) LIMITED v. BOARD OF INLAND REVENUE,**[cxv] a garment manufacturing company's returns for the years 1971-74 could not

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be traced due to destruction by fire in 1975 but it furnished duplicate copies of its returns for those years. The figures showed trading losses for each of those years. On the basis of information obtained from other garment manufacturers, IRC discovered the percentage of the gross profits were understated. The privy council upheld the court of appeal judgment and held the BOJ was sustainable because in absence of records from the company, IRC was justified to use an acceptable accounting method utilizing the sparse materials available. The court was emphatic that a large element of guess-works must be involved and it was on this basis that a reference to the average gross profit of other garment manufacturers, formed the foundation of a rational BOJ assessment.

UTILITY OF FIELD TAX-AUDIT AND ADDITIONAL TAX ASSESSMENTS AND THEIR SUSTAINABILITIES?

The RTAs may nevertheless issue **additional assessment** where they dispute self-assessment on returns submitted by taxpayer wherever they discovered deficiencies - under-declaration of income,[cxvi] - if they discovered new facts or they formed different opinion on legal effect of facts on which the same assessment was made.[cxvii] The fresh materials, evidence/information could be obtained from whatever source including the examination of books, records of accounts, the internal and **field-tax-audits**, especially where additional source of income is discovered which ought to be charged to tax. The above will increase liability to higher amount of tax.[cxviii] This would also be so where on the examination of the returns the taxpayer under-stated his/her tax liability due to discovered mathematical errors.

Sometimes unapproved claims or over-stated allowable expenses may have been deducted which led to under-payment of tax due.[cxix] Therefore, after totalling these sums of moneys, profits are discovered which show deficiency in the sum assessed to tax. In **NEGERI v. CHONG**[cxx] the taxpayer was found to have under-declared, his income for certain years. Notice of additional assessment was issued base on 22 percent of gross profit ratio (GPR) - the figure based on the first tax returns. GPR was upheld by the Special Commissioners for Income Tax. The High Court reduced it to 8 percent. The Court of Appeal Malaysia held that there was no basis for the reduction as it was not supported by evidence but mere opinion of the judge and therefore reinstated the 22 percent and was emphatic that it was just, appropriate and based on the evidence available.

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The discovery of additional income and its sources must be backed by evidence that the income was actually received by the taxpayer. Where the alleged income is not received, the taxpayer is not obliged to pay. In **COSMOS v. BOARD OF INTERNAL REVENUE**[cxxi] where the appellant was originally assessed to pay N37. It was later revised because BIR substituted reassessment of N905 tax and N64 development levy because they obtained fresh information based on declaration the taxpayer erroneously made his application to Ministry of Lands, Enugu for allocation of a plot of land where he claimed his income was N6000. The taxpayer rejected the additional assessment on the ground that he confused capital income from his overseas assets with his real income in Nigeria. The Court held that the Additional income tax cannot stand unless there is proof and that the plea of mistake of inserting N6000.00 as his income when it was in fact capital expenditure must be accepted because there is no denial through counter-affidavit by the Internal Revenue.[cxxii]

Similarly companies are required to file their returns[cxxiii] or further returns[cxxiv] through self-assessment process, compute the tax liability payable and show evidence of direct payment of the whole or part of the tax due in the currency such as dollars, pounds sterling and Euro in which the transaction giving rise to the assessment was affected.[cxxv]The RTA may proceed to issue assessment to the company's chargeable income where its audited accounts and return are acceptable.[cxxvi] Alternatively, the RTA may refuse to accept the return and proceed with its own best of judgment and determine the amount of the total profits of the company and make an assessment on it accordingly.[cxxvii] Like the private individual taxpayer, where the Company fails to deliver its return, the RTA may use its "Best of Judgment" to determine the amount of the total profits and make the assessment accordingly.[cxxviii]

Similarly, if there is evidence (obtained from whatever source such as tax-audit[cxxix] of a return) of additional income and the company tax payer has not been assessed the full amount it ought to pay, the RTA may determine additional tax giving notice of the assessment of additional amount of tax which ought to have been changed.[cxxx] In Jamaica, the RTA[cxxxi] is empowered to make additional assessments to tax where it appears the taxpayer has not been assessed or has been assessed to a less amount that he ought to haven charged within the year of assessment or within 6 years thereafter.[cxxxii] In **CHANG v. COMMISSIONER FOR TAXPAYERS APPEALS**[cxxxiii] additional assessments of $12, 125, 393.75 and $8, 136, 090.94 being the value of **investment gains derived** from **business activities** conducted from a non-licensed Investment Club. The taxpayer challenged it and alleged the incomes were not his but

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investments of funds he made on behalf of his friend, a foreign national. **Anderson J**[cxxxiv] disbelieved him and dismissed his appeal. The **Jamaican Court of Appeal upheld** the additional assessments were well-founded. because the taxpayer's claims were not supported with documentary evidence[cxxxv] and therefore constitute additional income arising from trading gain from business activity he conducted and therefore properly charged as additional income tax.

Once this process is completed, there must be compelling reason for a tax duly assesses and paid to be reopened and reassessed again, the court would determine what circumstance the additional assessment shall become arbitrary and capricious.[cxxxvi]

NOTICE OF ASSESSMENTS MUST BE SERVED ON TAXPAYER

In all cases, there is a requirement that notice of assessment stating total profits, amount of tax payable[cxxxvii] shall be served on the taxpayer[cxxxviii] by RTA. In **MOHAMMADU v. OTURKPO LGA**[cxxxix] the CA held that the service of notice of assessment cannot be inferred but failure to serve it, is not a mere defect in procedure but its effect is to nullify all the subsequent proceedings. Similarly, In **EBOSELE v. STATE TAX BOARD**[cxl] the court held that income tax assessment made without a request for returns of income as provided by income Tax Act was made without jurisdiction.[cxli]

It could be sent by registered post or through **courier service** or **Electronic-Mail** stating the amount of assessable, total or chargeable income, the amount of the tax charged and the designated banks where payment should be made.[cxlii] The issuance of notice of assessment is a condition precedent to liability of the taxpayer to discharge obligation to pay tax. In **BARCLAYS BANK LIMITED v. ZIMBABWE REVENUE AUTHORITY**[cxliii] **MAKONI J** held that ZRA could not garnish the taxpayer's funds, without assessments issued and served in compliance with the requirements of SS. 2 and 51 Income Tax Act stating taxable income, credits to which the tax payer is entitled and any assessed loss ranking for deductions and since the document failed to comply with these requirements, it is invalid.

Similarly in **NIZABA INTERNATIONAL TRADING LIMITED v. KENYA REVENUE AUTHORITY**[cxliv] the Kenya High Court held that notice of assessment[cxlv] must be served on the taxpayer, he must be informed of his right to lodge an objection and once an objection has been raised, it is incumbent on the Commissioner of Taxation to act on its statutory duties and

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it is not enough to remain inactive and state that there is no provision in the Income Tax Act to amend an assessment which has been made pursuant to an earlier assessment. Finally, the notice of assessment must also inform the taxpayer of his right to raise objection to the assessment within 30 days. The taxpayer may either agree or disagree with the assessment. If he/she agrees, the tax must be paid within the statutory period of 60 days from the date of the receipt of assessment notice.

FAILURE TO SERVE TAXPAYER NOTICE OF ASSESSMENTS ACCOMPANIED BY FIELD-TAX-AUDIT REPORT, ARE FATAL TO TAX RECOVERY LITIGATION

The failure of RTA to serve the taxpayer notice of assessment is fatal to the tax recovery litigation. In most cases, in order to enforce and recover the amount of tax, evidence of **field tax-audits** of the taxes due such as income tax, withholding tax etc must be produced to the satisfaction of the court.. In **NDDC v. RIVERS STATE BIRS**[cxlvi] field-tax-audits were not carried to ascertain the emoluments of the employees[cxlvii] and inspite of this defect, RVBIRS proceeded to issued BOJ assessment. The **Court of Appeal** held

1. RVBIRS cannot resort to issue BOJ assessment without field-tax-audits in ascertainment of the taxes due,
2. Under PAYE, it is the duty of the employer (NDDC) to File Annual Returns under S. 82 (1) (2) PITA containing all the emoluments paid to employees latest on 31 January every year – they musty deduct tax from the salaries and emoluments of the employees and account to the Tax Authority and failure to do so renders NDDC to make deductions and account renders NDDC to punishment N500,000 under S.82 PITA.
3. RVBIRS must give notice of Assessment to the taxpayer and the notice must contain the amount of assessment as ascertained under S. 57 PITA,
4. Before NDDC can enforce and recover the payment of tax – by the distraints of the taxpayer's goods, chattel, bond, security, land, seal his premises or place of business in execution of the obligation to pay tax, there must be ordxer of the High Court predicated on the field-tax-audit predicated under S.104(1) Personal Income Tax (as amended) in 2011.

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RTA MUST DETERMINE OBJECTION AND ISSUE NORA (NOTICE OF REFUSAL TO AMEND) BEFORE TAXPAYER CAN APPEAL TO COURT

Objection is the method available to taxpayers to formally protest, dispute assessment, challenge errors in tax computation or inaccurate and improper decision by RTA. Taxpayer is only obliged to pay tax where a valid assessment had been served. An informal tax dispute would commence where assessment is under review - post-assessment review of affairs such as value of rental property, its associated claims, audited income and expenditures in the taxpayer's returns[cxlviii] or where the disputes cannot be resolved through amended assessment issued based on adjusted taxable income. If the taxpayer disagrees with the assessment, he/she may apply to RTA by **notice of objection in writing,** urging RTA to review and revise the assessment it made.[cxlix] Dissatisfied taxpayer may do this by himself or through tax adviser/chartered-tax-practitioner within **30 days**[cl] from the date of the service of notice of assessment.[cli] The filed notice in writing must specify the relevance **grounds of objection** - amount assessable, total profits in year of assessment and amount of tax[clii] payable as contained in notice[cliii] of assessment served personally or sent by registered post, courier or electronic mail, within 30 days.[cliv] At this stage, formal tax dispute had commenced. The grounds of objection must be backed with supporting documents and contain alternative tax computation.

The next consideration is who can file written objection? Taxpayers must file written objection personally or through their agent/chartered-tax-advisor.[clv] Where employer/employee relationship exists, employee/taxpayer can do so personally[clvi] or through employer/agent on his/her behalf.[clvii] especially where RTA served demand notice/assessment on the employer, not on the employee, filing written objection on behalf of employee, though difficult but it is practicable.

SUSPENSION OF OBLIGATION TO PAY OF TAX UNTIL OBJECTION IS DETERMINED AND MATTER HEARD THROUGH APPEAL PROCESSES

In reconsideration of the deficiency of tax complained of, by taxpayer, RTA is under a duty to communicate its decision[clviii] whether with positive or negative result, after it has considered

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the objection. As long as the objection is pending and unresolved, the amount of tax being disputed shall not be enforced[clix] but must be held in abeyance.[clx] In **AZIKIWE v. FEDERAL ELECTORAL COMMISSIUON[clxi] ARAKA CJ** held that notwithstanding the provisions of the **S.20 (3),** taxpayers' liability to pay tax only arises and becomes final under **S. 29 (1) Finance law (Anambra-State-Nigeria**) after RTA had first served him with a written notice demanding returns with a written notice of assessment stating the amount of tax assessed, total income and amount of tax payable and where no extension[clxii] of time has been granted for making the payment.[clxiii] and the tax payer has not objected[clxiv] to the assessment.[clxv]

NOTICE OF REFUSAL TO AMEND (NORA) MUST BE ISSUED BY RTA BEFORE TAX MATTER BECOMES RIPPED FOR APPEAL TO HIERACHIES-OF-APPEAL COURTS

In most cases, decisions of RTAs verdicts in terms of taxpayers' liabilities, are upheld, vacated or referred-back to them, for second review and issuance of new decisions. If the taxpayer agrees with the amount of tax liability, the assessment is varied or adjusted in form of **amended assessment"**. It shall be served accordingly and the amount of tax payable shall be stated.[clxvi] In **ILORIN TAX AUTHORITY v. AJAO[clxvii] REED J**. held when a taxpayer objects to his income tax assessment, the RTA is under obligation by virtue of S.94 Personal Income Tax Act to either confirm the assessment by refusal to amend or revise it and failure to do so means the objection has not been determined so as to render the assessment final and conclusive.[clxviii]

If **disagreement** persists/lingers over amount of tax payable, RTA shall reconsider all the factors and issue **written decision[clxix] - notice of refusal to amend[clxx]** (NORA). Sometimes, RTA may further revise the assessment where appropriate to include **additional assessment** and thereafter issue **notice of revised assessment**[clxxi] and total amount of tax payable shall be stated. As soon as RTA confirms the assessment or disallows the objection through the issuance of NORA, the taxpayer's right of appeal had crystallized. The RTA may, after serious reappraisal of all circumstances, disallow the taxpayer's objection, maintain/confirm its original and additional assessment(s).[clxxii]

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TIME-LIMIT TO ISSUE AND SERVE NORA - INTERNATIONAL BEST PRACTICES FROM CANADA, TANZANIAN, JAMAICA AND AUSTRALIA

Although, there is a requirement that objection should be filed within 30 days by the taxpayer, subject to justifiable extension of time but there is no corresponding **time-frame** for RTA to hear and determine notice of objection filed. In view of this lacuna in many Commonwealths fiscal legislations, reform is suggestion by adaptation of Jamaican model. On receipt of all the relevant information pertaining to the particular tax case, the **Commissioner Revenue Appeal Division** (CRAD), is bound to follow the relevant legislation, decisions made by courts – case law judicial precedents and has **60 days** to issue **written decision.**[clxxiii]

Borrowing further leaf from **Canadian**, **S.165 (3) (a) Income Tax Act** provides: -

> …. On the receipt of notice of objection, the Minister of National Revenue of Taxation (MNRT) must "with all **due dispatch**" reconsider, reassess – vary, vacate, confirm it.[clxxiv]

In **Tanzanian** jurisdiction**, S. 92 (1) Income Tax Act** provides, if the taxpayer further disagrees with the **Notice of Revised or Amended assessment (NORAA)**, the **Commissioner of Taxation** shall issue **Notice of Non-Agreed Amended Assessment (NAAA)** and inform the taxpayer of the right of appeal. This is equivalent to the Nigerian NORA.

The phrase with due dispatch in **Canadian jurisdiction** though has no precise meaning but it is synonymously with **all due diligence**[clxxv] within a reasonable time.

In MINISTER **OF NATIONAL REVENUE OF TAXATION v. APPLEBY**[clxxvi] a lapse of time of 22 months between the service of notice of objection and confirmation was allowed in view of the work that had to be done before the reassessment could definitely be confirmed.

However, if the delay persists beyond 180 days, the taxpayer who had served notice of objection without receiving definite response, can proceed and initiate appeal to tax court[clxxvii] and the minister shall be deemed to have confirmed the assessment to which the notice relates and the taxpayer shall be deemed to have instituted[clxxviii] an appeal[clxxix]. This is also the same position in Australia to the effect that where objection has validly lodged within 60 days of the notice of assessment and if the Commissioner of Taxation has not made any decision within

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60 days from the date which objection was filed, the taxpayer may by written notice require the COT to make decision on the objection[clxxx] if COT fails to make the decision within a further 60 days, COT is deemed to have disallowed the objection[clxxxi]and the taxpayer may after the expiration of these cumulative **180 days**, commence the appeal proceedings[clxxxii].

Even though the lacuna in Nigeria tax legislation is noticeable, the **Jamaican, Tanzanian, Canadian and Australian practices** provide **international best practice** demonstrated above which have been followed in Nigeria. The acceptable practice is that RTA must act within a reasonable time to issue NORA in order not to keep the taxpayer unduly waiting. If there is unreasonable delay, the taxpayer as an aggrieved person in taxation-dispute, can take initiate to apply and commence the process of appeal to enforce his/her rights. This is the appropriate position. In **OANDO v. FEDERAL INLAND REVENUE SERVICE**[clxxxiii] where the RTA served the notice of additional assessment for 2006, 2007 and 2008 years of assessment. By a letter dated 26th May 2010, the taxpayer filed written objection and 6 months later RTA claimed it was still reviewing the notice of objection. The tax payer filed the appeal at the tribunal. The RTA filed a preliminary objection to strike out the action on the ground that ''NORA'' has not been issued by RTA pursuant to S. 69 Company Income Tax Act and Paragraph 13(2) of the Fifth Schedule Federal Inland Revenue Service Establishment Act (FIRSEA) 2007. The **Tax Appeal Tribunal** held that since there is no time-table stipulated for taking a step required by the law, **it does not lie prostrate because reasonable time is always imposed**. What is reasonable depends on the circumstances of the case. Inspiration is drawn from the 30 days' time limit allowed the tax payer to file his notice of objection. TATheld it shall not insist that RTA issue NORA within the same 30 days but instead a **generous/reasonable time-frame of 90 days is ideal bearing in mind the extremely busy RTAs' schedules**. TAT was emphatic that Failure to serve NORA within 90 days from the receipt of objection should enable taxpayer who has opted to exhaust RTAs' in-house-complaints handling mechanism to approach the court for redress. 6-months'time-frame is unduly oppressive against tax payer who is entitled to get correct information on his precise tax liability quickly. **The law is lopsided in favour of the tax-collector and TAT is entitled to treat failure to issue NORA within a reasonable time or at all, is interpreted as a deemed refusal to amend** and NORA as part of FIRS internal tax complaints handling procedure, is now optional[clxxxiv]

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FUNCTIONALITY OF REVENUE COURTS TO ENFORCE TAXATION OF INFORMAL SECTOR

The 36 States Boards of Internal Revenue Service (SBIRS) including FCT Abuja and Local Government Revenue Service Committee powers to enforce their taxes, levies and other categories of rates, fees, charges, tolls and dues payments againsr SMEs, the self-employed informal sector, were conferred by **Parts 11 and 111 Taxes and Levies (Approved Lists for Collection) Act 1998** and definitely outside the control of FGN. Depending on the Financial Limitations of the Claims - Magistrate/Districts/Revenue/Courts and States' High Courts for the 36 State of Nigeria and Abuja Federal Capital Territory (FCT) have respective jurisdictions over States Government and Local Government Taxes and Levies.[clxxxv]

(I) Revenue Courts (Magistrates/District courts) and States' High Courts' Depending on Financial Limits both have Jurisdictions over Taxes Collectable by State and Local Government Authorities

Tax disputes between States' Boards of Internal Revenue (SBIR) and individual taxpayers, including corporates bodies over personal income taxes and other categories of taxes are resolved through the Magistrate/District Courts styled as Revenue Courts (RCs) established by the States. There are RCs at Uyo Akwa-Ibom, Port Harcourt in Rivers, Calabar in Cross Rivers, Yenagoa in Bayelsa and other States of Nigeria. Its jurisdiction is to hear and determine taxation disputes at the first instance, prior to appeals to the States' High Courts, Court of Appeal and Supreme Court. They are basically staffed by presiding Chief Magistrates of 7-10 years' minimum post-call experience whose jurisdictions are regulated by the Statutes.[clxxxvi]

SS. **4 (1) (a) (b) (b) (c) (d) (f) (2) (3) (4) REVENUE COURT LAW 1989 AKWA-IBOM**:-

> …. ''the Revenue-Court shall have original civil and criminal jurisdictions to hear and determine causes, matters relating to the Revenue of Government, or any person suing or being sued, on behalf of the government or any organ of government or Local Government in relation to; -

(i) personal income tax under PITA,

(ii) tenement rates under Rating and Valuation Law,

(iii) Levy under Economic Development Levy Law,

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(iv) fees under Registration of Business Premises Law

(v) any fees, rates, levies and taxes imposed under any other law in the State for procurement of Certificates of Occupancy and other transactions relating to Lands,

(vi) any fees, rates, levies and charges duly imposed by the Local Govt Council under its Bye Laws.

The **jurisdiction of the RCs,** strictly speaking, refers to the revenue matters within the powers of the States' and LGAs.[clxxxvii] Therefore traders and SMEs in the informal sectors are liable for assessment to tax under **SS.1(a)(b), 2 and 3(1)(a)(c) (d)(e)(f) PERSONAL INCOME TAX ACT** individuals, communities, families etc are liable to taxation determined under **Sixth Schedule Table**, in respect of gains, profits arising from trade, business, profession or vocation whatsoever, in respect of income accruing in, derived from, brought into and received in Nigeria. In **ADERAWOS TIMBERS TRADING CO LIMITED v. FBIR**[clxxxviii] Supreme-Court held that lump-sum payment received by a trader is taxable income derived from trading activity of buying and selling timbers. This is subject to geographical limitation.[clxxxix] Foreign income arising from trading activities[cxc] in other countries are excluded. In **KARAM v. COMMISSIONER OF INCOME TAX**[cxci] a trader who carried on business in Ghana and England. Some of his goods were shipped and sold in Nigeria and assessement to tax on that transaction was subject to appeal. WACA held (two to onemajority) that the liability to pay tax for transactions did not arise in Nigerian because it is iprofits accruing in, derived from, received in and brought into Ghana and therefor not liable to Nigerian taxation.

Appeal lies as of right for questions of Law. On mixed law and facts, with leave on the decisions of RCs, to the State High Courts[cxcii] and shall not operate as stay of execution of judgements conditionally or unconditionally.[cxciii] **Federal High Court** (FHC) has jurisdiction only in **Federal taxes** and not over State taxes. In **SEAWELD ENGINEERING LIMITED v. AKWA-IBOM STATE BOARD OF INTERNAL REVENUE SERVICE**[cxciv] P applied to FHC for prohibition order and certiorari to quash criminal action instituted against it, for not remitting to AKSG, within 30 days, taxes deducted from workers salaries.[cxcv] It contended that RC has no jurisdiction, as the matter was civil rather than criminal. **ADENIJI J** dismissed the action and held; -

(i) under S.2 PITA 1993, a State government (AKSG) is empowered to impose tax on certain categories of individual workers while FGN can impose appropriate tax on itinerant workers,

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members of Nigerian Police and others specified in SS. 1(b), 2 PITA Individual workers' salaries, wages, allowances are taxable under S. 3 PITA as profits from employment defined to include service rendered in return for gains or profits.

(ii) PITA empowers the State to impose and collect taxes as agent of FGN. Under S.1(1) Taxes and Levies (Approved Lists for Collection) Act 1998, the States and LGA can constitute RTAs who are empowered under S.2(1) TLALFC Act, to assess and collect taxes on behalf of FGN.

(iii). S. 73 PITA includes civil and criminal proceedings and in view of the circumstances of P's conduct, it is up to RTA to decide whichever is appropriate. Since P is regarded as an agent of D and an agent who withholds amount deducted as tax incurs the wrath of it principal and can be dealt with appropriately.

(iv). The RC has jurisdiction and there is no challenge to the procedure it adopted is not strange and alien to all known legal principles to warrant certiorari or prohibition.

(v). FHC cannot be the appropriate venue as it has no jurisdiction where the issue of taxes of a State is involved. The RC is the appropriate forum and appeals from RC lies to the State High Court (SHC) and it would have been proper to seek all remedies and reliefs at SHC.

(vi). The RC has jurisdiction to try all civil and criminal matters summarily under S.4 (3) RC Law and the power of the court was limited to the imposition or award of the punishment not greater than that prescribed by Magistrate Court Law.

(vii). Under S. 4 RC Law, RC has jurisdiction to summarily hear and determine such Tax matters specified without exception or categorization – the Chief Magistrate who sits in RC, has all the powers enabling him, to take all Revenue Cases regardless of the amount involved and there is no limit to the amount he can preside over.

COMMENTARIES – The above decision appears sound and faultless in reasoning and accords with the taxation separation of powers known to tax jurisprudence. With the creation of RCs, the role of former Tax Appeal Commissioners in the States appears impliedly abrogated because all their functions have been transferred and subsumed to the RCs.

The similar validity and jurisdiction of RCs was further tested and confirmed through the processes of taxation appeals to the High Court and Court of Appeal in **ECODRILL (NIGERIA) LIMITED v. AKWA-IBOM STATE BIR**[cxcvi] referred above.

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(Ii) States High Courts are another Avenue for Tax Disputes Resolution between States' Boards of Internal Revenue (SBIR), Local Govt Revenue Committees and Individual Taxpayers for Certain Categories of Taxes

The States' High Courts(SHCs) have jurisdiction for categories of taxes under Parts II and III of the Taxes and Levies (Approved Lists for Collection) Act 1998 such as personal income tax under PITA, Withholding Taxes, States Development Levies[cxcvii], Land Use Charges,[cxcviii] tenement rates under Rating and Valuation Law, fees under Registration of Business Premises Law, fees, rates, levies charges and taxes imposed under any other law in the State and the Local Govt Council under its Bye Laws, especially where there are large financial claims and substantial questions of Law**.**

The **SHCs** have **unlimited jurisdiction** under **S.236 Nigerian Constitution 1999** to entertain matters including those relating to the enforcement of payment of the taxes stated above, which are due to the State Government. In **SKY BANK PLC v. KWARA SBIRS**[cxcix] KSBIRS claimed the sum of N21,887, 970.81 being outstanding liabilities for 2008-2010 financial year arising from under-deductions taxes, levies, withholding tax and ones actually deducted but not remitted pursuant to SS. 2, 3 and 4 Personal Income Tax Act and Kwara State Tax Law. The State High Court granted the claim. **Court of Appeal** dismissed the contention that the State High Court has no jurisdiction and held thus; -

(i). That it is the State High Court and not the Federal High Court that has jurisdiction over the disputes arising over Revenue accruable to the State Government under Personal Income Tax Act[cc] and Withholding tax.

(ii) TAT is an Administrative Tax tribunal empowered under S. 59(2) FIRSE Act 2007, to primarily entertain disputes arising from the correctness of assessments to tax without fixation of formality, over taxes and levies due to FGN[cci] collectible by FIRS.

(iii). That it is the Kwara SBIRS that is empowered to ascertain – assess, impose and collect the taxes payable to the Kwara State Government by the taxpayer under Kwara State Tax Laws because FIRS is only empowered to assess. Impose and collect Revenues accruable to Federal Government of Nigeria (FGN).

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PROPOSALS FOR REFORMS

One fundamental factor is to encourage tax compliance amongst the taxpayers. It is advocated that the conferment of pecuniary-reciprocal-benefits on the taxpayers-inhabitants-of particular community/area where higher quantum of taxes were collected, would lead to improved infrastructures and amenities in that locality This would in turn encourage and give incentives to the aggrieved taxpayers, to pay and enjoy the facilities.[ccii] Allocation of half or three-quarter percentage of the taxes collected to that particular locality to aid its infrastructural renewal and development, it would constitutes moral booster and incentive to pay taxes, by all including the informal sector participants.

It is recommended that the 4th tier Revenue Authority be created through legislative amendment of tax legislations. The 4th-tier may be called the "**District Revenue Collector Authority" ("DRCA")** which would be saddled with the responsibility to assign "TIN" to taxpayers resident in the villages to facilitate the effective assessment and collection taxes in respect of profits derived from the villages, communities and individuals pursuant to **S. 36 (6) PITAA 2011.**

The bane of Nigerian taxation is not only aparty but lack of transparency and proper accountability in the spending and oftentimes fraudulent utilization of the government revenue. Even though these informal sectors are eventually assessed and tax duly collected leading to maximization of the revenue, what is the guarantee that when the optimal taxation is achieved, the funds generated would soon develop wings, diverted or out rightly disappear? This is the basis of the lack of interest to pay taxes amongst Nigerians. It is also the direct lack of faith in the government of the day. This leads us to injudicious and reckless spending by successive Nigerian Governments. Worse still, there are absences of durable infra-structures and amenities of life in the villages/areas of collection and the tax payers do not enjoy the amenities for the taxes he/she paid. To cure this social malaise, the **tax Laws should be amended to stipulate that at least 40 percent of the proportion of the total revenue collected should be utilized on the projects cited within their environments or locality of the taxpayers**. This would be sufficient inducement for tax compliance. This is the magic which governors of Lagos State;- Tinubu, Fashola, Ambode and Sanwolu hav been exhibiting through the tax education of the residents whereby they are constantly being enlightened on the benefits of tax compliance in terms of the provisions of amenities, infra-structures and as indices of economic developments.

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The publicity and adverts which draw the attention of tax payers to the benefits derivable are matched with actions -when the roads leading to the residence and environment of the tax payers were rehabilitated, there were cases of the tax payers walking down to revenue offices to voluntarily pay their taxes. The taxpayers feeling and enjoying the benefits[cciii] of taxation was the direct inducements to Lagos State's voluntary tax compliance. In this way positive utilization of tax-revenue would properly and visibly impact on improved service delivery in many areas especially, in education, health-care services and entrepreneurship development programmes for the citizens. This would influence taxpayer to pay being sure of enjoyment of positive benefits.

The second aspect of remedy is the public purpose litigation. Public interests' litigation should be encouraged amongst lawyers, accountants, economists and business men/women who are versed in the interpretation of tax laws and other fiscal legislation particularly members of CITN in their personal capacity. In **INSTITUTE OF HUMAN RIGHTS & HUMANITARIAN LAW[cciv] v. ATTORNEY GENERAL RIVERS STATE[ccv], HOUSE OF ASSEMBLY & RIVERS STATE BOARD OF INTERNAL REVENUE SERVICE[ccvi]** the claimant, a Non-Governmental Organization resorted to this type of public interests' litigation when it successfully challenged the **Rivers State Government Social Services Contributory Levy Law 2011** at the Port Harcourt High Court. **OPARA J** declared the purported law as double taxation and therefore ultra-vires, null, void and of no effect whatsoever because it contravened the provisions of Personal Income Tax Act 1993 as amended. Her Ladyship affirmed that the 2nd Defendant has no legislative competence to enact the SSCLL 2010 and the 3rd Defendant has no right to collect taxes pursuant to the law which contravened the provisions of Nigerian[ccvii] Constitution 1999.

A private citizen resident in a State and also indigenes who can prove he is resident in a State has power to sue and question the State government. This is the position in **GOVERNMENT OF AKWA-IBOM STATE v. UDOFIA[ccviii]** where the **Court of Appeal** unanimously held that that under the combined effect of S.2(1) Taxes and Levies (Approved Lists for Collection) Act 1998 and Item 9 Part 11 2ND Schedule of Nigerian Constitution 1999; -

(i) An indigene of a State is empowered to sue and question the use and management of the revenue of the State Government and he need not be taxpayer to be able to exercise such power

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(ii). A State House of Assembly is duty bound to enact a Law empowering any person or group of persons to carry out the functions of investigating and monitoring the collection of taxes by the appropriate tax authority and also provide for the commission payable.

Where the government funds are being misused or channeled into wrong expenditures, a taxpayer can initiate litigation against the particular government department, ministries etc. The tax payers' right to challenge irregular expenditure of public funds was recognized in **GANI FAWEHINMI v. PRESIDENT OF NIGERIA**[ccix] where the taxpayer challenged the President payment of salaries allowances in dollars $247,000 and $1117,000 respectively to certain categories of choice Ministers above the one approved by Revenue mobilization, Allocation and fiscal commission (RMAFC)) i.e. ₦794, 085 as violation of SS. 15, 84, 124 & 153 Nigerian Constitutions 1999 and Political, Public and Judicial Office Holders (Salaries and Allowances) Act cap. 6 (2002). The **Court of Appeal** held that the taxpayer has locus standi to sue because it will definitely be a source of concern to any taxpayer who watchers the funds he contributed or is contributing towards the running of the affairs of the State being wasted when such funds could have been channelled into providing jobs, creating wealth and providing security to the citizens. **ABOKI JCA** was emphatic that such a taxpayer has sufficient interest of coming to court to enforce the law and ensure his tax money is utilized prudently[ccx].

POLITICAL WILL OF THE GOVERNMENT TO INSTITUTE REFORMS

The above reforms would still not be actualized unless the government of the day especially such as the Presidency and National Assembly are prepared to remove the institutional and administrative barriers towards improved taxation performance. One of such is the possibility of plugging loopholes in tax laws yearly and also passing new legislation to take care of the future exigencies. In the **United Kingdom** where we inherited majority of our laws**, Finance Acts are passed yearly to reform tax laws, removed the noticeable bottle necks and facilitate enforceable tax laws.**

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In Nigerian, government contingent support to overcome this institutional barrier while emulating Britain in passage of yearly Finance Acts. The members of CITN should also be prepared to emulate Chartered Institute of Taxation (CIOT of Britain) where **yearly Tax Guide textbooks are produced in the 3rd week of September yearly**. With these government and CITN Commitment, taxation reforms on yearly basis is continuing. When taxation attains its optimum dynamism leading to increased revenue and economic growth.

ENDNOTES

[i] Nigerian Bureau of Statistics Internal Revenue Generation Reports 2015.

[ii] See Appendix Rivers State Government of Nigeria Board of Internal Revenue Service (RVSG BIRS) Informal Sector Presumptive Tax Chart (ISPTC) Database

[iii] Nigerian Bureau of Statistics Internal Revenue Generation Reports 2015. The African Report Magazine Lagos:- Taxman Cometh, by Ayodeji Rotinwa 2 July 2018.

[iv] African Report Magazine Lagos (above).

[v] Babatunde Fowler,Chairman, Federal Inland Revenue Service (FIRS) - Taxation of Informal Sector and Contemporary issues in the Presumptive Tax Regime (2019 Annual Tax Conference Abuja of CITN FIRS name has been changed to "Nigeria Revenue Service" (NRS), Change of designation of the Chairman/Chief Executive to Commissioner-General and Re-Composition of the Board of the Nigeria Revenue Service by Finance Act 2022,

[vi] See Appendix containing statistics of Informal Sector taxpayers in Port Harcourt 2021. Special thanks are due to Israel Egbunefu FCTI, FCA, Director and Staff of Informal Sector Taxation Unit Rivers State Board of Internal Revenue Service (RVSG BIRS) Port Harcourt Nigeria, for all their support.

[vii] Dr J.A.U. Inyang – Tapping into Untapped Informal Sector to Expand Revenue Base, Paper presented at Mandatory Training Programme Chartered Institute of Taxation of Nigeria(CITN)(1919) 17 July.

[viii] AIT v. Edo State Board of Internal Revenue (below)

[ix] (2015) 12 NWLR (Pt. 1474) 442 at 443

[x] In Ansaldo (Nigeria) Limited v. National Provident Funds Management Board (1991) 2 NWLR (Pt. 171) 392 at 402 (1993) 3 NWLR (Pt. 174) 392 at 365 SCN held that the three-tiers of government – FGN, States and LGAs – each operates separate system of revenue collection and money provided by each segement is governed by separate tax laws.

[xi] Australian case Matthew v. Chicory Marketing Board of Victoria (1938) 60 CLR 263 at 276 per Letham CJ, Indian Supreme Court case where this definition was adopted, Commissioner Hindus Religious Endowment (Mandra) v. Sri Lakmutt (1954) SCR 1005 at 1040 per Mukherjee J

[xii] I. A Ayua, – Nigerian Tax Law (1996) pp.- 1-4 (Spectrum Publishers Ibadan), M. T. Abdulrazak , – Revenue Law & Practice in Nigeria (2000) pp. 1-6 (Malthouse Press Limited Lagos)

[xiii] (1995) FHCLR 158 at 159

[xiv] 4 Mich -App 224 14 N.W

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[xv] This was adopted in Petroleum Trust Funds v. Fidelity Bank Plc (2012) JELR 53023 where CA defined taxable 'Revenue' as any income or returns accruing to or derived from taxpayer (including any government corporation, parastatals etc) from any source.

[xvi] William v. LDPC (1978) 3 SC 11 at 1719 per Alexander CJN.

[xvii] Black Law Dictionary (1991) p. 1457

[xviii] FBIR v. American Insurance Co. Ltd (1995) FHCLR 158 at 159

[xix] (1975) 37 WILR 329 at 330 (Trinidad & Tobago West Indies CA)

[xx] (1975) 9 CCHCJ 1387 at 1388 per Kassim J.

[xxi] This is different from Consent fees for assignment of interests in landed properties payable to the State Government via Ministry of Lands and Survey. pursuant to Land Use Act 1978. Consent fees qualify as taxation because it is obligatory to pay it to government.

[xxii] D. J. Bakibinga (Prof) – Revenue Law in Uganda (2003) pp.1-10 (Professional Books Publishers Ltd. Box 16603 Kampala), NTT Simiyu –Taxation In Kenya (2003) pp.1-3 (published by the Foundation Institute of Professional Studies & Department of Accounting University of Nairobi) and Peter N Fulcher, - Fiji Income Tax (1999) pp.1-5 (Oceania Printers Ltd)

[xxiii] Uche Jack-Osimiri, – Stimulation of Investments in International Energy Through Nigerian Tax Exemption Laws (2003) Vol. xxvi (No.1) pp.45-60 OPEC Review Austria (Blackwell Publishers)

[xxiv] John Tiley (Prof) - Revenue Law (2000) 4th Edition pp.1-11 (Hart Publishing UK)

[xxv] Lotteries and Gaming Tax Laws (2005 Ebonyi State of Nigeria)

[xxvi] Teju Somorin (Prof) – Sourcebook on Taxes and Levies (2012)

[xxvii] Cigarette Tax Act 2019 (Australia) and the Order made thereat 2021 which subjected smokers to pay increase from Aus$25 to Aus$40 (from 12 to 20 pounds sterling) per packet of Cigarette from 2020 under Revenue-boosting budget. Finance Minister Scott Morrison told Parliament in Canberra that the Cigarette-Excise would raise revenue to Aus4.7 billion (2.3 billion pounds sterling) See – Morning Herrald Sydney 17 December 2017 p. 18.

[xxviii] Nigeria, for Beer and Spirits Beverages, FGN Raises Alcohol Taxes to 67 percent N35 ($0.10) per liter 7TH May 2019. Nigeria applies 'ad valorem' rate of 20 percent – See Nigeria Government Can Earn N20 Billion from Tobacco and Alcohol Taxes Increase. the World Bank Prediction 25 June 2021 – See hppts;//www: thecable.ng

[xxix] FDAM Luoga, (Prof) – Income Tax Laws in Tanzania (2000) pp. 1-10 (published University of Dar es Salaam Press)

[xxx] (2005) 3 Malaya LJ 97, 98, 100 Federal Court of Malaysia is equivalent to Supreme Court of Nigeria and UK Supreme Court.

[xxxi] Eti-Osa LGA v. Jegede (2007) 10 NWLR (Pt. 1043) 543 per Dongban-Mensem JCA

[xxxii] O. D Akintoye and K.I. Olatinwo – Trends in Internally Generated Revenue (2022) Vol. 3 (No.1) pp196-207 Kwara State University L.J. Nigeria. O. Animashaun and O.Y.A. Hamid – Challenges in Internally Generated Revenue op.cit 182-195

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[xxxiii] Government of Republic of Ireland for the first time, acknowledged in its Budget 2015 and granted the informal sector self-employed, tax credit of 550 Euros and a reduction in Capital Gains Tax – See Web; labour.ie/dereknolan@oireachtas.ie

[xxxiv] Teju Somorin(Prof), - Tax Reference Book (2012) pp. 939-940.

[xxxv] See Appendix A - Rivers State Government of Nigeria Board of Internal Revenue Service (RVSG BIRS) Informal Sector Presumptive Tax Chart (ISPTC) Database

[xxxvi] See Cattle (Licensing and Taxation) Law (2005 Ebonyi State of Nigeria).

[xxxvii] (1985) ILRM 655 at 656.

[xxxviii] Tax exemption is not defined in the Act but in the case of Northern Nigerian Investment Limited v. FBIR (1978) FHCLR 57 Belgore J held that exempted income though primarily subject to income tax but enjoy exemption under another provision of the law. See also the case Australian Mutual Provident Society v. IRC (1962) AC 135 where it was similarly held that the word exempted income under S. 86 New Zealand Tax Act did not cover income which was not within the reach of New Zealand Tax Laws.

[xxxix] S.4 (3) Nigeria National Tax Policy.

[xl] Segun Ojobaro,– Revenue Generation Model of Lagos State (2014) 24th April Guardian Newspaper p.66.

[xli]Nigeria formerly exports her palm kernels abroad but this practice stopped many years ago. Palm kernel oil is now in use to support local pharmaceuticals industries. Palm Kernel oil has veritable business utility now explored by the Nigerian businesses. Palm kernel uses boosted Malaysian economy.

[xlii] (2000) 2 Malaya LJ 217 at 317 (CA-Kuala-Lumpur-Malaysia)

[xliii] Palm Oil Research Development Board v. Premium Vegetable Oil Limited (2005) 3 Malaya LJ 97 at 98 per Ram JCA

[xliv] (2005) 3 Malaya LJ 97, 98, 100 (Federal Court of Malaysia is equivalent to Nigerian Supreme Court).

[xlv] Ibid at 100 per Shim C.J.

[xlvi] Ibid at 101 per Ram JCA.

[xlvii] Personal Income (Amendment) Act 2011 (PITAA)

[xlviii] (1980) IMSLR 460

[xlix] (1966) 1 ALL NLR 247 (1992) 1 NTC 154

[l] Treaty Against Double Taxation Agreement (DTT)2005

[li] (1952) 12 WACA 331 at 337

[lii] (1973) 3 ECSLR 661

[liii] (above) 662-663

[liv] (1977) FHCLR 251 at 252

[lv] Criticisms - this case is controversial and appears wrongly decided because the commission was received in Nigeria in respect of 50 percent part(s) of the operations-in-Nigeria i.e., the introductions of clients were done in Nigeria and the income therefore has Nigeria source which FBIR could sever and tax that particular percentage attributable to Nigerian source and subject the percentage to Nigerian taxation.

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[lvi] (1939) 10 WACA 144 at 145

[lvii] Decided under S.14 (1) Non-Natives Income Tax (Protectorate) Ordinance 1931

[lviii] Shodipo & Macaulay Trustees of Methodist Church v. FBIR (1992) 1 NTC 273per Lambo J.

[lix] Shodipo & Macaulay Trustees of Methodist Church v. FBIR (above)

[lx] SS. 3 (1) (b) Personal Income Tax Act 1993 as amended by Act No. 20 2011.

[lxi] Re Bishop Lasbery (1939) 10 WACA 144 at 145.

[lxii] Proviso to S.2 (8) and S. 3 (1) (b) Personal Income Tax Amendment Act 2011 now defines taxable emolument as wages, salaries, including allowances, benefits in kind and any other income derived solely by reason of employment.

[lxiii] Moorehouse v. Dorland (1955) CH 285 at 299, Seymour v. Read (1926) AC 554 (1927) 11 TC 625, Moore v. Griffiths (1972) 3 ALL ER 399 at 441 and Herbert v. MCQuarde (1902) 2 KB 631 (1902) 5 TC 344

[lxiv] (1907) AC 104 (1907) 5 TC 344

[lxv] (1939) 10 WACA 144 at 145

[lxvi] S.10 (1) (b) Personal Income Tax Amendment Act 2011

[lxvii] S. 10 (1) (a) (ii) (iii) Personal Income Amendment Act 2011.

[lxviii] See the editorial – Taxation of Churches and Mosques (2014) Sunday Sun Newspaper 1st June p.11.

[lxix] SS. 3- & 8-Income Tax Law 1959 (Western Nigeria) and S.SS. 2, 3, (4) (a) (b) (c) Income Tax Management Act 1961.

[lxx] S. A. Authority v. Regional Tax Board (1970) ALL NLR 173 at 174

[lxxi] Abolished as wars are oulawed

[lxxii] See the condemnation of this crude method by Chechey W.A. (Now a Judge-High-Court-Port Harcourt) – Agbai v. Okagbue (below) titled "Self-help" Invalid Enforcement of Customary Law (1995) vol. 2 (No.1) Lawyers Bi-Annual Journal of International & Comparative Law pp.188-194

[lxxiii] (2006) 1-2 ABSLR 91 at 92 (Abia-State-Nigeria-High-Court-Arochukwu).

[lxxiv] *Okereke v. James* (2012) 16 *NWLR* (*Pt.* 1326) 339

[lxxv] (1991) 7 NWLR (Pt. 204) 391 at 443 (1991) 9- 10 SCNJ 49 at 69 and Nkpa V. Nkume (2001) 6 NWLR (Pt. 710) 223

[lxxvi] It is submitted court in James v. Okereke should have made consequential order on the recalcitrant member to pay interests for the period of refusal to pay.

[lxxvii] (1957) 2 ALL ER 402

[lxxviii] Gani-Fawehinmi v. President-of-Nigeria(2007) 14 NWLR (Pt..1054) 275 at 299.

[lxxix] Under SS. 1(a) (b), 2 (4) (a) (b) PITA (Amendment) Act 1996, indivioduals, communities and trustees are subject to Personal Income Tax.

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[lxxx]. See Ansaldo (Nigerian) Limited v. National Provident Funds Management Board (1991) 2 NWLR (Pt. 171) 392 at 405 where it was held that the three tiers of government, Federal, States and the local governments each operate the systems of collecting its revenue and money provided by each government is governed by separate Laws.

[lxxxi] Nakaude v. Jos Native Authority (1992) 1NTC 118 at121

[lxxxii] Shittu v. Nigerian Agricultural & Co-operative Bank Ltd. (2001) 10 NWLR (Pt. 721) 298 at 307 (CA).

[lxxxiii] JAA Agbonika.- Problems of Personal Income Tax in Nigeria (2012) p.331-332 (Ababa Press Ltd Ibadan).

[lxxxiv] Teju- Somorin p. 40.

[lxxxv] Fowler Babatunde – an expert in taxation with humane heart and flexible method in tax administration.

[lxxxvi] Ojobara S p.66.

[lxxxvii] Data from National Bureau Statistics (NBS) and Joint Tax Board (JTB)

[lxxxviii] Addax Petroleum Services Limited v. FBIR (2013) 9 TRLN 126.

[lxxxix] S.2 (2) b (i) S.2 (2) PITA 1993

[xc] (1980) IMSLR 460.

[xci] Karam v. Commissioner of Income Tax (1952) 12 WACA 331 at 337 and Aderawos Timbers Trading Co. Ltd v. FBIR (1966) 1 ALL NLR 247 (1992) 1 NTC 331 at 332. If there is evidence or strong proof of additional income, tax payer could suffer additional assessment and incurre additional tax liability – Cosmos v. Board of Internal Revenue (1973) 3 ECSLR 661 at 662 - 664 per Nwokedi CJ.

[xcii] Reiss & Co. Ltd v. FBIR (1977) FHCLR 251 at 252 and Re; Bishop Bertram Lasbury (below)

[xciii] Addax Petroleum Services Limited v. FBIR (2013) 9 TRLN 126 at 27-128.

[xciv] Shell Petroleum Development Co. Ltd v. FBIR (1996) 8 NWLR (Pt. 256) 294 at 295 (1996) 10 SCNJ 50 and Syarikat Jasa Buumi Limited v. Negeri (2000) 2 Malaya LJ 217 at 317 CA Kuala Lumpur Malaysia.

[xcv] S.3 (1) (a) Personal Income Tax Amendment Act 2011.

[xcvi] Arbico Limited v. FBIR (1968) 1 ALL NLR 263 and Shodipo v. FBIR (1972) FHCLR 35 (1992) 1 NTC 28.

[xcvii] (2015) 11 NWLR (Pt. 1470) 303 at 307-315 (CA)

[xcviii] that residing in a vessel cannot serve as a place of residence under PITA, except if there is no permanent place available for the taxpayer's domestic use in Nigeria and definition intended by PITA is factual residence and does not cover deemed residence – per Nweze JCA

[xcix] (above) 309 at 333-344

[c] NDDC v. RVSBIRS (2020) 3 NWLR (Pt. 1711) 371 CA

[ci] S.41 Personal Income Tax Act (PITA) 1993 as amended in 2011, Roberts v. Commissioner of Taxes (below) C/F S. 51 Company's Income Tax Act 1977 (CITA) as amended (Nigeria).

[cii] Infra Quest Limited v. Negeri (below).

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[ciii] The Rivers State Government of Nigeria Board of Internal Revenue Service (RVSG BIRS) Informal Sector Presumptive Tax Registration Form'

[civ] Shell Petroleum Development Co. Ltd V. FBIR (1996) 8 NWLR (Pt. 256) 294 at 295 (1996) 10 SCNJ 50 and Syarikat Jasa Bumi Limited v. Negeri (2000) 2 Malaya LJ 217 at 317 (CA Kuala Lumpur Malaysia).

[cv] S.3(1) (a) Personal Income Tax Act 1993 as amendment in 2011.

[cvi] Arbico Limited v. FBIR (1968) 1 ALL NLR 263 and Shodipo v. FBIR (1972) FHCLR 35 (1992) 1 NTC 28.

[cvii] S.54 (1) (2) (a) PITA 1993 as amended 2011 (Nigeria), S.161 Tax Assessment Act 1936 (Australia), S.33 Tax Administration Act 1994 (New Zealand)

[cviii] S.54 (1) (2) (a) PITA 1993 as amended 2011 (Nigeria), S. 72 (1) (Jamaica), S. 83 (1) (Trinidad & Tobago), S. 53 (1) (Barbados), S. 85 (1) (St Lucia) Income Tax Acts.

[cix] S.54 (1) (2) (a) PITA 1993 as amended 2011 (Nigeria).

[cx] (1924) Rhodesian LR 33 (High-Court-Bulawayo-Zimbabwe)

[cxi](2017) 7 Malaya LJ 35 at 36 per Bache J (Malaysia-High-Court).

[cxii]Commissioner for Inland Revenue v. Grover (1987) 2 NZLR 736 (New Zealand CA).

[cxiii] To ensure the validity of BOJ, RTA must first of all send written request demanding the taxpayer to file return – See Mohammadu v. Oturkpo LGA (1973) NNLR 112 where the court held that service of notice of assessment cannot be inferred and failure to serve it is not a mere defect in the procedure but nullifies all subsequent proceedings. It is only in default that valid BOJ could be issued. Strictly speaking, assessment must comply with this condition otherwise, it is null and void - See Ebosele v. State Tax Board (1976) 6 ECSLR 281 where the court held that income tax assessment made without a request for returns of income as provided by income tax law, was made without jurisdiction. In Makurdi LGA v. Billa (1973) NNLR 101, it was held that the court would only act where there is a certificate signed by duly authorized RTA showing sufficient evidence of the amount of tax which the taxpayer is owing.

[cxiv] S.54 (1) (2) (a) PITA 1993 as amended. Where the taxpayer does not furnish the returns within the 30 days' time limit the FBIR/SBIR is entitled to raise best of judgment assessment taking into account his/her earnings for the period in question – See Board of Internal Revenue v. Sholanke (1974) FHCLR 40 (Federal High Court of Nigeria Law Report) where taxpayer, a legal practitioner was assessed for arrears of tax and penalty for 3 years 1965 / 66, 1966 / 67, 1967 / 68 which he did not file statement of accounts of his professional income even though he was served with notice in writing. It was held that under S.24 PITA 1961 (Lagos State), if a notice was sent and taxpayer failed to furnish his professional income, the IRC was entitled to raise best of judgment assessment which must be fair, not punitive and not excessive. See also Government of Malaysia v. Singh (1986) 2 Malaya LJ 185 where the Supreme Court held that since there was no response to the various notices issued, the RTA was entitled to compute tax based on BOJ under S.91 (1) Income Tax Act and the onus to prove the allegation that the assessment was excessive, erroneous, malicious, vindictive lies on the taxpayer and in this case the burden had not been discharged. Similar views were expressed in Tanzanian cases – Karia v. Shah (1962) EALR 43 and Income Tax Commissioner v. Ngaremtoni Estate Limited (1970) EALR 511 (East African Law Reports) where CA held that the onus of proving the assessment was excessive, expenditures reasonably, necessarily, exclusively incurred cannot be discharged by providing false accounts. See also the West Indian, Guyana case of Argosy company Limited v. Commissioner Inland Revenue (1971) 2 WILR 502 at 503 where Privy Council held that RTA must also show the grounds on which they formed opinion that taxpayer was liable to pay tax on BOJ assessment and where there is no such prima facie evidence which no reasonable person could rely upon, such assessment is bad.

[cxv](1990) 38 WILR 344 Privy Council appeal from CA Trinidad and Tobago.

[cxvi] In Negeri v. Chong (below).

[cxvii] S. 72 (4) Income Tax Acts (Jamaica), S. 54 (Barbados), S. 86 (St. Lucia), S. 89 (Trinidad and Tobago)

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[cxviii] S.55 (1) PITA 1993 as amended 2011. Under S.48 CITA additional income latter discovered could induce FIRS to send additional assessment to the taxpayer - in OLA v. FBIR (1974) FHCLR 70 at 71 the Court held that if the FBIR after making an assessment discovers new source of income not included in the earlier assessment, they are justified to raise additional assessment after the service of the relevant notices on the taxpayers.

[cxix] Robinson – An Inquiry into Tax Assessment Processes (1980) Vol. 35 Tax Law Review 285

[cxx] (2012) 4 Malaya L.J 184 at 185

[cxxi] (1973) ECSLR 661 at 662-663 (East Central State of Nigeria Law Report).

[cxxii] See also Mobil Oil Nigeria Limited v. FBIR (2011) 5 TLRN 167 at 176-182 (Tax Law Report of Nigeria) where the Supreme Court of Nigeria held that additional assessment can be made on the discovery of new facts such as new source which disclosed additional income.

[cxxiii] S.57 Companies Income Tax Act (CITA) 2004 as amended. Individual tax payers must furnish FIRS or SBIR all information relating to the taxable income so that an assessment can be made regarding the amount payable as tax - See SS. 41,42,43,44,47, 51 CITA 1990 - See Mgbemene v. Board of Internal Revenue (1980) IMSLR 460 (Imo State of Nigeria Law Reports).

[cxxiv] S. 58 CITA 2004 as amended. Petroleum Profits Tax is also payable in dollars into Central Bank of Nigeria (CBN) account with designated Banks – See Shell Petroleum Development Co. Limited v. FBIR (2004) 3 FWLR (Pt. 859) 46

[cxxv] SS 52, 53, 54 and 55 CITA 2004.

[cxxvi] S. 65 (1) (2) (a) CITA 2004.

[cxxvii] S. 65 (1) (2) (b) CITA 2004.

[cxxviii] S. 65 (3) CITA 2004. 2004.

42. Suzette Chapple – Income Tax Dispute Resolution; Can We Learn from Other Jurisdictions? (1999) 2 Journal of Australian Taxation 312 at 318

[cxxx] S. 66 (1) CITA 2004. There is a requirement that the notice of assessment shall specify the particulars or details of tax liability of the tax payer - See Ola v. FBIR (above) per Omoh-Eboh J (as she then was)

[cxxxi] Commissioner for Taxpayers' Audit and Assessment (CTAA)

[cxxxii] S. 72 (4) Income Tax Act (Jamaica)

[cxxxiii] (2016) JMCA Civil 16

[cxxxiv] Jamaican Revenue Court is the equivalent of High Court.

[cxxxv] Unanimous decision of Dukharan, Sinclair-Haynes and Morrison JJA.

[cxxxvi] Ukpong v. Commissioner for Finance & Economic Development (2006) 19 NWLR (Pt. 1013) 187 (2006) 11-12 SC 36 (2007) 2 CLRN 1 at 24

[cxxxvii] S. 68 PITA 2004, Mohammadu v. Oturkpo LGA (below), Barclays Bank Limited v. Zimbabwe Revenue Authority (below).

[cxxxviii] In Mohammadu v. Oturkpo LGA (below) It is only in default that valid BOJ could be issued. Strictly speaking, assessment must comply with this condition otherwise, it is null and void

[cxxxix] (1973-1975) NNLR 113 See Mohammadu v. Oturkpo LGA (1973) NNLR 112 (Northern Nigeria Law Report)

[cxl](1976) 6 ECSLR 281

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[cxli] Also In Makurdi LGA v. Billa (1973) NNLR 101, it was held that the court would only act where

income tax assessment was made after a request for returns of income as provided by Income Tax Act and therefore assessment made in violation of this, was made without jurisdiction.

[cxlii] S. 57 PITA 1993 as amended 2011.

[cxliii] (2004) 2 Zimbabwe L.R 151 at 152

[cxliv] (2000) Kenya L.R. 587 at 588. In Ireland's cases of Deighan v. Hearne (1990) 1 IR 499 and Criminal Assets Bureau v. M (2001) 1 IR 121 O'Sullivan J held that prior demand note of the unpaid tax is required before the commencement of proceedings for the recovery of income tax which was due and payable.

[cxlv] In Malaysian jurisdiction, the notices of assessment validly posted to the taxpayer's last known address, may be accepted by the court as judicial and official acts regularly performed, in absence of the controverting evidence adduced by the taxpayer refuting the assertion – see Kerajan Malaysia v. Central Strata Limited (2013) 5 Malaya L.J 728 at 729 (High Court)

[cxlvi] (2020) 3 NWLR (Pt. 1711) 371 CA

[cxlvii] Pursuant to SS.54 (5) (a), 81 (1) (2) (3), 82, Personal Income Tax Act as amended (2011)

[cxlviii] Binh-Tran-Nam & Michael Walpole (above) at 478

[cxlix] S. 69 (1) CITA 2004.

[cl] It is 90 days – See S.165 Income Tax Act (Canada), 60 days - SS. 84 & 85 Income Tax Act (Kenya), 30 days – S.91 (4) Income Tax Act (Tanzania) , 30 days – SS. 101 &102 Income Tax (Uganda), 60 days - S. 14ZW(1)(aa) Tax Administration Act 1992 (Australia)

[cli] 30 days – See S. 76(1) Income Tax Acts (Jamaica), 59(1) (Barbados), S.97 (1) (St. Lucia) and S. 86(1) (Trinidad and Tobago).

[clii] S. 69 (2) (a) (b) (i) (ii) CITA 2004 (Nigeria).

[cliii] S.57 PITA 1993 as amended 2011(Nigeria).

[cliv] S. 58 (1) PITA 1993 as amended in 2011(Nigeria).

[clv] ICAN v. CITN (below).

[clvi] Westoil Petroleum Services Limited v. LSBIR (2012) 6 TLRN 48 50-51 and LSIRB v. SPDC (below)

[clvii] Lagos State Board of Internal Revenue v. Shell Petroleum Development Company Limited (2011) 5 TLRN 60 at 62 -63 per Adebiyi J

[clviii] Azikiwe v. FEDECO (below)

[clix] Adesola, S. M – Tax Law & Administration in Nigeria (1998) 2nd Ed. pp. 53-55 (OAU Press ILe-Ife).

[clx] Azikiwe v. FEDECO (below)

[clxi] (1979) NCLR 276 (1979) 3 LRN 286 (1979) ANSLR 1 (1979) BNSLR 136. (1979) 3 PLR 236.

[clxii] S. 72 (1) Electoral Act 1977 sets out the qualification for candidates for election and the word "year" in S. 72 (2) in relation to a failure to pay income tax refers to the 'fiscal year and not the calendar year'.

[clxiii] Azikiwe v. FEDECO (above) Anambra State High Court.

[clxiv] Objection suspends the obligation to pay the disputed tax in some countries such as Argentina Bolivia, Nigeria, Chile, Columbia, Peru, Dominic, Grenada, Trinidad and Tobago, Barbados, Guyana and Jamaica (50 percent is payable, in case of VAT) and interests are payable for frivolous/failed objection.

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[clxv] In countries such as Costa Rica, Uruguay, Venezuela, St. Lucia, St Kitts & Nevis, St. Vincent and Grenadines, allow certain percentage of the tax to be paid.

[clxvi] S. 69(5) CITA 2004. Amended assessment is a situation where the submitted administrative assessment is faulted and the original assessment earlier made is revised or amended in line with the new information revealed in the computation of tax liability.

[clxvii] (1967) NNLR 25 at 28 (1967) NCLR 99.

[clxviii] FBIR v. Nigerian General Insurance Company Limited (2012) 8 TLRN 106 at 109 where the Supreme Court held that the court has no power to reopen assessment which has become final and conclusive.

[clxix] The Jamaican RAD Commissioner must issue written decision within 60 days.

[clxx] NORA is issued in Nigeria, Kenya, Uganda, Tanzania and Zambian jurisdictions.

[clxxi] S. 58(3) PITA 1993 as amended 2011.

[clxxii] Onuigbo v. Commissioner for Internal Revenue (1963) 10 ENLR 123 where the taxpayer was assessed to pay tax of £96, 6 shillings and 3 pence. He filed a statement of account with schedule.

[clxxiii] Revenue Appeal Division Act 2015 (Jamaica).

[clxxiv] The taxpayer's right of appeal - S. 92 (1) Income Tax Act (Tanzania).

[clxxv] Canadian case of Jolicoeur v. Minister of National Revenue of Taxation 60 DTC 1254 (Exc. Ct.)

[clxxvi] 64 DTC 5199 (Ex.Ct)

[clxxvii] S.169 Income Tax Act (Canada)

[clxxviii] Arthur Scace & Douglas Ewens - Income Tax of Canada pp.580-584 (1983) (Carswell Publishers)

[clxxix] Appeal becomes operative after 180 days have elapsed - See SS.169, 170 Income Tax Act (Canada)

[clxxx] SS. 14ZYA (1) (2) Taxation Administration Act (1953) as amended.

[clxxxi] SS. 14ZYA (3) Taxation Administration Act (1953) as amended.

[clxxxii] Julie Cassidy – Concise Income Tax Law pp.65-73 (2004) 3rd Ed. (Federation Press New South Wales Australia)

[clxxxiii] (2011) 4 TLRN 113 at 115-119

[clxxxiv] Ibid at 115.

[clxxxv] Tax Appeal Tribunals and Federal High Courts respectively have jurisdictions over Federal Government (FGN) Taxes under Part 1 Taxes and Levies (Approved Lists for Collection) Act 1998.

[clxxxvi] Magistrate Courts' Law 1999 (Rivers), 2000 (Akwa-Ibom), 2004 (Cross Rivers) and 2006 (Bayelsa) and Revenue Court Law 1997 (Delta) States of Nigeria

[clxxxvii] Schedules 11 and 111 Taxes and Levies (Approved Lists for Collection) Act 1998.

[clxxxviii] Aderawo Timber Trading Co Limited v FBIR (1966) 1 ALL NLR 247 .

[clxxxix] Re; Bishop Bertram Lasbury (1939) 10 WACA 144 at 145 for liability for income tax arising from the employment in Nigeria whose allowances were received during vacation in England, were excluded from the Nigerian taxation.

[cxc] Reiss & Co (Nigeria) Limited v. FBIR (1977) FHCLR 251 at 252

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[cxci] (1952) 12 WACA 331 at 337. See also the

[cxcii] S. 8 (1) Revenue Court Law 1989 (Akwa-Ibom)

[cxciii] S. 8(2) Revenue Court Law 1989 (Akwa-Ibom)

[cxciv] (2002) 1 FHCLR 295 at 297-298

[cxcv] SS,68, 69, 70 S.73, Personal Income Tax Act..

[cxcvi] (2015) 11 NWLR (Pt. 1470) 303 at 307-315 (CA)

[cxcvii] Nigerian Bottling Co. Limited v. LSBIR (2000) 2 Lagos State HCLR (Pt. 8) 147 at 148-149.

[cxcviii] Shell PDC Limited v. Governor Lagos State & Etiosa LGA (2002) 3 Lagos State HCLR (Pts.28-29) 18, 19-21

[cxcix] (2021) 12 NWLR (Pt. 1789) 27

[cc] Under SS.2, 3 and 4 Personal Income Tax Act

[cci] Addax v. FIRS (2012) 7 TLRN 74

[ccii] JK Naiyeju – Opinion expressed in Annual Tax Conference Akwa-Ibom State 2012

[cciii] Cordelia Onyinye Omodera and KI Dandago - Tax Revenue and Public Service Delivery: Evidence From Nigeria - International Journal of Financial Research (February 2019) Vol. 10 (No,2) pp.82-91

[cciv] Under its Executive Director courageous and indefatigable Nsirimovu Anyakwe – an influential Human Rights Lawyer.

[ccv] See (2011) 17-23 June Beacon Newspaper p.12 decision of Opara J. Port Harcourt High Court dated 25 July 2013 suit No.PHC/2667/2010

[ccvi] (2014) 14 TLRN 9 at 14-18

[ccvii] Curiously the Learned Counsel for the claimant over-sighted to ask the Honourable Court for the refund of Social Services Contributory Levy Taxes already deducted from the salaries of the civil servants and other categories of employees in Rivers State in the enforcement of the Statute which has been nullified by the court. It is submitted that the Rivers State Board of Internal Revenue should grant them tax credits to off-set subsequent future tax liabilities. This is the most logical conclusion.

[ccviii] (2010) 4 CLRN 181

[ccix] (2007) 14 NWLR (Pt..1054) 275.

[ccx] Ibid at 299.

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