

THE LEGAL FRAMEWORK, PROCEDURE AND CHALLENGES OF TAX AUDIT AND INVESTIGATION IN NIGERIA: A COMPARATIVE ANALYSIS OF THE UNITED KINGDOM AND UNITED STATES OF AMERICA*

Abstract

The research examined the Legal Framework procedure and challenges of tax audit and investigation in the Nigerian tax system in relation to some other selected jurisdictions, viz: United Kingdom and United States of America. The rate of tax evasion and avoidance have reached an alarming dimension in Nigeria, to the extent that sporadic tax audit and investigations by tax authorities is inevitable to check revenue loss. However with the enactment of the Federal Inland Revenue (Establishment) Act 2007 as well as the Taxes and Levies (Approved list for collection Act) CAP T2, LFN 2004, the roles of the Revenue Services at the different tiers of government have been clearly spelt out, with minimal ambiguity, but not much reforms and researches have been carried out in the area of tax audit and investigation, hence the need for this research. Some of the major objectives of this work are: to examine tax avoidance and evasion in Nigeria, to identify key strategies by which responsibility of paying taxes can be inculcated into the culture of Nigerians, to identify key efforts needed to strengthen the level of tax audit and investigation in Nigeria as well as a comparative analysis of the Legal Framework and procedure for tax audit and investigation in Nigeria and other selected jurisdictions of the world. This research adopted the doctrinal approach, which involved the primary and secondary mode of data collection, by collecting data from the Constitution, Statutes, Case Law, textbooks, seminar papers, journal articles and online sources etc. Aside the twin problems of tax evasion and avoidance that have bedeviled tax audit and investigation in Nigeria, this research equally uncovered some other major challenges in tax audit and investigation in Nigeria such as corruption on the part of staff of the Revenue Service, poor tax administration, non-availability of tax statistics, transfer pricing and illicit capital flight. This research however made some recommendations which will enhance tax audit and investigation in Nigeria to include: Enthronement of the Rule of Law, Efficient and Effective Tax Administration, Promoting tax payers, education, imposing stiffer penalties for tax offences, judicious use of tax proceeds by the government etc. the research however brought to fore the fact that the Nigerian Tax system, however complex it may seem, have basic laws and/or provisions for tax audit and investigation, which if applied strictly will bring to the barest minimum, incidences of tax evasion and avoidance.

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INTRODUCTION

The rate of tax evasion and avoidance is on the increase in the Nigerian tax system and there is the urgent need to enhance audit and investigative activities by tax authorities/ revenue service. Until recently, tax administration in Nigeria had been largely low keyed. It may not be an exaggeration to state that, even now, payment of accurate tax is still as strange as rainfall in dry season to some segments of our society. The usual culprit for this state of affair is the over-dependence of successive governments on the more readily available petroleum profits. Taxation was therefore placed in the back burner of public discourse and governmental policy. Tax administrators were quite contented with returns filed by a few tax payers who bothered to do so, whether accurate or not. This is unlike what operates in other jurisdictions where inaccurate returns, non-payment of tax or under-remittance are all taken as criminal offences on the same pedestal as treason¹.

It is obvious that taxes are not usually paid with a smile. This should not be surprising, having regard to the fact that tax is a compulsory exaction of money by a public authority for public purposes.² As rightly noted in the United States case of *Michigan Employment Sec. Commission v. Patt*,³ tax is not a voluntary payment or donation but an enforced contribution which is exacted pursuant to legislative authority. In Nigeria, declaration of income and payment of tax are also civic obligations that have constitutional statutory sanction. The Constitution of the Federal Republic of Nigeria, 1999 provides that: “it shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly.”⁴

The failure of the citizenry, either by commission or omission, to accurately declare their income for the purpose of taxation may be an indication of tax evasion. This denotes activities which are responsible for a taxable person not paying the tax that he is under a legal obligation to pay.⁵ In other words, tax evasion is the failure to pay one’s tax liability through illegal or fraudulent returns or failure to make a return or even failure to pay tax as and when due⁶.

Statutory mechanisms are therefore required to enable the tax authorities to conduct audit and investigations into the affairs of the citizens to ensure that the revenues due to government are not lost by way of false returns. In this research, an attempt is made to examine the legal basis and the statutory provisions which are relevant to the tax authorities’ power of audit and investigation vis-à-vis what is obtainable in other jurisdictions.

¹ See for instance; Wesley Snipes jailed for tax evasion: www.abc.net.au/news/stories Gary Lineker’s brother jailed for tax fraud: www.dailymail.co.uk/news/artcile Dentist jailed for tax fraud: www.hihbeam.com/doc Tax Investigator jailed for tax fraud: www.readmedia.com.

² *Mathews v. Chicory Marketing Board* [1938] 60 CLR p. 263 at p. 276. This element of coercion is also obvious in the definition of tax as given in Nchi’s *The Nigerian Law Dictionary* to the effect that: tax is “compulsory payments to the state by individuals and business concerns of duties imposed on goods, services, income and wealth.” 315.

³ Mich. App. 224, 144 N. W. 2nd 663, p 665.

⁴ Section 24(d), the Constitution of the Federal Republic of Nigeria 1999 (as Amended).

⁵ A. Ayua, *Nigerian Tax Law*, (Ibadan: Spectrum Law Publishing, 1999) p. 265.

⁶ A. Ipaye, *Tax Audit and investigation: Procedures, techniques and Fraud*, Being a paper presented at a seminar organized by EFCC in April 2009, p.1-2.

Taxation can be referred to as a charge imposed by governmental authority upon property, individuals, or transactions to raise money for public purposes⁷. It is a means created by law for raising revenue for legitimate government functions⁸. The major aim of tax collection is to generate fund for the government so as to meet up with government expenditure. A tax policy is the bedrock of any successful tax regime. Before the advent of the British colonial masters in Nigeria, there had been some form of taxation. A system of direct taxation had been in existence in Nigeria, particularly in Northern Nigeria, where there was an efficient and stable administration based on Islamic system⁹

The power to impose tax is today primarily derived from the Constitution of the Federal Republic of Nigeria' 1999 (as amended in 2011). However it is important to note that the power to impose tax is not synonymous with the power to collect tax. The fact that a tier of government has power to collect or impose tax does not necessarily make it a beneficiary of the said tax.¹⁰ The Federal government regulates the payment of taxes which ordinarily accrue to the states.

Tax evasion can be described as the failure to pay one's tax, while tax avoidance is the reduction of one's tax liability through legal means which could be realistically seen to be fraudulent in nature. Tax evasion and avoidance in the Nigerian tax system can be properly and efficiently curbed if the tax authorities are alive to their responsibilities in the area of Tax Audits and Investigations. However, the main thrust of this research is an analysis of existing mechanisms employed in other jurisdictions, vis: United Kingdom and United States of America, in respect of tax audit and investigation. Such mechanisms include; cross border investigations, forensic analysis, the taxation of illegal income, net worth and cash expenditure method of proof, the whistle-blower program etc.

Taxation has become a major source of government revenue in recent times, especially in developed nations of the world, such as the United States of America and the United Kingdom. However, same cannot be said of developing nations as well as under-developed nations, especially in Sub-Saharan Africa. In Nigeria, there are a plethora of tax laws, which if enforced to the letter, our economy which presently depends on revenue from oil, will experience a major boost.

⁷ F. Nlerum, 'Reflection Capital Allowance in the Administration of Companies Income Taxation in Nigeria' (2009) 1(2) A.J.B.P.C.L.14.

⁸ F. Nlerum, 'Reflection Capital Allowance in the Administration of Companies Income Taxation in Nigeria' (2009) 1(2) A. J. B. P. C. L, 14.

⁹ M. Abdulrazaq, 'Judicial and Legislative Approaches to Tax Evasion and Avoidance in Nigeria' (1985) 29(1) J. A. L, 59.

¹⁰ M. Umenweke, Tax Law and its Implications for Foreign Investments in Nigeria (Enugu: Nolis Educational Publications, 2008) p. 47. see also, items 58 and 59 of the Exclusive legislative list and items 7, 8, 9 and 10 of the Concurrent legislative list contained in the second schedule of the Constitution of Federal Republic of Nigeria, 1999 (as amended).

The bane of the Nigerian tax system have been the twin vices of tax evasion and tax avoidance. The prevalence of tax evasion and avoidance in Nigeria cannot be overemphasized. Tax evasion is a contravention of the tax laws, whereby a taxable individual or company neglects to pay the tax due or reduces the tax liability by making fraudulent or untrue claims on the income tax form. Tax avoidance on the other hand, denotes those various devices which have been adopted with the aim of saving tax and thus, sheltering the tax-payer's income from greater liability which would have been incurred but for the tax avoidance devices¹¹

In other words, the distinction is that avoidance is legal while evasion is illegal, although the description of tax avoidance as legal is used with some caution in the light of new developments in this area. However, tax evasion and tax avoidance can be properly and efficiently checked or curbed if the revenue service carry out what is known as routine tax audit and investigation on tax payers, such that even if they are not totally eradicated, their incidences will be reduced to the barest minimum. It is against this backdrop that this work seeks to examine the legal frame work for Tax Audit and Investigation in Nigeria side by side with what is obtainable in other jurisdictions.

The Meaning of the Tax Audit and Investigation

Until recently, tax administration in Nigeria had been largely low keyed. It may not be an exaggeration to state that, even now, payment of accurate tax is still as strange as rainfall in dry season to some segments of our society. The usual culprit for this state of affair is the over-dependence of successive governments on the more readily available petroleum profits. Taxation was therefore placed in the back burner of public discourse and governmental policy. Tax administrators were quite contented with returns filed by a few tax payers who bothered to do so, whether accurate or not. This is unlike what operates in other jurisdictions where inaccurate returns, non-payment of tax or under-remittance are all taken as criminal offences on the same pedestal as treason.¹²

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¹¹M. Okorodudu, 'Measures against Tax Evasion and Avoidance; some Equity and suggested Reforms', A paper delivered at the 15th Annual Seminar staff conference of the Federal Inland Revenue Department in December 1985, p.2.

¹² See for instance; Wesley Snipes jailed for tax evasion: www.abc.net.au/news/stori Gary Lineker's brother jailed for tax fraud: www.dailymail.co.uk/news/artcile Dentist jailed for tax fraud: www.hihbeam.com/doc Tax Investigator jailed for tax fraud: www.readmedia.com.

¹³ *Mathews v. Chicory Marketing Board [1938] 60 CLR 263 at p. 276*. This element of coercion is also obvious in the definition of tax as given in Nchi's The Nigerian Law Dictionary to the effect that: tax is "compulsory payments to the state by individuals and business concerns of duties imposed on goods, services, income and wealth." 315.

¹⁴ Mich. App. 224, 144 N. W. 2nd 663, 665.

EHIGIATOR: The Legal Framework, Procedure And Challenges Of Tax Audit And Investigation In Nigeria: A Comparative Analysis Of The United Kingdom And United States Of America

every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly.¹⁵

The failure of the citizenry, either by commission or omission, to accurately declare their income for the purpose of taxation may be an indication of tax evasion. This denotes activities which are responsible for a taxable person not paying the tax that he is under a legal obligation to pay.¹⁶ In other words, tax evasion is the failure to pay one's tax liability through illegal or fraudulent returns or failure to make a return or even failure to pay tax as and when due.

Statutory mechanisms are therefore required to enable the tax authorities to conduct audit and investigations into the affairs of the citizens to ensure that the revenues due to government are not lost by way of false returns. In this research, an attempt is made to examine the legal basis and the statutory provisions which are relevant to the tax authorities' power of audit and investigation.¹⁷

In Taxation, the process in which the tax collection agencies review the return of an individual or company to see if all income, deductions and or credits reported, accurately reflect reality is known as Tax Audit. This is done to ensure that each individual/company (tax payer) pays his or her tax liability. Audits are conducted on a random basis or when something appears remiss on a tax return.¹⁸ In other words, tax audit is a review of tax payer's return by the revenue service, including an examination of the tax payer's books, vouchers and records supporting the return¹⁹

More-so, tax audits are similar to special audits. They are additional to statutory audits and are carried out by tax officials from relevant tax authorities. Basically, tax audit is an activity carried out or performed by government appointed Auditors/Revenue Service to determine if the appropriate taxes were paid in full by the entity being audited.

Tax audit is an examination of an individual or organization's tax report by the relevant tax authorities in order to ascertain compliance with applicable tax laws and regulations of the state. Furthermore, it is a process whereby the internal revenue service's attempt to confirm the figures an individual or organization has put in their tax returns.

The importance of tax audit in the Nigerian tax system, includes, but not restricted to the following:

- (i) It Creates an Avenue to Educate Tax Payers on the Various Provisions of the Tax Laws
- (ii) It Discourages Tax Evasion

¹⁵ Section 24(d). The Constitution of Nigeria, 1999 (as amended).

¹⁶ A. Ayua, Nigerian Tax Law, Spectrum Law Publishing, p. 265.

¹⁷ See, A. Ipaye, Tax Audit and Investigation: Procedures, Techniques and Fraud. Being a paper presented at a workshop on Detecting, Investigating and Prosecuting Tax Evasion organized by the Economic and Financial Crimes Commission, Lagos, April 2009.

¹⁸ Tax Audit and Investigation in Nigeria (Lagos: CITN Practice Series, 2002) pp. 14 – 18.

¹⁹ B. Garner, Black's Law Dictionary (8th edn, USA: West Africa Publishing Company, 1999) p.141.

- (iii) Detect and Correct Accounting/ Arithmetical Errors in Tax Returns
- (iv) Provides Feedback to the Management on Various Provisions of the Law and Recommend Possible Changes
- (v) To identify cases involving tax fraud and recommend them for proper investigations.
- (vi) Tax audit helps to encourage voluntary compliance which is one of the strong reasons in support of the self-assessment scheme.
- (vii) Tax audit helps to ensure that all applicable tax legislations have been complied with by the tax payer and also to forestall taxable person's failure to render tax returns or incomplete or inaccurate returns.
- (viii) To improve the degree of voluntary compliance by tax payers and ensure that the due amount is collected and remitted to government.

These are basically two forms of tax audit:

- (a) Desk Audit
- (b) Field Audit

As it stands now, tax audit seems to be an annual exercise and would appear to have the following achievements to its credit.²⁰

- (i) It has made the tax payers more conversant with the applicable tax laws;
- (ii) It has improved the compliance rate;
- (iii) It has added depth to the Nigeria tax practice because tax audits has involved the use of tax consultants by tax payers with some of the cases going to courts of law. Accountants and lawyers who specialize in taxation have been given the opportunities to test their skills and knowledge of taxation.
- (iv) It has helped in increasing the revenue of government.

Conclusively, the primary purpose of tax audit is to monitor and maintain the confidence in the integrity of the self-assessment system. It helps to improve voluntary compliance by detecting and bringing into account / to book, those who do not pay the correct amount of tax.

The Distinction Between Tax Audit and Tax Investigation

Tax Audit: Objectives and Procedures

- Tax Audit
- Tax Investigation
- Power to Investigate and Audit Financial Transaction
- Basis of Tax Audit and Investigation
- Who can Investigate
- Liability for Wrongful Investigation

²⁰ S. Ojo, *Elements of Tax Management and Practice in Nigeria* (Ibadan: Sagibra Tax Problem, 1988) p.68.

The Meaning of Tax Investigation: Objectives and Procedures

The stages involved in tax investigation, are as follows:²¹

- (a) Surveillance or Pre-Investigation Activities
- (b) Evidential Investigation
- (c) Case Preparation
- (d) Arraignment
- (e) Termination of Investigation

Key Elements of the Legal Framework for Tax Audit and Investigation

This research shall discuss the key elements of the legal framework, under the following subheads:

- (i) Tax payers Record Keeping Obligations:
- (ii) Giving Tax Officials access to Tax Payers Books and records:
- (iii) Giving Tax Officials, Access to Third Party Information Sources:
- (iv) Obtaining Information from other National Revenue Bodies:
- (v) Sanctions for Non-Compliance

Issues in Tax Audit and Investigation

There a number of issues in Tax Audit and Investigation. A modest effort will hereby be made to address some of these contemporary issues related to Tax Audit and Investigation. Some of these are summarized below:²²

- i. Responsibility for the result of Tax Audits
- ii. Definition of Income
- iii. Focus on Revenue Generation
- iv. Artificial Transactions, Global Income, Expatriates and Deemed Income
- v. Recovery of debt due to the State Government

Tax Fraud/Offences

This work discusses and considers Tax Evasion and Tax Avoidance as tax offences, since both methods are means of non-payment or under-payment of taxes, which the tax payer is liable to pay to the government. It has been argued overtime, that only tax evasion should be regarded as a tax offence²³.

Tax Evasion and Avoidance

- Tax Evasion
- Methods of Tax Evasion
- Tax Avoidance
- Methods Employed In Tax Avoidance

²¹ A. Owolabi, *Tax Audit and Investigation* (Lagos: CITN Practice Series, 2004) p.56.

²² O. Ladi and I. Henry: *Effects of Tax Audit on Revenue Generation: Federal Inland Revenue Service, Abuja Experience* (Journal of Good Governance and Sustainable Development in Africa, JGGSDA) Vol. 2, No. 4 May 2015 p. 71.

²³ M. Abdulrazaq, *Nigerian Tax Offences and Penalties* (Lagos: Priceton Publishing Company, 2014) p12.

Evasion, Fraud and Negligence²⁴

The difference between Avoidance and Evasion is crucial, DENTS HEALEY, when he was Chancellor of the UK Exchequer, famously described the distinction as the thickness of a prison wall. Avoidance is arranging ones affair, or structuring a transaction to reduce the tax liabilities which arises .Evasion is pretending that Asset or a transaction are other than they are in truth. In other words, Evasion is a type of fraud. A useful correction to some unclear thinking that has sometimes attempted to blur this vital distinction was given by Dawn Primarolo the Paymaster-General, in the House of Commons on 29th June 2000.

Historically, the provisions for dealing with evasions and fraud have differed according to the differing Taxes. In its investigation, the revenue makes use of information supplied by informant. From time to time, the revenue service makes payment for information supplied. The existence of this practice forms the subject of *R (on the application of church house) v IRC*²⁵ in that case an informer had been paid for information supplied on Tax Avoidance by a large company, but the Revenue Service declined to make a second payment for further information judicial review case, the informer failed in his attempt to obtain an order from the Court that a second payment be made to him.

Agencies Involved in Tax Audits and Investigations in Nigeria.

The Agencies responsible for tax audits and investigations are the same tax authorities responsible for the collection of the various taxes and levies imposed on the tax payers. Most times they carry out this onerous task, using their personnel, at other times, they engage the services of experts or firms who specialize in tax auditing, such as members of the Chartered Institute of Taxation of Nigeria (CITN). The aforesaid agencies/tax authorities include, the Federal Inland Revenue Service (FIRS), the Board of Internal Revenue of the various States of the Federation as well as the Revenue Committees of Local Government Areas.

The Prosecution Powers of the Federal Inland Revenue Service

The Service shall have powers to employ its own legal officers who shall have powers to prosecute any of the offences under this Act, subject to the powers of the Attorney- General of the Federation²⁶

Power to Compound Offences

Section 48 of the FIRS (Establishment) Act, 2007 provides:

1. The Service may compound any offence under this Act by accepting a sum of money not exceeding the maximum fine specified for the offence.
2. The Service shall issue an official receipt for any money received under subsection (1) of this section.

²⁴ Tiley & Collision UK Tax Guide (2013-14) pp .114,115,116.

²⁵ [2003) STC, p. 629.

²⁶ Section 47 of the FIRS (Establishment) Act, 2007.

Criminal Prosecution

Where in the course of its adjudication, the tribunal discovers Evidence of possible criminality; the tribunal shall be obliged to pass such information to the appropriate criminal prosecuting authorities, such as the office of the Attorney-General of the Federation or the Attorney-General of any State of the Federation or any relevant law enforcement agency.²⁷

Prosecution to be with Sanction of the Board

No prosecution in respect of an offence under this part of this Act may be commenced except at the instance of the relevant tax authority.²⁸

We must also take note that the provision of the part of this Act shall not affect any criminal proceeding under any other enactment.²⁹

Place of an Offence

An offence under this act shall be deemed to occur in the State or such place as the relevant tax authority may decide.³⁰

The Powers of the Revenue Service to Audit and Investigate Tax Payers.

The power of the tax authorities which includes the Federal Inland Revenue Service, State Board of Internal Revenue Service as well as the Revenue Committee of Local Government are set out as provided by the extant provisions of the various Revenue Laws, which shall be discussed briefly.

The power of the Revenue Service to audit is jealously guarded by the salient provisions of section 60 (4) of the Company Income Tax Act.³¹ The section empowers the Federal Inland Revenue Service to carry out tax audit. The subsection is reproduced below:

Nothing in the foregoing provisions of this section or in any other provisions of this Act shall be construed as precluding the Board from verifying by "tax audit any matter relating to the profits of a company or any matter relating to entries in any books, documents, accounts or return as the board may from time to time specify in any guidelines issued by the Board.

Furthermore, section 35 of the Federal Inland Revenue Service (Establishment) Act empowers the Revenue Service to carry out tax investigation. The section provides thus:

- 35 (1) The Service shall employ special purpose tax officers to assist any relevant law enforcement agency in the investigation of any offence under this Act.
- (2) Notwithstanding anything to the contrary in any other enactment or law, the Service shall have the power to investigate or cause investigation to be conducted to ascertain any violation of any tax law whether or not such violation has been reported to the Service.

²⁷ 5th Schedule, FIRS (Establishment) Act Para 12.

²⁸ Section 99 of PITA, *Op Cit*.

²⁹ *Ibid*, Section 100 of PITA.

³⁰ *Ibid*, Section 101 of PITA.

³¹ CAP Laws of the Federation of Nigeria, 2004.

- (3) In conducting any investigation under subsection (2) of this section, the Service may cause investigation to be conducted into the property of any taxable person if it appears to the Service that the lifestyle of the person and extent of the properties are not justified by his source of income.
- (4) Where any investigation under this section reveal the Commission of any offence or an attempt to commit any offence, the Service shall pursuant to section 48 of this Act undertake the prosecution of the offence.

Tax Audit and Investigation in England (United Kingdom)

England is only a part of the United Kingdom. Basically under this subheading this work seeks to discuss Tax Audit and Investigation randomly in the States that make up the United Kingdom, such as England, Wales, Scotland, and Ireland etc.

In the United Kingdom, many businesses are likely to face a routine tax audit from time to time. More serious tax investigations are likely if the Revenue Service (i.e. Her Majesty Revenue & Customs (HMRC) suspects that the taxpayers' returns are inaccurate³².

Tax audits and tax investigations can be complex and very stressful, unless the taxpayer is very sure of his tax returns, or otherwise he seeks professional advice prior to tax audit and investigation.

How likely is a Tax Audit or Investigation?

In England taxpayers should expect routine tax audits, if the taxpayer is registered for VAT i.e. Value Added Tax or have employees paid through Pay As You Earn scheme (PAYE). Tax audit is aimed at checking the taxpayer's records and systems, focusing on areas where mistakes are common.

In England routine tax audits are much less likely when it comes to Income Tax or Corporation Tax instead the focus is more on tax investigations where the HMRC has a reason to believe that the taxpayer is either making errors or deliberately concealing income. We should note that frequency of tax audits and the likelihood of in-depth tax investigations increases if HMRC suspects that tax is being underpaid.

Tax Investigations and Frequent tax audits are more likely, if:

- i). The taxpayer files tax returns late, pays tax late or make errors that needs to be corrected.
- ii) There are inconsistencies or substantial variations between different returns, such as a larger fall in income or increase in cost.
- iii) The taxpayer's costs are abnormally high for businesses in that particular sector of the economy.
- iv) The taxpayer's tax returns are inconsistent with how busy the business actually is or the standard of living of the taxpayer
- v) The taxpayer has offshore bank accounts/income from property.

³² *Brown, Tax Audit and Investigation in England' [http://www. Tax donut.co.uk](http://www.Taxdonut.co.uk)Accessed on the July 23, 2018.*

EHIGIATOR: The Legal Framework, Procedure And Challenges Of Tax Audit And Investigation In Nigeria: A Comparative Analysis Of The United Kingdom And United States Of America

- vi) The taxpayer operates in a high risk industry, such as businesses that routinely take cash payments.
- vii) The taxpayer has been reported to the Revenue Service (HMRC)

In England, the taxpayer is free or at liberty to seek insurance cover against the cost of a tax audit or tax investigation.

Notification of a Tax Audit or Tax Investigation

The first thing a taxpayer gets to know about tax audit or tax investigation is when the HMRC contacts the taxpayer. In tax audit, officials of the HMRC visit the taxpayer to check tax records while in tax investigation, the HMRC writes to the taxpayer, demanding for information and whether the HMRC is investigating a particular aspect of the taxpayer's return or carrying out a full tax investigation, i.e. in instances where tax fraud is suspected.

Tax Audit and Investigation in United States of America (USA)³³

The major problem with the tax system in the United States of American is Tax evasion, and a lot has been done in this area by the Internal Revenue Service (IRS) as well as the American government. The research will hereunder treat some of the measures so far adopted in America and also urge the Federal Inland Revenue Service (FIRS) as well as the Nigeria government to take a clue from what the United States of America has done, in the area of auditing and Investigation.

Tax evasion is the general term for efforts by individuals, corporations, trusts and other entities to evade taxes by illegal means. Tax evasion usually entails taxpayers deliberately misrepresenting or concealing the true state of their affairs to the tax authorities to reduce their tax liability and this includes, in particular, dishonest tax reporting, as declaring less income, profits or gains than actually earned or even overstating deduction.

To curb tax evasion, the government of the United States of America undertook the Taxpayer Compliance Measurement Programme (TCMP), which was an attempt to check unreported income and the tax gap. The tax gap is the difference between the amount of tax legally owed and the amount actually collected by the government. The 'TCMP program was believed to have produced the most reliable information about noncompliance. But later this system of tax audit was seen to be too intrusive into the taxpayers' affairs and as such it was discontinued.

However under the Federal law of the United States of America, taxpayers who are found guilty of non-compliance are liable to fines and imprisonments. The Internal Revenue Service (IRS) has identified small business and sole proprietorship employees as the largest contributors to the tax gap between what Americans owe in federal taxes and what the Federal Government receives. The Internal Revenue Service (IRS) has developed several methods of proof of income tax evasion in an effort to decrease the tax gap. These investigations can be carried out

³³ B. Brian, "Tax Evasion: The Effects on the American Economy" <http://tax.usa.com> – Accessed on July 23, 2018.

to determine the correctness of any tax return, make a return where none has been made, determine the liability of any person for any income tax or collect any income tax.

The Internal Revenue Service has the authority to summon the taxpayer to provide particular information for purposes of investigating and ascertaining the correctness of the tax return. The information requested may include books, records, papers and any other data which may be relevant to the investigation. However, the Internal Revenue Service (IRS) Investigator must follow all proper administrative steps in obtaining the information. It is worthy of mention, that there is a very thin line i.e. a very little distinction between Tax audit and Tax investigation in the United States of America, as both are seen to complement each other, in practice.

In the United States of America, there is a measure otherwise known as the Suspicious Activity Report Review Teams (SAR Review Teams) which consist of Law Enforcement Agencies from Federal, State and Local levels and operate in 80 of the 94 Federal Judicial districts. The main purpose of the SAR Review Team is to systematically review all suspicious transaction reports that affect a specific geographic jurisdiction, identify individuals who may have engaged in criminal activities, and co-ordinate and disseminate to appropriate agencies for follow-up. A case in point is the recent list released by FBI in August 2019 of about 177 Nigerians who are said to be allegedly involved in internet fraud.

Tax Audit and Investigation in the Republic South Africa

The body or commission of Government that is responsible for Tax audit and Investigation in South Africa is the South African Revenue Services (SARS). There has been a lot of audit activity by the SARS lately and the activity is expected to increase. While there is a move by SARS to become more client oriented, specialist audit teams comprised of well qualified professionals is focusing on closing the tax compliance gap. Should a taxpayer be in a position of non-compliance, such a taxpayer should expect to be audited and possibly investigated. Although, many taxpayers pride themselves in getting away, the reality is that once the specialists at the SARS lay their hands on their contact/number or address, they will surely get the due taxes from them and being ignorant about their power has left so many unprepared taxpayers a lot poorer, in the real sense of it.

Here is a list of the rules that should guide a taxpayer, who ought to pay his taxes via SARS.

- (i) Whether the person/company is an employer or individual subject to audit, always remember to have your paper work up to date and in order, as starting to think about a defence when you are to be audited, is too late. You need to be strategic and in order to achieve the best outcome; you should have evidence to back the positions you take.
- (ii) Non-disclosure is not planning. When caught, you will have 200% penalties and criminal sanction charges to deal with. One may ask, anything can be tracked to a bank account, your estate when it is to be wound up, when a family member or an unhappy employee or anyone who may not like you, decides to make a report against you, work permit applications, etc. any professional who knows is now under legal obligation to tell. People get caught in many unique and interesting ways. All that is important, is that you know,

EHIGIATOR: The Legal Framework, Procedure And Challenges Of Tax Audit And Investigation In Nigeria: A Comparative Analysis Of The United Kingdom And United States Of America

that people or taxpayers are caught, audited or investigated these days, more often than ever before and that non disclosure does not reduce your tax liability.

- (iii) Be careful, what you tell SARS when you are been investigated. Your responses to their seemingly innocent questions often turn out to be their best reason to attack you therefore a taxpayer should not prejudice himself.
- (iv) When you get a letter of findings to be extra careful it is necessary that you take heed.
- (v) Non-disclosure and fraud never prescribes, assessments prescribes after three years.
- (vi) Seeking professional help in dealing with SARS is often worth the cost. The taxpayer should know when to disagree and take on the SARS and also when to take a softer approach.

A Comparative Analysis of Tax Audit and Investigation in UK, USA, South Africa and Nigeria.

In Nigeria, the tax laws which are in operation are good laws, but the bane of the Nigerian tax system, have been the existence of the loopholes, as already identified in chapter three of this work, coupled with the incidents of Tax evasion and avoidance on the part of taxpayers. The study of the tax audit and Investigation methods adopted in other climes and jurisdictions show that Nigeria is not completely out of tune with modern day practices. For instance, in the United States of America, the whistle-Blower program has become very effective in checking the rate of tax evasion and avoidance. Similarly, Section 37(1) and (2) of the FIRS Act equally supports the Whistle Blower program.

Section 37(1) of the FIRS (Establishment) Act, provides:

The Service may with the approval of the Board pay any reward to any person, not being a person employed in the Service, in respect of any information that may be of assistance to the Service in the performance of its duties under this Act upon meeting such conditions as may be determined by the Board and the quantum of such reward shall also be at the discretion of the Board.

Section 37(2) of the FIRS Act further provides that, such an informant shall be protected by virtue of the provisions of section 39 of the same Act. In the United States, the parastatal that is responsible for tax investigations and audits is the Treasury Inspector-General for Tax Administration (TIGTA) which is distinct from the Internal Revenue Service. Similarly in Nigeria, section 8(1)(e) of the FIRS (Establishment)Act provides that:

The Service shall in collaboration with relevant law enforcement agencies, carry out the examination and investigation of all cases of tax fraud and evasion with a view to enforcing compliance with the provisions of this Act.

In England, the HMRC carries out criminal Investigation in tax related offences, these powers are contained in the Police Criminal Evidence Act (PACE) 1984, while similar powers are contained in sections 26, 27, 33 of the FIRS Act. There is no identifiable distinction between methods adopted in respect of tax audit and investigation in South Africa and Nigeria, except that tax audit and investigation are a bit more frequent in South Africa than in Nigeria.

Finally, the United States of America adopts the forensic analytics, which is similar to the provisions of section 8(1) (g), which is to the extent that the service shall adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax evasion or fraud.

Furthermore, the United States has also adopted the Networth and Cash Expenditure methods of Proof, which includes taking into account the assets of the taxpayer, while in Nigeria, section 3 5(3) of the FIRS Act provides that “the Service shall employ special purpose Tax officers to assist in conducting any investigation on any violation of the tax law. The Service may cause investigation to be conducted into the properties of any taxable person, if it appears to the Service that the life-style of the person and extent of the properties are not justified by his source of income.

From the foregoing comparison, it is argued that Nigerian tax laws have adequately provided a framework for tax audit and investigation. However, what is required is a strict compliance with the laws, the same way it is done in developed countries of the world. The FIRS in Nigeria must as a matter of fact engage in routine and spontaneous tax audits and investigations of taxpayers. Furthermore, stricter penalties should be prescribed for the various tax penalties and conclusively, the Nigerian government should try as much as possible to encourage the taxation of illegal income, as obtainable in the United States of America.

The Defects Inherent in Tax Audit and Investigation in Nigeria

The Nigerian tax system though has improved tremendously over time but still faced/plagued with a plethora of defects which include but not restricted to the following:

- The Use of Force in the Collection of Taxes
- Invalid Assessments by Tax Authorities
- Incidence of Multiple Taxation
- The Overbearing Power of the Federal Inland Revenue Service over other Tax Authorities
- Intimidation/ Harassment of the Taxpayer during Auditing and Investigation by Tax Officers.
- Human right abuses on Tax payers by officers of the Revenue Service

The Challenges Identified in Tax Audit and Investigation in Nigeria

Herein below discussed are some of the major challenges that are apparent in tax audit and investigation in the Nigerian Tax system:

- Corruption on the part of the Staff of the Revenue Service
- Poor Tax Administration
- Non-Availability of Tax Statistics
- Recruitment of Under-Qualified Tax Personnel
- Illicit Capital Flight (Money Laundering)
- Tax Fraud and Evasion/ Tax Avoidance
- Inability to Prioritize Tax Effort
- Complexity of Tax Laws.

- Absence of the Spirit of Civic Responsibility among Taxpayers.

Conclusion

This work discussed several recommendations that would aid effective tax Audit and tax investigation in the Nigerian tax system. It is also pertinent to state without much ado, that Tax evasion and avoidance are very serious societal problems that have caused much concern and major setback on revenue collection in Nigeria. From all indications it is now clear that if government engages in a complete re-organization of the administrative machineries, the twin problems of tax evasion and avoidance will be reduced to a tolerable limit, if not totally eradicated. It is equally important for the various state governments to make frantic efforts aimed at educating the tax illiterates of their civic responsibilities. Such enlightenment on tax evasion and avoidance will go a long way to reduce the states over dependence on federal allocation, in that when proper and efficient tax audit and investigations are conducted by the relevant authorities, it will boost the inflow of revenue.

Moreso to avoid the present situation where states adopt some very crude and inhuman methods of tax audit and investigations, the methods should be unified. To complement this effort, specialized tax judges should be engaged to preside over tax matters promptly and efficiently and to foster tax compliance and respect. The Joint Tax Board's initiative that tax consultants should not be involved in primary taxation functions is however a step in the right direction, because it upholds the tenets and the spirit of the Taxes and Levies (Approved list for collection) Act 1998, but I am of the view that such consultations should be engaged in secondary taxation functions, such as tax audit and investigation to the extent that consultants found contravening the law should be prosecuted by the Attorney General and the relevant professional association, such as the Chartered Institute of Taxation of Nigeria, Institute of Chartered Accountants of Nigeria, etc can also take disciplinary steps against any of such consultants who is a member of their Professional body or Institute.

May, I also quickly add that in addressing the problem of corruption and entrenching accountability and probity in issues of finance, in our public services delivery, there is need for continuous dialogue between the government and the citizenry on taxation matters. This does not; however replace the need for tax education and information dissemination and enlightenment campaigns on critical issues relating to tax administration. The government must be honest and more transparent with regard to the way public funds are dispensed. Tax Law defaulters must be prosecuted accordingly, else the entire citizenry will not take issues of taxation seriously.

There is no gainsaying the fact that over the years, the Nigerian tax laws have been noted for their complex structure, tax laws must be understandable to all, and should be couched in simple language, furthermore the repeated numerous amendments that are incorporated into the yearly budgets should be aligned with the principal legislation to avoid confusion. From all indications, it is clear that if government can harken to the recommendations set out in this research work, the level of tax audit and investigation in the Nigerian Tax System, will be maximally enhanced.

Recommendations

This researcher having painstakingly gone through the major defects and challenges that are apparent in Tax Audit and Investigation in Nigeria, shall at this juncture, attempt to proffer a few

recommendations, to curb the defects and challenges highlighted in chapter three of this research work. The recommendations herein below highlighted are only some of such, as the list of recommendations is not exhaustive.

1. Enthronement of the Rule of Law
2. Efficient and Effective Tax Administrations
3. The Use of Computer Technology
4. Promoting Tax Payers Education
5. Imposing Stiffer Penalties for Tax offences
6. Judicious use of Tax Proceeds by the Government
7. Suitable and Qualified Personnel should be Recruited by Tax Agencies
8. Creation of a Well Remunerated, Motivated and Dedicated Workforce with Exciting Career Paths
9. Reduction of Compliance Requirements
10. Introduction of Tax Education at the Elementary School Level
11. Embedding Ethics, Integrity and Responsibility into our Culture and people. to Eradicate Corruption in the Tax System
12. Privatization of the Agencies responsible for Tax enforcement
13. Taking a Census of all Eligible Tax Payers
14. Access to Suspicious Transactions Reports, by the Tax Authorities
15. Setting up of Joint Investigation Teams
16. Secondments and Co-allocation of Personnel

Contributions to Knowledge

This research has made the following contributions to knowledge in the area of tax audit and investigation in Nigeria.

1. That the full implementation and domestication of taxation treaties, aids supports and encourages tax audit and investigation in a tax system.
2. The need for the tax education cannot be over emphasized, as there may be less need for tax audit and investigation on tax payers, where there is proper enlightenment.
3. This research equally revealed that despite the enabling legal and institutional framework for tax audit and investigation in Nigeria, the reality is that implementation of same is poor as incidences of tax evasion and avoidance still abound, while the tax authorities seen helpless and not tactical.
4. This research has equally exposed the fact that revenue/tax officials in Nigeria need to be trained and retrained in the area of tax audit and investigation.
5. Finally, this research work also brought to fore, the need to track illicit capital flights and/or money laundering, with the use of tax audit and investigation mechanisms.