



NATIONAL OPEN UNIVERSITY OF NIGERIA

SCHOOL OF LAW

COURSE CODE: Law 434

COURSE TITLE: Law of Taxation II

NATIONAL OPEN UNIVERSITY OF NIGERIA
LAW OF TAXATION II

Course Title: Law of Taxation II
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Course Developer/Writer: Mr. Saka Olokooba Mohammed

GENERAL INTRODUCTION

Tax is dynamic in nature, and that is why a system of taxation varies from one country to another. As a student, you need to appreciate the fact that tax is part of the price to be paid for living in an organized and orderly society, for if this is not done the miscreants produced through the inequality in the system will be a source of constant irritation to the well-being of those who even have. (Lekan et al, 2006:2).

This course (Law of Taxation II) is the second part of the Law of Taxation 1 (Law 433), and the major aims and objectives of the course is to broaden your knowledge on law of Taxation in Nigeria as relates to different Taxes, Taxing powers of different tiers of Government Duties imposed by the Government in Taxation, Tax treatment of women and special group; all in a bid to appreciate bottle problems and prospects of taxation in Nigeria.

There will be 6 Modules in this Course which are subdivided into 12 Study Units. In module 1 you will be introduced to some case Law definitions of tax. The reason for this is to show and enlighten you on some categories of charges that looks like tax but which under the Nigerian Tax statutes is not one.

In module 2 you will be taught the duties imposed by government in the Nigerian Tax system. While in module 3, taxing powers of Government will be examined.

Module 4 introduces you the problems of taxation, while Company taxation and reliefs are discussed in module 5.

Tax treatment of women, special groups, pensions and gratuities etc. constitutes module 6. The content of the units are as follows:

MODULE 1 DIFFERENT TAXES

Unit 1	Tax Identification
Unit 2	Types of Taxes
MODULE 2	TAXING POWERS
Unit 1	Definition of Taxing Power
Unit 2	Examination of Federal, State and Local Government Taxing Powers in Nigeria
MODULE 3	PROBLEM OF TAXATION IN NIGERIA
Unit 1	Major Taxation Problems in Nigeria
Unit 2	Solutions to taxation problems in Nigeria
MODULE 4	DUTIES IMPOSED BY GOVERNMENT
Unit 1	Stamp Duties
Unit 2	Other Categories of Duties
MODULE 5	COMPANY TAXATION AND EXEMPTIONS
Unit 1	Administration of and Chargeability to Company Tax in Nigeria
Unit 2	Company Tax Exemption and reliefs
MODULE 6	WOMEN AND SPECIAL GROUPS TREATMENT TO TAX
Unit 1	Imposition of Personal Tax and Income chargeable
Unit 2	Personal tax exemptions and reliefs

MODULE 1

DIFFERENT TAXES

UNIT 1 IDENTIFICATION OF TAX

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- 1.0 INTRODUCTION
- 2.0 UNIT OBJECTIVES
- 3.0 MAIN CONTENT
 - 3.1 IDENTIFICATION OF TAX
 - 3.1.1 What is not Tax?
 - 3.1.2 What is Tax?
 - 3.1.3 How do you identify an item as a tax?
- 4.0 CONCLUSION
- 5.0 SUMMARY
- 6.0 TUTOR-MARKED ASSIGNMENTS
- 7.0 REFERENCE/FURTHER READINGS

1.0 INTRODUCTION

In Nigeria, tax is a major source of revenue generation. It is a source that government at all levels relied upon to generate fund to execute one form of project or another. Different forms of taxes under different names i.e charges, tolls, fees e.t.c are levied on the citizenry, ironically, not all these charges and levies qualify as tax under the law. Therefore it is pertinent for you to know and have a clear knowledge on the legal status of some of these charges and to know the proper constitution of tax under the Nigerian law.

2.0 UNIT OBJECTIVES

At the completion of the course, you are expected to be able to:

- i. Identify what constitute proper tax and others that look like tax but are not tax under the Nigerian Tax system.
- ii. Appreciate some case law definition of tax

3.0 MAIN CONTENT

3.1 IDENTIFICATION OF TAX

First and foremost, you should know that tax was only described and not defined in whatever form in the Nigerian Tax Statute. Therefore, any definition of tax you must have come across or you are about to be taught are purely a derivation of either the case law, that is the courts perception of what constitute tax or it may be literature base, that book writers definitions of what they believed tax is. In order words, a simple or single definition may not and is likely not to have all encompassing application. Therefore, in defining a tax, it is better to look at its essential characteristics rather than its name (Ipaye, 2002:4).

However, since you must have been exposed to some definitions of tax in Law of Taxation 1 (Law 433) which was the first part of this course, the importance of outlining some more definitions is to serve as a reminder and to help you to know how to identify the constituents of tax under the Nigerian law which will ultimately serve as the foundation of what you are about to be taught in this course.

In order to have a firm and grip understanding of the course, let us first examine what looks like tax but which is not one before we dwell more on to what tax really is.

3.1.1 What is not Tax?

You must have witnessed, heard, or experienced, or on several occasions when Government at all levels levied some sorts of charges, fine, penalties, fees and contributions on the populace for the purpose of providing certain services. Most of the times, the misconceptions on all these charges were that, taxes were being paid. The questions now are:

- Is any charge, fee or levy by government with the aims of providing commensurate services to the people a tax?
- Is a voluntary contribution by the people encouraged by government at whatever level for the execution of a public project, a tax?

The answer is simply No. This is because;

- a. While tax is a compulsory contribution backed by law, charges, fees, tolls, are not.
- b. While fines, penalties are levied as a punishment for crime committed, taxes are mere contributory aid to the government.
- c. While fees, fines, penalties and other categories of charges may be arbitrarily fixed, tax must pass through the process of law making in the state before it becomes a tax.
- d. While a payer can lay claim to a commensurate benefit from charges or fees contributed, a tax payer cannot claim a direct benefit from the government that is equivalent to the amount of tax paid (Nike, 2011: 4).
- e. While a tax is a statutory collection which is not directed to the provision of a specific benefit, other charges by imposed for a particular service rendered (Ipaye: 4).

3.1.2 What is Tax?

Remember, there has not been a single all encompassing definition of tax, therefore our effort here will be to outline some case law definitions of tax and to

supplement same with some book writer's definitions and the common features that if detected in charges and other contributions qualities them as a tax.

Case Law definition of Tax

- In the case of **Mathew Chicory Marketing Board (v) 1935 60 CLR, 263 at p: 276**, tax was defined as a compulsory extraction of money by a public authority for public purposes.
- In **United State vs Butler 2229 us 1 (1935) at p:61** per Mr. Justice Robers, tax was defined simply as an exaction for the support of the government.
- In **Michigan Employment Sec Commission vs Patt; 4 Mich-App 224 14 N.W 2nd 663**, tax was defined a non voluntary or donation, but an enforced/compulsory contribution, exacted pursuant to legislative authority.

Invariably therefore a tax can be said to be a compulsory and definite amount levy on adult citizenry of a particular country the collection of which is backed by the statutory provision of a state. A tax is a pecuniary burden laid upon individual or property to support government expenditure. Therefore, a tax is not levied in return for any specific service or services rendered by the government. (Lekan et al, (2006). Tax according to the National Tax policy for Nigeria is a monetary charge on a person's or entity's income, property or transaction and is usually collected by a defined authority at the federal; and state level.

3.1.3 How do you identify an item as a tax?

The presence of the under listed characteristics/ features could be used to determine that an item is a tax.

- i. Compulsion: It is a compulsory contribution
- ii. Backed by law: it is backed by law
- iii. Fixed amount: it is a definite and fixed amount
- iv. Adult: It is levied on Adult
- v. Annually: It is paid annually

- vi. Not commensurate: The benefit is not directly commensurate with amount contributed.
- vii. Income & Asset: It is paid on income and Asset.

SELF ASSESSMENT EXERCISE 1

- Briefly outline some case law definitions of Tax
- Examine the difference between fines, fees, penalties and tax
- What are the major characteristics/features that make tax, a tax?

4.0 CONCLUSION

It has been established in this unit that, many charges that people thought are taxes are in fact, not one. The unit further reveals that instead of using names or purpose of charges to determine what tax is, it is more appropriate to look at the features and characteristics of charges or levies. Therefore, no matter the name given to a charge, on it is compelled and statutorily backed by the law of the state, it is a tax.

5.0 SUMMARY

We have in this unit discussed.

- What is tax
- Other charges that look like tax but not one under the Nigerian tax statutes
- How to identify the constituents of tax

6.0 TUTOR-MARKED ASSIGNMENTS

- Tax, charges, fines and penalties are payment to government purse and means of generating revenue; they look alike but are not the same-Discuss.
- A simple or single definition of tax may not and is likely not to have encompassing application. Therefore, in defining a tax, it is better to look at its essential characteristics rather than its name. (Ipaye: 4). As a student of tax law, examine the aptness of this statement.

7.0 REFERENCE/FURTHER READINGS

- Ayua I.A. (1996)** The Nigerian Tax Law, Lagos: Spectrum Law Publishing.
- Abdulrazaq M.T. (1993)** Principle and Practice of Nigerian Tax
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UNIT 2 TYPES OF TAXES

CONTENTS

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3.0 MAIN CONTENT

3.1 TYPES OF TAXES

3.2 PROPORTIONAL TAX SYSTEM

3.2.1 Advantages of Proportional Tax

3.2.2 Disadvantages of Proportional Tax

3.3 PROGRESSIVE TAX SYSTEM

3.3.1 Advantages of Progressive Tax

3.3.2 Disadvantages of Progressive Tax

3.4 REGRESSIVE TAX SYSTEM

3.5 DIRECT TAX SYSTEM

3.6 INDIRECT TAX SYSTEM

4.0 CONCLUSION

5.0 SUMMARY

6.0 TUTOR-MARKED ASSIGNMENTS

7.0 REFERENCE/FURTHER READINGS

1.0 INTRODUCTION

In categorizing tax, you can either use income theory or incidence theory. Income theory is a theory whereby tax classification is based on the percentage or amount of income of the tax payer. Under this theory, taxes are classified into proportional, progressive and Regressive taxes.

Incidence theory on the other hand, is the classification of tax based on where lies the incidence of such taxes. Under this theory, taxes are classified into direct and indirect taxes. In this unit, you will be exposed to a detail examination of each category of taxes, advantages and disadvantages of each.

2.0 UNIT OBJECTIVES

At the completion of this unit, you are expected to be able to:

- i. Identify what constitute proper tax and others that look like tax but are not tax under the Nigerian Tax system.
- ii. Identify different categories of taxes we have under the Nigerian tax system
- iii Demonstrate a clear understanding of the advantages and disadvantages of each categories of taxes

3.0 MAIN CONTENTS

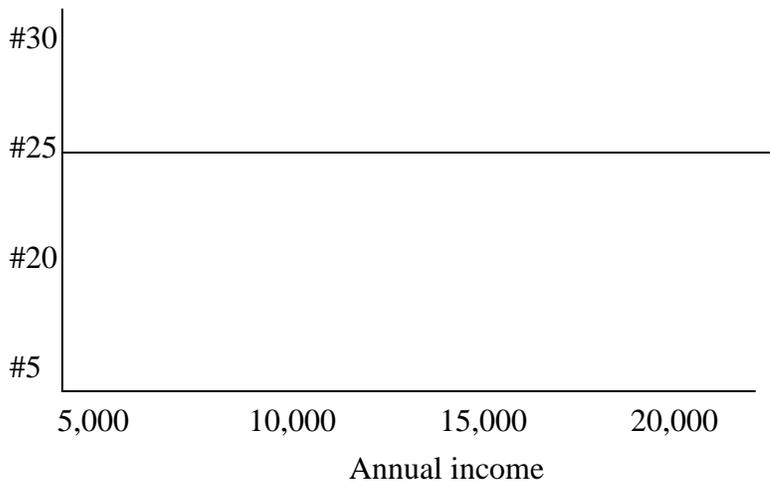
3.1 DIFFERENT TYPE OF TAXES

3.2 PROPORTIONAL TAX SYSTEM

Proportional tax is the tax that is paid by each tax payers premised on the same ratio to the amount to be raised as the value of his property bears to the total taxable income. In order words, a proportional of income (M.T Abdulrasaq 1993:6).

In order words, in the proportional tax system, the percentage of tax rate remains the same as tax base increases. As a result the amount of tax paid is proportional to the tax base. (Lekan: 7). Therefore if the tax rate is 25% every person shall have to pay income tax at this rate and a person whole income double pay double the amount tax.

Proportional Tax System



3.2.1 Advantages of proportional Tax System

The following are the advantages of proportional tax system

- Equality: Payment of equal percentage based on income is achievable
- Simplicity: The calculation of tax is on proportional basis is easy for any body to do.
- It does not affect income distribution: No matter your income, every person pays the same rate of tax.
- Neutralizing effects: It has neutralizing effects on saving and incentives (Lekan n:8)

- Non distributing: This tax system distributes the economy as little as possible because every person contributes as nearly as possible in proportion to his ability to pay (Lekan:8).

3.2.2 Disadvantages of Proportional Tax System

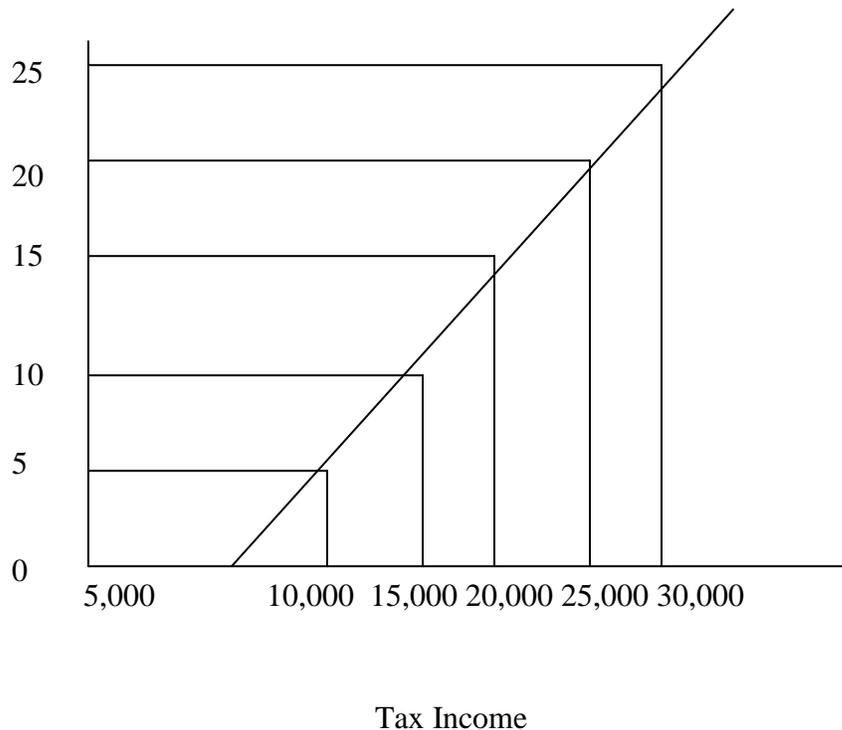
The following are the disadvantages of proportional tax system.

- Inequitable: Where both high-income and low income groups are taxed at the same rate; persons who belong to the low income group make a greater sacrifice than those in high income groups (Lekan: 8).
- Less productive: It does not bring enough revenue because of constant tax rate (Lekan: 8)
- It is against the principle of taxable capacity and it may have a bad effect on the economy: By taxing the high and low income groups at the same rate this tax system proportionally taxes away a larger percentage of the income of low income groups. As a result the consumption standard of such group falls. (Lekan: 8).

3.3 PROGRESSIVE TAX SYSTEM

Progressive tax is a tax system that takes an increasing proportion as income rises. (M.T. Abdulrazaq .O), in other words it is a tax that is based on the idea of vertical equity which simply means redistribution of income from the well-to-do to the less privileged (Ayua: 12). A tax is progressive if its rate increases as the size of income or stock of wealth which is being taxed increases. The burden of a progressive income tax falls on those with higher income (Teriba, 1977: 176).

Progressive Tax



3.3.1 Advantages of progressive tax

The following are the advantages of progressive tax system.

- It ensures increase payment in tax: As to change tax rate thereby generating extra revenue more easily through progressive tax.
- Equality: Since high income earner pay higher in this tax system, equity is achieved.
- It encourages better use of resources and it promotes economic stability: By reducing the tax rate during a recession or depression the government provides relief to the tax payer so that they may increase their demand for goods and as a result investment is encouraged.

On the other hand by raising tax rates during economic boom the government reduces the purchasing power of the tax payers in order to fight inflation. Thus, this tax system helps in bringing economic stability in the economy. (Lekan: 10).

3.3.2 Disadvantages of Progressive Tax System

The following are the disadvantages of progressive tax system

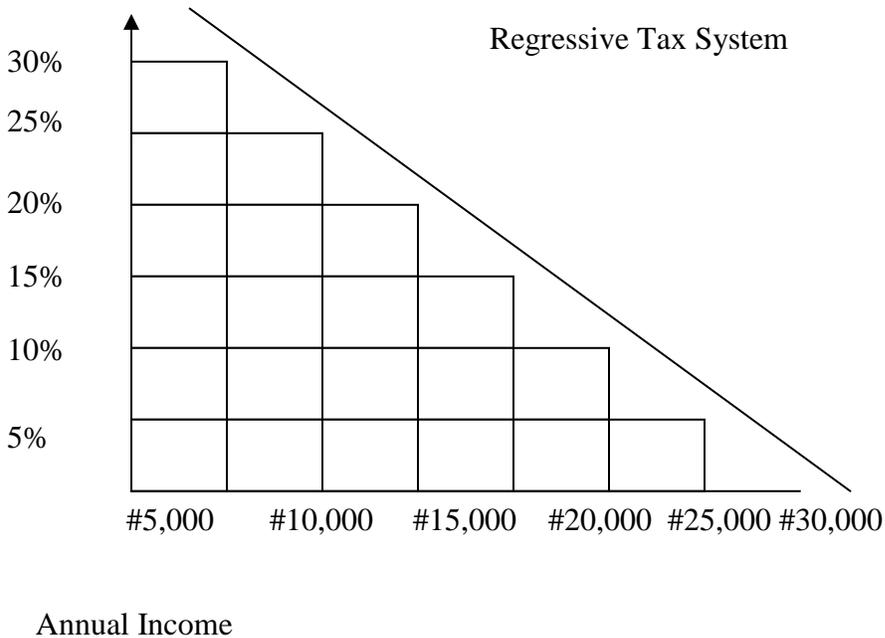
- It encourages tax offences: If people are taxed heavily there is the tendency and greater urge to evade the payment of tax.
- It discourages capital formation: Because this tax system adversely affects savings, the resultant effect is the discouragement of investment and capital formation. According to Lekan 2006, since the high income groups are the main source of savings in a country's heavy taxes on them discourage savings and investments and thus hamper development of trade and industry.
- It is arbitrary: There is no scientific or standard way of fixing the tax rate progressively.
- It is faulty: Since utility is subjective and cannot be measure in terms of money, basing a tax on diminishing marginal utility of income cannot aid the actualization of tax purposes.

3.4 REGRESSIVE TAX SYSTEM

Regressive tax is a tax whose structure is such that the revenue yield becomes smaller as the value of the property taxed increases. (Ayua: 1996: 2). In order words, a regressive tax takes a declining proportion of income as income rise (M.T. Abdulrazaq:6). In a regressive tax system, a high income person pays less tax than low income person.

The general criticism of the regressive tax system is that, it fails to take care of the economic needs of the poor masses that constituted the majority of the population in the

developing countries. Not only that, due to low revenue yielding nature of the regressive tax system, it is also not suitable for developing country like Nigeria.



3.5 DIRECT TAX SYSTEM

The incidence of tax is of vital essence in classifying tax into direct or indirect taxes. A direct tax, is one which is demanded from the very persons who it is intended or desired should pay it (Ayua:12). In essence, the incidence of taxation directly fell on the actual tax payer. In this type of tax, the tax is not only advised by notification called assessment notice, but it is duly receipted (Lekan; p:6). Company Tax, PAYE Tax, Capital Gain Tax, and Capital Transfer Tax are examples of Direct Tax.

The major advantage of a direct tax system is that the burden of tax payment falls directly on the tax payer. Not only that, the notification and assessment notice aided both the accurate calculation and payment of the tax by the tax payer.

The major limitation of this type of tax however is that because the incidence falls directly on the tax payer, there is tendency for the unscrupulous tax payer to wanting to evade or completely avoid the payment of such tax.

3.6 INDIRECT TAX SYSTEM

Indirect tax system is borne by a person other than the one from whom the tax is collected. In other words, indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of the other (M.T. Abdulrazaq: 7).

In a nutshell, indirect taxes are those which are imposed on commodities before they reach the consumer, and are paid by those upon whom they ultimately fall, not as taxes, but as part of the market price of the commodity. Examples of indirect taxation are Value-Added Tax, Stamp Duty, Exercise Duty, Customs Duty, and Sales of purchase Tax (Ayua:12).

Amongst the advantages of indirect tax is that, the burden of incidence does not fall directly on the tax payer. Not only that, collection of indirect tax is also easier and more revenue is generated through the source.

SELF ASSESSMENT EXERCISE 2

- As proportional tax system is with lots of merit so also its demerit-Discuss.
- Differentiate with clear examples what you understand by direct and indirect tax system.

4.0 CONCLUSION

From the discussion in this unit, it could be gleaned that different taxes exist in Nigeria. While some are direct, some are indirectly levied on property and individuals. It is also clear from the discussion that, most of the taxes have both advantages and disadvantages.

5.0 SUMMARY

We have in this unit discussed.

- Different categories of taxes
- Advantages and Disadvantages of each classes of taxes

6.0 TUTOR-MARKED ASSIGNMENT

1. Different theories can be used to categorize tax system, as a student of tax law;
 - a. Explain what you understand by income and incidence theories of tax classifications.
 - b. Differentiate with clear examples what you understand by direct and indirect tax system.
 - c. Write short notes on:
 - i. Progressive Tax
 - ii. Proportional Tax
 - iii. Regressive Tax
2. Despite the ample merits of regressive tax system, many scholars opined that such a tax system is not the best for a developing country like Nigeria. As a tax law student, do you agree with this statement and why?

7.0 REFERENCES/FURTHER READINGS

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Abdulrazaq M.T. (1993) Principle and Practice of Nigerian Tax

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Wednesday, 5th January, 2011.

Teriba O. (1977) Certificate Economics for West Africa, London: Longman Group Ltd.

MODULE 2

TAXING POWERS

UNIT 1 DEFINITION OF TAXING POWER

CONTENTS

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- 3.0 MAIN CONTENT
 - 3.1 DEFINITION OF TAXING POWER
 - 3.2 HISTORY OF TAXING POWERS IN NIGERIA
- 4.0 CONCLUSION
- 5.0 SUMMARY
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- 7.0 REFERENCES/FURTHER READINGS

1.0 INTRODUCTION

As already discussed in the 1st unit of this course, Nigerian Tax issue and law are purely statutory; therefore, it would be incongruous for any tier to seek to impose any form of tax on subjects, belt person or property, beyond its legislative competence (Arifowomo 2010, 185). The simple meaning of this is that Nigerian tax system originated from law and any tax levied on the people must be backed by law. Any levy whatever name it is called not backed by law is not a tax. The tax system thus features a wide and mixed range of statutes by which the various governments in the country seek to charge and collect revenue for public expenditure. (Ipaye:2009: 21). **In Mathew vs Chicory Marketing board (1938) 60 GLR 263 at 276 and US vs Butter (1936) 227 9 U & I at 61**, tax is said to be a compulsory exacting of money by the government for public purpose. (M.T.Abdulrazaq:2005:1).

While this unit will expose the meaning of taxing power, an attempt will also be made to trace the historical development of taxing powers in Nigeria.

2.0 UNIT OBJECTIVES

At the completion of this topic, you are expected to be able to:

1. Explain what taxing power means
2. Appreciate the historical development of taxing powers in Nigeria

3.0 MAIN CONTENT

3.1 DEFINITION OF TAXING POWER

Taxing power is the power and authority by a tier of government to impose and collect taxes from the citizenry in that particular state. According to Abiola (2002), taxing power is the power of a level of government to impose a tax by its own law and prescribe conditions for the collection and due administration of the tax either by its own agency or that of another level of government.

In other words, power is the ability of government to levy tax or raise revenue through taxation. The power is said to have its origin in the implied common law powers of government and that such power “ought to know no bounds than the exigencies of the nation and the resources of the community. This power has been variously described as an imperious necessity of all governments, which ought not to be restricted by merely legal friction”, “not dependent upon the consent of the individual taxpayer”(Abiola:2009:44)

A power to tax is the ability or power of any government to levy tax or raise revenue through taxation. The power to tax is conceived as being inherent in sovereignty and essential to the existence of independent government. It is a right that resides in the government as part of itself and is co-extensive with that to which it is incident (Anifowose: 2010 185). What we are saying here is that, tax can only be levied by a recognized government. Tax exhibit sovereignty and it is the responsibility of government and not individual to impose.

The most significant aspect of taxing power is that, such power must be constitutionally derived. A tax power is not a mere power to collect taxes or levies because such powers is executive or administrative, but instead a statutory ground to impose tax. Any imposition and collection of tax outside the jurisdiction of tax statute or that is devoid of the state legislative arm approval is a self ascribed taxing power which to that extent is null.

3.2 HISTORY OF TAXING POWERS IN NIGERIA

An analysis of the federal and state taxing powers should not be made in complete isolation from the legal history of the processes which culminated in the recognition and adoption of the rationale of the basis and structure for the demarcation of taxing powers between the federal and state Government within the Federation of Nigeria. Certainly, a brief discourse upon the past not only explains the origins of the present system, but also gives a clearer insight into the concepts and reasoning that have underlined our structure of the demarcation of the tax jurisdiction (Okorodudu: 1991: 51-52).

Historically, when Nigeria became a federation in 1954, the issue of sharing of taxing powers between the Regions and the federal government immediately arose. According to Ayua 1996, the question was discussed at the Nigeria constitutional conference in London in 1957. At that conference it was decided that the issue be referred to a Commission. Consequently, the Raisman commission was inaugurated to look into the issue of how to allocate taxing powers between the Regional and Federal governments and make recommendation that would ensure an equitable tax distribution.

Earlier in 1951 and 1953, two commissions were set up; they were the Hicks Phillipson Commission of 1951 and Sir Louis Chick Commission of 1953. In its composite recommendations Hicks Phillipson laid down amongst others, the principle of independent revenue with a view to making the regions within the newly established federation more financially self-reliant (Okorodudu:1991:53). While sir Louis recommendations to a larger extent reflected in the Section 155-163 of the 1954 constitution order-in-council.

Raisman commission report was submitted in June, 1958, the proposals of his commission in relation to the division of taxing powers between the tiers of government had strong influence on the relevant provisions of the Nigerian Constitution Order-in-Council, 1960. Section 70 of the 1960 Independence Constitution provides as follows:

- (1) Parliament may make laws for Nigeria or any part thereof with respect to taxes on the income and profits of companies.
- (2) Parliament may make laws for Nigeria or any part thereof with respect to taxes on income and profits other than the income and profits of companies for the purpose of:
 - (a) Implementing any treaty, convention or agreement between the federation and any other country or any arrangement with or decision of an international organisation of which the federation is a member with respect to taxes on income and profits;

- (b) Securing uniform principles for the taxation of income and profits accruing to persons in Nigeria from countries other than Nigeria and of income and profits derived from Nigeria by persons outside Nigeria;
 - (c) Securing uniform principles for the computation of income and profits of all persons (including members of partnerships) for the purposes of assessment of tax and for the treatment of losses, depreciation of assets, and contributions to pensions or provident funds or schemes;
 - (d) Regulating the liability to tax of persons within Nigeria by reference to their places of residence or otherwise for the purpose of ensuring that any income or profit does not bear tax under the laws of more than one territory;
 - (e) Providing, in pursuance of any arrangement in that behalf subsisting between the Government of the Federation and the Government of a State, for the exemption from liability to tax in respect of all or part of the income or profits of any person or class of persons;
 - (f) Obtaining information with respect to income or profits from any source and providing for the exchange of information between different tax authorities; and
 - (g) Providing, in pursuance of any arrangement in that behalf subsisting between the Government of the federation and the Government of a Region, for the establishment and regulation of authorities empowered to promote uniformity of taxation and to discharge such other functions relating to the taxation of income and profits as may be conferred upon them in pursuance of any such agreement.
- (3) Parliament may make laws for Nigeria or any part thereof with respect to taxes on the estates of deceased persons and the succession to their property for the purpose of ensuring that any estate or part thereof does not bear tax under the laws of more than one territory.
- (4) The powers conferred upon Parliament by sub-sections (2) and (3) of this section shall not extend to the imposition of any tax or penalty or the prescribing of rates of tax or personal allowances and reliefs.
- (5) Nothing in subsections (2) and (3) of this section shall preclude the legislature of a region from making laws with respect to the matters referred to in these subsections.

(6) In this section references to the Income and profits of companies are references to the income and profits of any company or other corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere but do not include references —

(a) to the income and profits of anybody corporate established by or under the Native Authority Law, 1954, of Northern Nigeria, the Eastern Nigeria Local Government Law, 1960, of Eastern Nigeria, or the Western Region Local Government Law, 1952, or the Local Government Law of Western Nigeria, as amended, or any law replacing any of those laws;

(b) to the income and profits of any purchasing authority established by the legislature of a Region and empowered to acquire any commodity in that Region for export from Nigeria derived from the purchase and sale (whether for purposes of export or otherwise) of that commodity; or

(c) to the income or profits of any corporation established by the legislature of a Region for the purpose of fostering the economic development of that Region, not being income or profits derived from a trade or business carried on by that corporation or from any share or other interests possessed by that corporation in a trade or business in Nigeria carried on by some other person or authority.

The provisions of section 70 above were transcribed unto the Legislative List in the Schedule to the said Constitution of Nigeria 1960 accordingly. Subsection (1) was included in the Exclusive Legislative List, and subsections (2) and (3) were included in the Concurrent Legislative List. Matters reserved to the exclusive taxing authority of the Federal Government in Part 1 of the Schedule to the 1960 Constitution were:

item 10: Customs and excise duties, including export duties

item 25: Mines and minerals, including oil fields, oil mining, geological surveys and natural gas. (Authority of the Federal Government

to impose mining rents and royalties may be implied from this

item, vide item 44 “Any matter that is incidental or supplementary

— (a) to any matter mentioned elsewhere in this list; or

(b) to be discharge by the Government of the federation or any officer, court or authority of the federation of any function conferred by this Constitution.

item 38: Taxes on amounts paid or payable on the sale or purchase of commodities except — (a) produce; (b) hides and skins; (c) motor spirit; (d) diesel oil sold or purchased for use in road vehicles; (e) diesel oil sold or purchased for other than industrial purposes.

item 42: Wireless, broadcasting and television other than broadcasting and television provided by the Government of a Region; allocation of wavelengths for wireless, broadcasting and television transmission. (Authority of the federal Government to levy license fees on non-Regional wireless radio and television may be implied from this item in conjunction with item 44— incidental and supplementary matter.

While the foregoing taxing powers were made exclusive to the federal government, the legislative list did not specify additional matters relating to taxing authority which is concurrent to both the federal and regional government besides those already incorporated by subsection (2)&(3)of section 70 of the 1960 constitution(Okorodudu:1991:58)

SELF ASSESSMENT EXERCISE 1

- Taxing power is a mere power to collect taxies or levies and nothing more- Discuss.
- Examine the contributions of Hicks-Phillipson and Sir Loius Click commissions to the issue of taxing power in Nigeria.

4.0 CONCLUSION

It could be gleaned from the discussion in this unit that Nigerian Taxing Powers are statutory in nature. The power to tax of both Federal and state are embedded in the

legislative powers of the National and states House of Assemblies and that a charge can only become a tax only if it is passed in to law by the legislative arms of the government.

5.0 SUMMARY

We have in this unit, discussed

- What taxing power is
- The historical development of taxing powers in Nigeria

6.0 TUTOR-MARKED ASSIGNMENTS

- The setting up of Raisman Commission marked a turning point in the history of Taxing Powers in Nigeria-Discuss
- Tax exhibit sovereignty and it is the responsibility of government and not individual to impose-Discuss

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**UNIT 2 EXAMINATION OF FEDERAL, STATE AND
 LOCAL GOVERNMENT TAXING POWERS IN NIGERIA**

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1.0 INTRODUCTION

The most important factor that determines the division of taxing powers in a country is whether the country is operating a federal or unitary system of government (Abiola: 2002, 651). In other words, type of government operated will determine the level of taxing powers of each tiers of government. Globally, the allocation of taxing powers between different levels of government is a complex problem (Abiola: 650), and this problem is not exclusive of Nigeria, therefore, as a student of law of taxation, it is pertinent for you to know who among the three tiers of government in Nigeria have the statutory power to levy tax - the federal, state or Local Government?

2.0 UNIT OBJECTIVES

At the completion of this topic, you are expected to be able to:

1. Explain how taxing power is constitutionally shared in Nigeria
2. Determine the constitutionality or otherwise of some of the existing federal and state tax statutes.
3. Appreciate the status of Local Governments as regards taxing power in Nigeria.

3.0 MAIN CONTENTS

3.1 EXAMINATION OF FEDERAL, STATE AND LOCAL GOVERNMENT TAXING POWERS IN NIGERIA

3.1.1 Federal Taxing Powers

From 1960-1979, distribution of the taxing powers between the Federal and State Governments remain relatively constant except for a few deviation during the military Administration of Jan 1966-Sept 1979.

Going by the tax jurisdiction as demarcated under the 1960 independence constitution, 1963 Republican constitution, 1999 constitution, the federal government has taxing powers to taxing on;

- i. Import duties
- ii. Export duties
- iii. Excise duties
- iv. Mining Rents and Royalties
- v. Companies Income Tax
- vi. Capital Gain Tax
- vii. Personal Income Tax
- viii. Petroleum Profit Tax
- ix. Sales and Purchase Tax

However, from 1979, all vital matters subject to tax are kept within the exclusive control of the Federal Government most likely with a view to avoiding competing and conflicting tax jurisdiction.

The taxing power of the Federal Government is spelt out in sec 4 (2) of the 1979 constitution. According to the section,

The National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter including in the Exclusive Legislative List set out in part 1 of the second schedule to this constitution.

Going by the schedule to the Taxes and Levies (Approved list of collection), Decree No. 102, 1993, there seems to be multifarious taxes in Nigeria, however in the Exclusive legislative List, only four of them are specifically mentioned by name. the four as stated in the second schedule of the CFRN, 1999 are:

- i. Customs duties in the item 16
- ii. Excise duties also in item 16
- iii. Export duties in the 22nd item, and
- iv. Stamp a duty which is in the 58th items.

In addition, item 59 of the Exclusive legislative list vests the Federal government with powers on “taxation of incomes profits and capital gains pursuant to which the personal

income tax, companies income tax, petroleum profit tax and capital gain tax have been imposed (Abiola: 2002, 652-653). The simple implication of this is that, from 1979, the federal government of Nigeria can impose tax on any of the 67 subject matters on the exclusive legislative list pursuant to its implied power in item 68. This position was affirmed by the Supreme Court of Nigeria in the case of the **Attorney General, Ogun State Vs Alhaja Ayinke Aberuagba (1984) SC, 20**. The main reason for given so much power to the federal government may be to avoid competing and conflicting tax jurisdiction, or to aid the federal government's higher generation of revenue in order to be able to meet the socio-economic responsibility of the central government.

3.1.2 State Taxing Powers

Unlike the federal government, no tax is specifically reserved for the state government under the 1999 constitution. The only reference in the constitution to the powers of state governments in relation to taxation is contained in item D-9 and 10 of the Concurrent Legislative List in the CFRN, 1990. (Sanni: 2002: 657).

However, going by the provision of section 4 (7) of the 1999 constitution of the Federal Republic of Nigeria, which provides for the legislative powers of the state House of Assembly, it could be deduced that, save items listed in the Exclusive Legislative List in the second schedule of the constitution, the state can legislate including the levying of tax on matters in the concurrent legislative lists and others not clearly mentioned therein.

Going by section 4 (7), the House of Assembly of a state shall have power to make laws for the peace, order and good government with respect to the following matters that;

- a. Any matter not included in the Exclusive Legislative list in the second schedule to this constitution;
- b. Any matter included in the concurrent legislative list set out in the first column of part II of the second schedule to this constitution to the extent prescribed in the second column opposite thereto and

- c. Any other matter with respect to which it is empowered to make laws in accordance with the provisions of this constitution.

It is clear from the above provisions, that as the state governments have powers to make laws on matters in the concurrent legislative list, so also it has plenary powers to make laws on any subjects matter that is not on either the Exclusive or concurrent legislative list. A federal law on concurrent matter does not necessarily preclude states laws on the same matter; however, the state power to make law with respect to those on the concurrent legislative list is subject to the “doctrines of inconsistency and covering the field”. (Sanni: 657) The meaning of this is that, the state law must not be in conflicts with the federal law on the same item. And to determine conflict according to professor Nwabueze (1983), legislation on concurrent list must therefore first be made by both governments before any question of inconsistency between them can arise, and only then can a compromise be made to see if one has conflicted with the other.

3.1.3 Local Government Taxing Power

Through the Local Government Reforms of 1974, Local Governments in Nigeria transformed from mere administrative units status to a constitutional establishments.

Under section 7(1) of the 1999 constitution of the F R N the arms local government by democratically elected process is guaranteed. Therein, every state government is mandated to ensure their existence under an applicable law that regulates their establishment, structure, composition, finance and functions. (Arifowomo: 189)

Today however, the status of the local government has been enhanced. And, the enhanced status of the local government councils has raised the question whether or not they have independent power to raise own taxes (Sanni: 658).

The division of legislative power under section 4 for the constitution involves only the federal and state governments. Also, it will be observed that matters that the constitution mandating the state governments to rest in the local government councils are matters within the residual power of the states. The implication of this is that local

governments have no legislative power of their own and cannot impose any tax on any subject matter whatsoever. Therefore, it is instructive to note that the provisions of schedule 4 of the constitution do not directly rest the local government councils with power to collect taxes. (Sanni: 658).

To this extent, the local government councils were brought within the federal structure of the distribution of taxing powers and functions. However, these councils are not given any direct legislative powers under the constitution but are made to loop up to the Federal and State Government for their sustenance, via statutory allocations as stated in section 7 (6) (a) & (b) and section 162 (5) (8) of the constitution FRN (Orifowomo: 189).

Furthermore, in getting these statutory allocations, a state government must first enact appropriate enabling law, which will determine the taxable persons, assessment procedure and method of collection, recovery and penalties for tax delinquency. And where such a law has been enacted, a local government council must exercise its power within the limits prescribed by the law; any exercise of power beyond the units allowed by the constitution or the enabling law according to the court in **Shell Petroleum Development Company of Nigeria Limited Vs Burutu Local Government Council (1989) 9 NWLR (Pt. 165) 318 C.A.**, will be *ultra vires, null and void* (Sanni: 659).

However, notwithstanding the lack of clear taxing power for the local government in the Nigerian constitution, since section 7(1) of the Nigerian constitution guarantees the system of local government, for their sustainability and running of the local governments, the local government council is allowed to generate revenue through the levying of certain categories of rates to wit, the collection of radio and television licenses, establishment of cemeteries, burial grounds, licensing of bicycles, trunks, wheel barrows and carts, establishment, maintenance and regulation of slaughter house, slaughter slabs, motor park, naming of roads and streets , registration of births and deaths e.t.c. All these functions are specified in the fourth schedule of the Nigerian Constitution.

Based on the foregoing, there appears to be lopsidedness in the distribution of taxing powers as well as revenue formula of the Nation, however it is instructive to point out that all tax revenues collected by the federal government are not wholly retained by it. Rather according to Sanni(2002), the taxes collected by the Federal Government are paid into the federation Account and distributed among the federal, states and local governments pursuant to section 162 (2) of the 1999 constitution.

SELF ASSESSMENT EXERCISE 2

- Section 2 (2) of the Nigerian constitution is a curtailing provision to any taxing power of the local government council in Nigeria-Discuss.
- Examine the constitutionality or other wise of a local government levying tenement rates on the people.

4.0 CONCLUSION

The Federal Taxing power is more explicitly stated in the section 4 (2) of the constitution of the Federal Republic of Nigeria. And, the items outlined therein are called the Exclusive Legislative list. These lists are contained in the second schedule of the constitution. Not only that item 59 of the exclusive legislative list also vested powers on the federal government on some sorts of taxes pursuant to which the personal income tax, companies income tax and others are taxed.

Furthermore, this unit also exposes the fact that, states taxing powers basically are on the items in the concurrent list and others not clearly mentioned either in the Exclusive or current lists. In nut shell while the state taxing powers are open-ended that of the federal government can be specifically be enumerated.

In conclusion, the discussion in this unit also revealed that, though constitutionally, the local government can generate fund by itself but the third arms of government in Nigeria does not have any clear or concrete constitutional taxing power.

This is so because according to Section (2) of the CFRN, Nigeria shall be a federation consisting of states and a federal capital territory, which means that only the state and federal authorities can levy tax so to say.

5.0 SUMMARY

We have in this unit, discussed

- The taxing powers of the three tiers of government in Nigeria
- Examined the taxing power status of the local government councils in Nigeria.

6.0 TUTOR-MARKED ASSIGNMENT

1. “All Animal are equal, but some are more equal than the other” As a tax law student examine how aptly can this statement mirror the sharing of taxing power between the three tiers of government in Nigeria.
2. Examine the contributions of Hicks-Phillipson and Sir Loius Click commissions to the issue of taxing power in Nigeria.

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MODULE 3
PROBLEMS OF TAXATION IN NIGERIA

UNIT 1 **MAJOR TAXATION PROBLEMS IN NIGERIA**

CONTENTS

- 1.0 INTRODUCTION
- 2.0 UNIT OBJECTIVES
- 3.0 MAIN CONTENTS
 - 3.1 MAJOR TAXATION PROBLEMS IN NIGERIA
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 - 3.1.2 Tax Evasion
- 4.0 CONCLUSION
- 5.0 SUMMARY
- 6.0 TUTOR-MARKED ASSESSMENT
- 7.0 REFERENCE/FURTHER READINGS

1.0 INTRODUCTION

So far, in this course, apart from the treatment of what tax is in this first unit of the module, in the second unit, we have also discussed the taxing powers under the Nigerian Tax System. From the two lessons, we have been able to appreciate the fact that Nigeria tax is a baby of tax legislations. Nothing can be categorized as tax except such is backed by the law of the land. Not only that, you must have also discovered in the last two lessons that, the Nigerian taxing powers are strictly and constitutionally shared amongst the federal and state tiers of government. For an efficient tax system, an assessable person must be identifiable; the amount of tax to be paid must be accurately determined by the tax authority, which also is in the position to collect the assessed tax. The assessed tax must also be paid by every taxpayer that a particular tax is targeted. (Lekan et al 2006: 59). That being the case, Nigerian income tax laws prescribed various legal instruments to enforce tax, such as distress, tax clearance certificate system, search and seizure (Adedokun 2010: 439). However despite all these efforts geared towards tax compliance, the Nigerian tax system is still facing some problems which constitute barriers to the actualization of the aims and objectives of the Nigerian tax system

In this 3rd unit of the course we shall discuss those barriers that constitute clogs to the proper taxation in Nigeria.

2.0 UNIT OBJECTIVES

At the completion of this topic, you are expected to be able to:

1. Explain what constitute Taxing Problems in Nigeria
2. Identify reasons why people engage in tax evasion and Avoidance

3.0 MAIN CONTENT

3.1 MAJOR TAXATION PROBLEM IN NIGERIA

The issue of taxation problems in Nigeria is becoming worrisome. Despite series of effort to curb and or eliminate the problems, it is disheartening to note that the problems still persist. Up till now the tax payers are not willing to pay their tax

voluntarily. Cases of both legal and illegal/means of escaping the payment of tax is still on the high side in Nigeria.

Both corporate and private individual are culprit when it comes to the issue of nonpayment of tax. For a clearer understanding of this topic, Nigerian problems of taxation will be divided into two broad categories, the principal/major problem, and others problems. The major taxation problem in Nigeria is the problem of tax avoidance and tax evasion.

3.1.1 TAX AVOIDANCE

The word, “tax avoidance” is never defined in the Nigerian tax legislation. However in the words of Hornby (2001), tax avoidance can be describe as ways of paying only smallest amount of tax that you legally have to.

In the Black’s Law Dictionary, tax avoidance is simply described as, the act of taking advantage of legally available tax planning opportunities in order to minimize one’s tax liability.

In the words of Nlerum (2010), tax avoidance is the ability of the tax payer and their consultants to reduce their tax liability by manipulating the provisions of tax law i.e the tax payer takes full advantages of all exemptions, deductions, concessions, rebates, allowances and other tax reliefs or benefits permitted by law and arranges his affairs under the circumstances. She stated further that, avoidance of tax liability by so arranging commercial affairs that charge to tax is reduced is not prohibited but it is wrong.

Invariably, tax avoidance therefore, can be said to be the arrangement of tax payers affairs using the tax shelters in the tax laws, and avoiding tax traps in the tax laws, so as to pay less tax than he or she would otherwise pay. That is a person pays less tax than he ought to pay by taking advantages of loopholes in a tax levy. (Lekan et al. 2005:61)

From all aforesaid, tax avoidance can thus be said to be a legal ways by which a tax payer can get relief through the payment of less amount he or she ought to have paid for the assessed tax period. The payer is not trying to escape payment but looking for ways of paying fewer amounts. Tax avoidance does not necessarily denote. Tax avoidance does not necessarily denote an activity that is in all cases obnoxious. Indeed, tax avoidance some cases was considered to be legal. This was the position in the case of **IRC v Fisher's Executers (1962) A.C 395** wherein a limited company with large undistributed profits which has resolved to capitalize part of these profits and to distribute them pro rata among its ordinary shareholders as a bonus in the form of 5 per cent debentures stock, the whole aim being to prevent the shareholders from paying super tax on the bonus, it was held that the bonus paid in debenture stock was not income in the hands of the shareholders and was therefore not liable to super tax. In that case, Lord Summer said.

My lords, the highest authorities has always recognized that the subject is entitle so to arrange his affairs as not to attract taxes imposed by the crown so far as he can do so within the law, and that he may legitimately claim the advantage of any express terms or of any omissions that he can find in his favour in taxing acts. In so doing he neither comes under liability nor incurs blame....
(Ayua I.A 1996: 246-247).

It is worth noting that, the view in fisher's Executor's case was also followed in **Ayreshire Pullman Motor services and D.M Ritchie Vs IRC's case 14T.C 754** and in **Duke of west minister Vs IRC's case reported in (1934) 19 T.C 490 at 520**. In the words of Fullagar J in **Federal Commissioner of Taxation Vs Westgarth (1985) 18 (C.L.R) 396 at 414**, the word avoidance... involves, I think, no notion of escaping by any device or artifice, escaping through not being called upon to pay.

Caution must be exercised however to see tax avoidance as totally permissible or legal. Many judges on many occasions as pointed out in Ayua (1996) have pointed out

that tax avoidance is not a commendable exercise, that indeed it is an evil exercise which should be prevented. In the case of **Latilla vs IRC**, Viscount Simon L.C said

My lords, of recent years much ingenuity has been expended in certain quarters in attempting to devise methods of disposition of income by which those who were prepared to adopt them might enjoy while receiving the equivalent of such income without sharing the appropriate burden of British taxation. Judicial dicta may be cited which point out that, however elaborate and artificial such methods may be, those who adopt them are “entitled” to do so. There is of course, no doubt that they are within their legal rights, but that is no reason why their effects should be regarded as a commendable exercise of ingenuity or as a discharge of the duties of good citizenship. On the contrary, one result of such methods, if they succeed, is of course to increase *pro tanto* the load of tax on the shoulders of the great body of good citizens who do not desire, or do not know how to adopt those maneuvers.

Sir Wilfred Green M.R also concurred with this statement when he said in the case of **Lord Howard de Walden vs IRC (1942) I K.B 389** that

For years a battle of maneuvers has been waged between the legislature and those who are minded to throw the burden of taxation off their shoulders on to those of their fellow subjects. In that battle, the legislature has often been worsted by the skill, determination and resourcefulness of its opponents of whom the present applicant has not been the least successful. It would not shock us in the least to find that the legislature has determined to put an end to the struggle by imposing the severest of penalties. It scarcely lies in the mouth of the taxpayer who plays with fire to complain of burnt fingers.

In some other cases, i.e the case of **Finsbury Securities vs IRC (1965) 43 TC 59**, per Lord Denning, JP Harrison **Warford Ltd vs Griffiths (1961) 40 T.C 281** per Upjohn L.J; **Reeves vs Evans Boyse and Northcolt Syndicate (1971) 48 T.C 495 at 513** per Megarry J, judges also condemned the act of avoiding tax payment.

a. Forms of tax avoidance in Nigeria

According to Nlerum (2010), people have continue to evade and avoid tax because of a number of reasons which include unbearable high tax rates, lack of faith in

the ability of government to use tax money well, total ignorance of the law, absence of any visible benefit accruing to the taxpayers, inefficiency of tax administration, ridiculous low penalties and outright unwillingness to contribute towards the upkeep of one's society.

Not only that, the under listed is amongst the ways by which tax is avoided by the Nigerian tax payers.

- i. Incorporating the tax payer's sole proprietor or partnership into a limited liability company.
- ii. The ability to claim allowances and reliefs that are available in tax laws in order to reduce the amount of income or profit to be charged to tax.
- iii. Minimizing the incidence of high taxation by the acquisition of a business concern which has sustained heavy loss so as to set off the loss against future profits.
- iv. Minimising tax liability by investing in capital asset (for instance through the new form of corporate financing by equipment leasing), and thus sheltering some of the tax payers income from taxation through capital allowance claims.
- v. Sheltering part of the company's taxable income from income tax by capitalizing profit through the issue of bonus shares to the existing members at the (deductible) expenses to the company.
- vi. Creation of a trust settlement for the benefit of children or other relation in order to manipulate the martinet tax rate such that a high income bracket tax payer reduces his tax ability. Converting what would ordinarily accrue to the tax payer (employee) as income into capital gain (i.e compensation for loss of office) the advantage of the employer and employee manipulation of charitable organizations whose affairs are controlled and dominated by its founders thus taking advantage of income tax exemption.
- vii. Buying an article manufactured in Nigeria thereby avoiding import duty on imported articles

- viii. Avoiding the consumption of the articles with indirect taxes incorporated in their prices e.g tobacco (Lekan et al: 2005: 61-62).

3.1.2 TAX EVASION

Just like avoidance, the Nigerian Tax statutes are also silent on the definition of tax evasion. Therefore to have a working definition of what constitute evasion, efforts of text book authors and case law will be used.

Tax evasion according to Ayua I.A (1996) is the failure to pay one's tax or the reduction of one's tax liability through illegal or fraudulent returns or failure to make a return or even failure to pay tax on time.

In the words of Nlerum (2010), tax evasion can be described as the failure to pay one's tax or the reduction of one's tax liability through illegal or fraudulent returns. In Nigeria, the incidences of tax evasion are manifested by the glaring fraudulent concealment of income through false entries and failure to keep records of accounts.

From the forgoing, one deductible view about tax evasion is that, it is a criminal ways of avoiding tax. It is illegal, morally and criminally punished. Tax evasion is not only morally wrong but also it involves a breach of the tax law.

According to Abdulrazaq (1993), 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. In other words, tax evasion is a deliberate and willful practice of not disclosing full taxable income so as to pay less tax. (Lekan at al:2005:60 .

In Hornby (2001), tax evasion is described as the crime of deliberately not paying all the taxes that you should pay. In the same vein, the Black's Law Dictionary described tax evasion as the willful attempt to defeat or circumvent the tax law in order to illegally reduce one's tax liability. Tax evasion is punishable by both civil and criminal penalties.

In the case of **Simms vs Registrar of probates (1900) A.C 34** Lord Hob house in determining the question of what tax evasion is I said "... Everybody agrees that the word is capable of being used in two senses, one which suggests underhand dealing, and another which means nothing more than the international avoidance of something disagreeable".

In addition, in the case of **Ballen vs Wisconsin (1916) 240 U.S 625** the court on tax evasion observed that when an act is condemned as an evasion, what is meant is that it is on the wrong side of the line indicated by the policy if not by the mere letter of the law. The simple meaning of this is that, once tax offence is evasion, it is an offence against law and the state unlike avoidance which is not an offence per se. In the words of the court in **Akinsete syndicate vs Senior Inspector of income tax F.S.C 164/63 30/10/64 unreported**. "a person may use lawful means to avoid income tax" what he may not do is to try to evade it. What he does should be genuine not merely a veil to hide or dissemble the reality of things. According to Abdulrazaq (1999), the basic ingredient in tax evasion is mensrea and absence of any credible explanation for fraud, willful default or neglect. This was exactly what the court said in **Barrip vs Commissioner of Taxation (N.S.W) (1941) Australian income tax report (A.I.T.R)** that

it is sufficient for the purpose of the appeal to say that where a tax payer makes a profit which he knows to be taxable income, and willfully omits this profit from his income tax return, he would be guilty of evasion in the absence of some satisfactory explanation for the omission.

a. Forms of Tax Evasion.

Tax is evaded through different methods, amongst which according to Lekan et al (2005) are:

- i. Refusing to register with the relevant tax authority.
- ii. Failure to furnish a return, statement or information or keep records required.
- iii. Making an incorrect return by omitting or understanding any income liable to tax refusing or neglecting to pay tax.

- iv. Over standing of expenses so as to reduce taxable profit or income which will also lead to payment of less tax than otherwise have been paid.
- v. A tax payer hides away totally without any tax returns at all.

In a nutshell tax evasion is perpetuated if the tax payer fails to make return for income tax or capital gain tax or if he fails to make return for cooperate tax, and if he makes incorrect return or accounts. And, the various acts must be done with fraud, willful default or neglect and knowingly for them to constitute the offence of tax evasion as contained in Companies Income Tax Act (CITA) and Personal Income Tax Act (PITA) (Abdulrazaq 1999:3). Other forms of tax evasion are:

- i. Failure to furnish a return, statement or information or to keep record required as contained in P.I.T.A 1961, s.54, CITA 1979, s.66, I.T.M.A 1961 s.30.
- ii. Making an incorrect return by omitting or understanding any income liable to tax as contained in P.I.T.A 1961 s.55, CiTA 1979 s.67.
- iii. Giving any incorrect information in relation to any matter or thing affecting the liability to tax as written in P.I.T.A1961, s.55, CiTA 1979, s.6.7
- iv. Refusing or neglecting to pay as written in P.I.T.A 1961s.56 CITA 1979 s.68.

SELF-ASSESSMENT EXERCISE 1

1. As a Tax consultant with your state government, critically examine the problem of tax avoidance in your state and suggest probable solutions you think can curb it.
2. List and explain some of the ways tax is avoided by the tax payers.

4.0 CONCLUSION

From all the aforesaid in this unit, it is clear that Nigerian Tax System is facing some problems which constantly hindered the realization of actual projected revenue from payment of tax. Majorly among these problems are tax evasion and tax avoidance which we have discussed herein.

5.0 SUMMARY

We have in this unit discussed

- Major Taxation problems in Nigeria
- Constitution of tax evasion and Tax avoidance
- Reasons and strategies for tax evasion and tax avoidance in Nigeria.
- Efforts in checking tax evasion and tax avoidance in Nigeria.

6.0 TUTOR-MARKED ASSESSMENT

1. As a Tax consultant with your state government, critically examine the problem of tax evasion in your state and suggest probable solutions you think can halt it.
2. Tax evasion is purely tax avoidance -As a Tax law student, examine the validity of this statement supporting your answer with statutory authorities.

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UNIT 2 SOLUTION TO TAXATION PROBLEMS IN NIGERIA

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 - 3.1.2 Lack of adequate professionals in the Nigerian tax administration
 - 3.1.3 Lack of Good Record Keeping
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 - 3.2 SOLUTION TO TAXATION PROBLEMS IN NIGERIA
- 4.0 CONCLUSION
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1.0 INTRODUCTION

Though tax evasion and tax avoidance are the major clogs to proper taxation in the contemporary Nigeria, however, this does not mean that, there are no other factors debarring proper taxation in Nigeria. While tax evasion and avoidance constitute the major problems, there are many other socio-economic clogs to the proper taxation of banking business in Nigeria.

2.0 UNIT OBJECTIVES

At the completion of this topic, you are expected to be able to:

1. Identify other problems of taxation in Nigeria
2. Identify how taxing problem negatively affect tax projection in Nigeria.
3. Proffer probable solutions to the problems.

3.0 MAIN CONTENTS

3.1 OTHER PROBLEMS OF TAXATION IN NIGERIA

Apart from tax evasion and avoidance, proper taxation in Nigeria is also hindered by social, cultural, economic, religious, political and administrative reasons. Apart from low income level of most of Nigerians which makes it impossible for them to adequately cater for ever their immediate need talk less of having extra to pay as tax, the Nigeria tax system also faced problems which includes.

... excessive corruption on the part of government officials, problems of assessment collection and enforcement of tax, administrative incompetence on the part of tax authorities, general dishonesty among Nigerians, low political culture, ignorance, unfairness of the tax system, lack of regard for equity, law and justice, historical and unpatriotism. (M.T. Abdulrazaq: 1999:31).

For clearer understanding, let us examine some of these problems one by one.

3.1.1 Problems of Assessment

There are two legs to this problem to wit, problem of identification of the person to be assessed and problem of identifying income for tax purpose.

Due to the poor rate of voluntary compliance, and very low degree of honesty among Nigerian tax payers, most taxable persons hide from tax authorities and if possible would give fake address to conceal their identify. (Lekan et al (2005:63).

Worst still, since most of our urban centers are not planned and that street names and numbers are either not existing or difficult to find give ready excuse to the unwilling postman to trace tax payers and deliver letters to them. According to Oladunjoye (1991) many businessmen and women do successful business without any registration or any fixed addresses. Added to this is the fact that a lot of business transactions involving money are not documented either for fraudulent reasons or for tax purposes.

Furthermore, where the identity of the tax payer is not the problem, the problem may be that of income identification. Finding of income is one of the difficulty aspects of the tax man's work because once the income is known the correct assessment is an easy task. In Nigeria however some tax payer constantly flout notice to file return of income thereby concealing or dodging the burden of tax and concealing income yielding transactions. The resultant effect of this is that the tax man would be left with no other option than mere estimation of tax payers' income; which may not be accurate.

3.1.2 Lack of Professionals in the Nigerian Tax Administration

Experience and competent personnel are rear in the field of tax administration in Nigeria. A lot of people avoid the area of tax law, and some of those who claim to be experts are not doing the job excellently. Sometimes they assist tax payers in what is called tax engineering which leads to tax avoidance and evasion (Nlerum: 2010:6) Not only that, in some state, the Board of Internal Revenue is poorly staffed and the image of tax man in Nigeria, is that of a corrupt person (Lekan et al).

3.1.3 Lack of Good Record Keeping

A common problem with both public and private individual in Nigeria is lack of good record keeping. A lot of businesses do not keep good records and they do this a time to escape the payment of tax.

Most of the Nigerian tax payers have a very bad attitude to tax payment. In fact most people do not know it is part of their civil duties or responsibilities to pay tax and except a few enlightened individuals, corporate organizations and salaried employees whose income are subjected to tax many adult Nigerians are not inclined to the payment of tax.

3.1.4 Lack of Capacity and Poor Working Incentives

There is insufficient number of personnel engaged as tax authority officials coupled with poor remuneration and orientation of inadequate services and corrupt practices resulting to paid taxes sometimes ending up in private pockets and ultimately resulting in a variance between actual amount paid and amount receipted, therefore, there is the need for training of staff, computerization of tax offices, introduction of on-line payment, creation of fee-back forum, sustained and increased level of public enlightenment and better welfare system for staff (Nlerum: 6)

3.1.5 Cumbersome Process of Payment and Inadequate Penalties for tax Defaulters

The procedures of tax payment in Nigeria are too cumbersome. Due to this many Nigerian who are not patient enough especially where there are no pressing need for tax clearance certificate often end up not paying the tax half way or a times bribe the tax officials to get clearance. Despite this the inadequate penalties for tax offenders finally made nonsense of the whole exercise. Most of the penalties for tax offences in Nigeria are not strict enough to enforce compliance.

3.1.6 Ambiguity in the language of tax statutes

An examination of the language of some of the Nigerian tax statutes reveals that some of the provisions are confusing, even to the professionals. Identifying tax liability and valuation is not an easy task. Many of the supposed tax payers understand nothing about the rules under which they are to pay or the range of deductible expenses and allowances available to them. As such, they have difficulty ascertaining and disclosing their taxable income. This difficulty is even worsened by the unpopular nature of tax payment and the reluctant attitude of some people to reading. Provisions of tax statutes should be made simpler and clearer for better understanding and tax law reforms must focus on simplifying tax statute provisions. (Nlerum).

Generally, the level of awareness of many Nigeria on their civic responsibility is very low. The belief many tax payer is that the tax money is going to the government to settle civil servant salaries or at worst for embezzlement and since most government in Nigeria too are not performing the tendency and urge of more people on this fallacy is rife. Therefore, people refuse to pay their tax and the resultant effect is the low tax generation in the Nigerian tax system.

3.1.7 Ignorance on the part of tax payers and tax man

In Nigeria, most of the tax payers are ignorant of tax laws and the Nigerian tax man is not ready to enlighten the payers in whatever form, instead what they are ready to do is forceful enforcement. This and many other factors make tax payers see tax and tax authorities as a plaque to be avoided.

3.2 SOLUTIONS TO TAXATION PROBLEMS IN NIGERIA.

a. Statutory Solutions

The statutory effort in checking and possibly halting tax avoidance is outlined in the Section 17 of the Personal Income Tax Act with corresponding provision on when undistributed profits may be treated as distributed in Section 21 of the Companies Income Tax Act. According to section 17(1) PITA:

Where a tax authority is of opinion that any disposition is not in fact given effect to, or that any transaction which reduces or would reduce the amount of any tax payable is artificial or fictitious, the tax authority may disregard the disposition or direct that such adjustment shall be made as regards the income of an individual, an executor or a trustee, as the tax authority considers appropriate so as to counteract the reduction of liability to tax effected, or reduction which would otherwise be effected by the transaction.

In brief, the Nigerian general anti avoidance provision operate on two limbs, namely, if tax authority is of opinion that any disposition is not in fact given effect to or if a tax authority is also of the opinion that any transaction which reduces or would reduce the amount of tax payable is artificial or fictitious (Abdulrazaq:2002: 678 - 679).

b. Other Solutions

The under listed can serve as solutions to the problems of taxation in Nigeria.

1. Total overhauling of the Nigerian Tax System
2. Strict enforcement of the presentation of tax clearance for any business transaction with the government.
3. Strict penalties both civil and criminal to any tax evaders.
4. Adequate and constant education and mobilization of the tax payer on the need for prompt payment of their tax.
5. The use of alternative dispute resolution mechanism in achieving peaceful settlement/compliance of the payment of tax.
6. The use of less aggressive and rigid enforcement procedure by tax authorities because this is making the tax payers to be less willing to comply with tax laws (Adedokun:2010:147)

SELF ASSESSMENT EXERCISE 2

- Considering the recurrence problems facing proper taxation in Nigeria, what do you think as a tax law student to be the best solution?

- Giving adequate tax education and enlightenment vast part of Tax problem in Nigeria could be solved. As a Tax law student, do you concur with this statement and why? Justify your answer with adequate reasons

4.0 CONCLUSION

Basically tax evasion and avoidance, problem of assessment, lack of competent tax man, bad attitude of Nigerians to tax system, lack of adequate penalty for tax offence, ambiguity in the Nigerian Tax statutes language etc are some of the problem facing proper taxation in Nigeria. The aftermath of all these problems is the constant failure in the Nigerian tax policy and no noticeable benefit to Nigerians from the tax revenue.

It has also been discussed in this unit that lack of interest of the Nigerian tax payer which culminated in shying away from performing their civic responsibility also hinder greatly the getting of apt and correct tax assessment and the best a tax man can do is to use an estimated assessment's strategy which in most cases faulty and not accurate.

To create an efficient taxation system therefore, a nation like Nigeria must make clear and definite choices regarding the distribution of tax burden-who will pay taxes, how much they will pay and how taxes collected will be spent (Nlerum: 2010:13).

5.0 SUMMARY

We have in this unit discussed

- Other categories of taxation clogs i.e problem of assessment, lack of competent hands in the Nigerian tax management, bad attitude to the payment of tax by Nigerians, lack of adequate tax law to curb tax offences and ambiguities in the tax law languages.
- Reasons and strategies for tax evasion and tax avoidance in Nigeria.
- Solutions to taxation problems in Nigeria

- Efforts in checking tax evasion and tax avoidance in Nigeria.

6.0 TUTOR-MARKED ASSIGNMENT

1. Since Nigerian tax statutes did not define tax evasion or avoidance, it is common practices to see people using the two interchangeably. As a student of tax law, supporting your answer with statutory authorities, critically analyse the constituents of tax evasion and tax avoidance bringing out the dichotomy between the two concepts.
2. Excessive tax avoidance is tax evasion-Discuss
3. Examine the criminal liability of
 - a. Tax avoidance
 - b. Tax evasion

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MODULE 4
DUTIES IMPOSED BY GOVERNMENT

UNIT 1 STAMP DUTIES

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1.0 INTRODUCTION

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3.0 MAIN CONTENT

 3.1 STAMP DUTIES

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6.0 SUMMARY

6.0 TUTOR-MARKED ASSIGNMENTS

7.0 REFERENCES/FURTHER READINGS

1.0 INTRODUCTION

A duty is a tax you pay on things that you buy especially those that you bring into a country (Hornby: 2000:364). In Nigeria, categories of duties that can be imposed by the government are stated in the second schedule to the constitution of the Federal Republic of Nigeria, (1999). The duties are Custom and Excise Duties, items 16, Export Duties, item 25, and Stamp Duties which is the 58th items on the Exclusive Legislative List.

In this unit, the duties that government can impose under the Nigerian law will be examined. Not only that, the essence and reason for the imposition of those duties will also be discussed.

2.0 UNIT OBJECTIVES

At the completion of this topic, you are expected to be able to

1. Explain what stamp duties are
2. Categories of items subject to Stamp Duties
3. Categories Of Items Exempted From Stamp Duties
4. Stamp Duties Commissioner and its duty

3.0 MAIN CONTENT

3.1 STAMP DUTIES

3.1.1 Definition of Stamp Duties

Stamp duties are one of the oldest taxes (M.T Abdulrazaq). They are taxes paid to the federal or state government on documents for the purpose of conferment of legal approval or authority. Stamp duties may be specific or *advalorem* taxes imposed upon instruments otherwise called written document. (Lekan et al).

According to Ola C. S (1981), stamp means as well as a stamp impressed by means of a die, as an adhesive stamp for denoting any duty or fee. Simply put, stamp

duties are taxes paid in perfecting documents. Apart from the fact that, stamp duties are one of the oldest taxes, it is specific or “*advalorem*” taxes imposed upon instruments otherwise called written documents (Lekan et al: 2006: 639). Stamp duties are an everyday affair yet little or no attention is paid to its details which are very important for the day to day running of most business (M.T. Abdulrazaq, 2002: 568).

Stamp duties are strictly taxes on documents and not on transactions or personal tax. It is a tax that is governed by the Stamp Duties Act 1939 as amended by numerous acts that followed. Stamp duties is one of the most important ways of making legal document acceptable in the criminal proceeding, evidence relating to document cannot be given in the Nigerian criminal proceeding except when same is duly stamped

From the foregoing, a deductible definition of stamp duty is that it is a form of tax levied on legal document in order to have legal recognition. In nutshell, stamp duty is simply a tax on legal document in pursuant to the perfection of such document.

3.1.2 Administration and General Nature of Stamp Duties

Historically, stamp duties were originally introduced in 1694 in England (M.T Abdulrazaq). However in Nigeria today, a stamp duty is administered by the provisions of stamp Duties Act CAP 411 LFN 1990 and it is managed by the commissioners of stamp duties. The process of determining formally the correct duty is by adjudication and to achieve this, the instrument must be sent to the commissioner of stamp Duties for adjudication. (M.T Abdulrazaq: 2002:569).

In the stamp Duties administration in Nigeria, going by the provision of Section 4(1)(2) of the Stamp Duties Act, the power is vested on both the Federal as well as the State government. In the wordings of the Act;

The federal government shall be the only competent authority to impose, charge and collect duties upon instruments

specified in the (4) schedule to the Act if such instruments relate to matters executed between a company and an individual, group or body of individuals; while the state government shall collect duties in respect of instruments executed between persons or individuals at such rate to be agreed with the federal government.

According to the court in the case of **A.G. vs Camplough (1878) 3 ex 214**. The law of stamp duties is governed solely by statute and no document can be charged with stamp duty unless it comes within the clear words of an Act Parliament. (M.T. Abdulrazaq)

The stamp Duties Act is divided into three parts. Part 1 consists of a number of general provisions and contains the charging section, which imposes a stamp duties specified in the schedule on the Act on the documents set out in the schedule. These are arranged in alphabetical order and are called the heads of charge. Each head of charge may be divided into several sub heads. Part II consists of a number of explanatory sections which relates to and supplements the various heads of charge. Part III contains supplementary provisions relating to stamp duties. The duties specified in the schedule are of two kinds, fixed and *anvalorem*. Fixed duties do not vary with the consideration for the document whereas the *ad valorem* duties vary with the amount of the consideration and in accordance with the scales stated in the schedule as amended by subsequently Acts (Abdulrazaq: 2002:569).

In Nigeria, as earlier said, Stamp Duties is levied by both state and Federal Government. All the federation Units (states) as well as the central Government are empower by law to establish their own stamp duties office and appoint their own commissioner who will be in charge of proper execution of stamp duties issues and according to sec. 6 SDA cap 411 LFN 1990 such commissioner are to be appointed by the relevant civil service commission.

a. Categories of items subject to Stamp Duties

The under listed items are liable to stamp duties before becoming effective as a legal instrument.

- i. Letters of power of Attorney
- ii. Leases
- iii. Bank Notes, promissory Notes and Bills of exchange
- iv. Bills of Landing
- v. Conveyances on sale
- vi. Duplicate and Counterparts
- vii. Mortgages

Other as outlined in Lekan et al is:

- viii. Agreements
- ix. Appraisement
- x. Instrument of Apprenticeship
- xi. Contract Notes
- xii. Other conveyances
- xiii. Exchange, partition or Division
- xiv. Marketable Securities
- xv. Notarial Acts
- xvi. Policies of Insurance
- xvii. Receipts
- xviii. Settlements
- xix. Share Warrants
- xx. Warrants for Goods; and
- xxi. Capital of Companies

b. Categories Of Items Exempted From Stamp Duties

In Lekan et al (200: 641-642), the items that are exempted from stamp Duties were examined; the items include:

i) **Liquidation sales /Transactions.** Where liquidation is under a compulsory winding up order by a court or a creditor's voluntary winding section 513 of company and Allied Matter Act 1990 provides exemption from stamp duties

- Any assurance (which includes any deed, conveyance, discharge, assignment or surrender).
- Mortgage, charge or other encumbrance on any property forming part of the assets of the company to be liquidated.
- Power of attorney, or order in respect of the company's property.
A property sold by a liquidated is exempted

ii) **Treaties/Agreements.**

Treaties/Agreement made either between the Federal Government and other Foreign Government or foreign private Corporations/international organizations are exempt from stamp duty.

iii). **Company Reconstruction and Amalgamation.**

Section 104 of this Stamp Duties Act exempts instruments in reconstructions and amalgamations. These include such instruments as a conveyance or transfer of sale assigning debts whether secured or unsecured. However, the exemption does not cover debts (a part from debts due to banks or trade creditors) incurred less than two years before the proper time for making a claim of exemption. Section 102 provides that a loan capital shall be exempted from stamp duty if paid in respect of a mortgage or marketable security on any trust deed or other document securing such a loan capital

- iv) Section 70 of SDA exempt instruments providing for penal rent or increased rent in the nature of a penal rent.
- v) Receipts issued for the payment of any government duties or taxes or of money for government are exempt.
- vi) A letter of credit granted in Nigeria or amount drafts to be drawn in Nigeria for payment outside Nigeria is also exempted.

c. Stamp Duties Commissioner and its duty

A stamp duties commissioner is the commissioner appointed solely for the purpose of administering and controlling issues of stamp duties. Commissioner of stamp duties performs both administrative as well as technical functions. Administratively, his function is basically to ensure the proper functioning of the SDA office by ensuring that:

- a) Stamping room where documents are embossed.
- b) Cash office where duties are paid and books are balanced on daily basis.
- c) The archive where copies of stamp documents are kept for future (Lekan et al: 2006:641).

Among the technical functions of the commissioner for stamp duties are:

- a. Assessments and fixing of appropriate duties and rates on document
- b. Stamping or embossments which may be by way of embossment with dies, affixing adhesive stamps, affixing postage stamps in lieu of adhesive stamps and printing on the instrument.
- c. The stamp duties commissioner is also charged with the custodian of dies and adhesive stamps use in stamping instruments in other to guide against its loss or misuse.
- d. Sometimes a commissioner may be required to express option on the amount of duty to be paid on any executed instrument and where this happens, it will be require of the commissioner to endorse a certificate on the instrument under the hand of the commissioner stating whether certain amount is chargeable on the instrument as duty or not. However, no two commissioners can adjudicate on an instrument and anybody who takes an instrument that has been adjudicated upon by one commissioner to another shall be guilty of an offence punishable with a fine (Lekan et al).

i Collection and Assessment of Stamp Duties.

Two banks branches in each state are mostly designated for the collection of the stamp duties. Any payment outside these bank can only be honoured after due confirmation. Not only that, the law expressly gave the right to assess document to the

states commissioner of stamp duties. (C.S Ola). The applicable rates are approved by Joint Tax Board, thus monitor the activities of the commissioners by comparing duties charged with the approved rate and any under assessment is returned for reassessment (C.S. Ola).

ii Stamp Adjudication

The special nature of stamp duties according to Abdulrasaq is illustrated by the adjudication process which enables the correct amount of duty to be determined – usually conclusively by the commissioners. Any person may require the commissioners to express their opinion on the liability to duty or to amount due. Following such an opinion the instrument may be stamped with the amount of duty determined and further stamped or with a stamp to show that it is not chargeable. There is however, no obligation to pay that duty and generally the only consequence is that the document is not adjudicated and duly stamped.

In **Fitch Lovell Ltd vs IRC (1962) WIR 1325 @ 1363** it was held that, apart from satisfying statutory requirements the main advantages in requesting adjudication is that the instrument is if duly stamped under the adjudication process –admissible for all purposes notwithstanding any objection relating to duty, thus it is the most that can be done to convince third parties. The process is also the first step in disputing the stamp Duties offices view of the correct amount of duty.(M.T.Abdulrasaq). It is important to however note that as was held in **Prudential Mutual Assurance Investment and loan Association vs Curzo (1852) 8 EX 97**, if an instrument is not duly stamped, subsequently, adjudication cannot retrospectively make it duly stamped. At the same time and as was held in **Marx vs State & Gen. Investment Ltd (1976)1WLR 380 at 387** that the process cannot be prejudiced rights that have been asserted and relied upon prior to adjudication. In that case, Brightman J. (as he then was) and as quoted in M.T. Abdulrasaq, held

Suppose a vendor of land requires the purchase to accept a title deed which is not properly stamped. The purchaser declines. The vendor serves a notice to complete. The

vendor forfeits his deposit. Suppose that this purchaser was right in law in his assessment of the stamp duty liability. It would be absurd to suppose in that case that the purchaser loses this deposit merely because the vendor between recession and trial succeeds in getting the instrument in question erroneously adjudicated as not liable to duty.

Any issue arisen from adjudication; it is the High Court that has the jurisdiction to entertain same. And this will be by way of case stated after adjudication and payment of the duty. The appeal must be made within 21 days of assessment. The commissioners of stamp Duties must state a case and deliver it to the appellant who may then within seven days file it at the High Court (M.T. Abdulrasaq; 2002:577). According to the count in **Holimeigh (Holdings) ltd vs IRC (1958) 46TC, 435**, oral evidence is admissible to supplement & the case stated. Not only that the court in **Clarke Chapman Tolin Thompson ltd vs IRC (1976)** and **Western United investment Co Ltd. Vs IRC (1958 ch 392)** held that if the appeal is successful overpaid duty can be repaid with such interest as the court determine.

Furthermore, the revenue may not give to recover the excess of any higher duty the court may determine, in such circumstances the instrument is simply not duly stamped unless the excess is paid. Not only that, an application for judicial review is open to a tax payer in appropriate circumstances. (M.T. Abdulrazaq).

d. Legal Status of Instrument not properly stamped.

The failure to stamp a document (unlike a failure to pay income tax) is not an offence and in general, the state cannot sue for duty on an unstamped instrument. Isaacs J in **Dent vs Moore (1919) CLR316 at 324** held that an instrument which is not properly stamp is nevertheless effective. However, the stamp duty Acts provide a number of sanctions against no-stamping (M.T. Abdulrazaq: 200: 578)

According to section 22 Stamp Duties Act an instrument which is not duly stamped in accordance with the law in force at the time when it was first executed “shall not except in criminal proceedings, be tendered in evidence or be available for any purpose whatsoever”.

In other words, the prohibition on admissibility does not extend to criminal proceedings, nor apparently to rent tribunals, since these are not court of law(M.T. Abdulrazaq) and as was held in **Mason vs Motor Traction co (1905)1 Ch 419**.

Through failure to stamp an instrument is not a criminal offence but SDA provides a penalties for late stamping. (M.T. Abdulrazaq). Not only that going by sec24 SDA, if any person whose office is to enroll register or enter in, or enters any such instrument not being duty stamped, he shall incur a fine (C.S. Ola).

According to M.T. Abdulrazaq (2002) on penalties for late stamping, the general rule SDA 5.23 (1) is that the person presenting the instrument for stamping after the date of execution must pay the unpaid duty, penalty of ₦20 and a further penalty, if the unpaid duty exceeds ₦20 of interest on such duty at 10% per annum from the day upon which the instrument was first executed up to the time when such interest is equal in amount to the unpaid duty. (M.T. Abdulrazaq: 2002: 579).

In the Act, a fine of ₦40 is chargeable if a person execute an instrument in which partial facts affecting the liability to or amount of duty were not disclosed especially if it was with an intention to defraud the state; going by the sec 9 S.D.A.

SELF – ASSESSMENT EXERCISE 1

- List and Explain five of the functions of the commissioner for stamp Duties.
- Vividly explain what you understand by stamp duties and its essence in the fund generation drive of your state government.

- There are some categories of documents that are exempted from stamp duties, list and explain 5 of these documents.

4.0 CONCLUSION

Though not as pronounced as the other forms of taxes, but from the discussion in this unit, it is clear that stamp duties is also a tax and its essence can never be over-emphasised. Stamp duties are not a tax on transaction or personal tax, but a tax on document. Issues on stamp duties are governed by the Stamp Duties Act 1993 as amended.

Whilst is the duty of commissioner to adjudicate on what constitute the stamp duties but any issue that arisen from adjudication strictly lies to the High Court in essence it is the High Court that has the jurisdiction to hear appeal from stamp duties matter.

It has also been established in this unit that, though the law required ones to stamp some categories of legal document but failure to stamp them properly still does not makes them ineffective because, failure to stamp a document is not a criminal offence but if any person saddle with the responsibility of enroll, register or enter such instrument do so without stamp, he shall incur a fine.

5.0 SUMMARY

We have in this unit discussed

- What stamp Duties is
- Categories of items that qualify for stamp duties and the ones not qualify.
- How stamp duties is levied
- Legal effect of a document not properly stamped.

6.0 TUTOR-MARKED ASSIGNMENTS

1. Critically examine the jurisdictional competency of state stamp duties office in the adjudication of instrument that relates to matters executed between a company and an individual taking cognizance the provision of section 4 (1) (2) stamp Duties Act.
2. With a well plan strategy of enforcement, both Custom and excise duties and export duties can be a good sources of fund to government through tax-Discuss

7.0 REFERENCES/FURTHER READING

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UNIT 2 OTHER CATEGORIES OF DUTIES

CONTENTS

1.0 INTRODUCTION

2.0 UNIT OBJECTIVES

3.0 MAIN CONTENTS

 3.1 OTHER CATEGORIES OF DUTIES

 1.1.1 Customs and Excise Duties

 3.1.2 Import and Export Duties

4.0 CONCLUSION

5.0 SUMMARY

6.0 TUTOR-MARKED ASSIGNMENTS

7.0 REFERENCES/FURTHER READING

1.0 INTRODUCTION

Apart from Stamp duties which can be legislated upon by both state as well as the federal legislatures, other duties are exclusive for the federal government. And even on the stamp duties, it is only the execution of personal instruments that can be legislated upon by the state government, while federal government legislates on stamp duties executed by Corporate and residence of the federal capital territory, Abuja. Even though not highly pronounced, duties are one of the modest but constant ways of generating revenue to the government coffer through indirect taxation.

In this unit, our target will be to examine other categories of duties that government imposes on goods and reasons for imposing them.

2.0 UNIT OBJECTIVES

At the completion of this topic, you are expected to be able to

1. Explain other categories of duties imposed by government on goods
2. Reasons why government imposes duties

3.0 MAIN CONTENT

3.1 OTHER CATEGORIES OF DUTIES

3.1.1 Customs and Excise Duties

Excise duty is defined by the Excise Ordinance No. 64 of 1941 as “any duty other than export duty of customs imposed on any goods manufactured in Nigeria”.

Excise duty is the money paid to the government by manufacturing concerns on goods produced. It is a production tax. Excise duties are government tax on some goods made, sold or used within a country (Hornby: 2000: 401). A customs and excise duty is the 16th items on the Exclusive Legislative List.

Amongst the reasons for the imposition of excise duties according to Lekan et al (2006) are;

- i. It is a fiscal weapon that can be manipulated to achieve predetermined economic objectives.
- ii . It has high capacity for re-allocating income
- iii It can be used to influence exercise of purchasing power by consumers.

iv It can be used to discourage the proliferation of industrial development along certain lines to the exclusion of others. For example exercise duty may be increased on certain commodities to deter investors.

v. Exercise duties also have import substitution effect. Rate of exercise duty are sometimes reduced or eliminated completely in order to give impetus to local production activities.

The rate of tax for most excisable goods ranges from 5% to 10%. However the goods that are considered harmful to the wellbeing of the members of the society attract rates up 40 %. Such harmful goods include beer, tobacco cigarettes, and liquor. The objective is to discourage massive production of such goods. Excise duty is the 16th items on the Exclusive Legislative List.

3.1.2 Export Duties

This is a tax on goods coming and going out of the country. Though a product tax, it is one of the effective indirect ways of generating fund for government. Just like the excise duties, import and export duties are levied in order to check the production and distribution of certain classes of goods. To check importation and to correct imbalance of trade between one country and another, a higher percentage of rates can be fixed on importations, while a lower percentage of importation rates will encourage the flowing in of such goods. An export duty is the 25th items on the Exclusive legislative List.

SELF – ASSESSMENT EXERCISE 2

- Apart from custom and excise duties, state other categories of duties that can be a good sources of fund to government
- List and explain why government impose duties generally

4.0 CONCLUSION

In this unit you have been exposed to other duties that government imposed on goods apart from stamp duties. All in all, the most important things to note is that the

levying of all these duties are basically for raising of funds as an indirect ways of taxation.

5.0 SUMMARY

We have in this unit discussed

- Other categories of duties levied by government
- Reasons for the imposition of excise duties
- Importance of levying duties

6.0 TUTOR-MARKED ASSIGNMENT

3. Critically examine the jurisdictional competency of state stamp duties office in the adjudication of instrument that relates to matters executed between a company and an individual taking cognizance the provision of section 4 (1) (2) stamp Duties Act.
4. With a well plan strategy of enforcement, both Custom and excise duties and export duties can be a good sources of fund to government through tax-Discuss
5. Whenever there is any ambiguity on the amount of stamp duties paid or to be paid, a request of adjudication can be sought. As a tax law student what do you understand by “adjudication” as relate, to stamp duties? How is it done, by who and mode of resolving issue that arisen from adjudication.
6. One of the serious criminal offences is a failure to stamp instrument before it execution. As a Tax law student supporting your answer with statutory authorities examine the veracity of this state.

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MODULE 5

COMPANY TAXATION AND EXEMPTIONS

UNIT 1 ADMINISTRATION OF AND CHARGEABILITY TO COMPANY TAX

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1.0 INTRODUCTION

Just like every individual, companies are also chargeable to tax. The law requires that companies should endeavor to make yearly return to the tax authority. It is therefore important to know that, a company is a different entity from its share holders

In this unit, you will be exposed to the administration of company taxation and ways by which companies are chargeable to tax.

2.0 UNIT OBJECTIVES

At the completion of this topic, you are expected to be able to:

- Appreciate the administration of company income tax in Nigeria
- Explain the chargeability of companies to tax in Nigeria

3.0 MAIN CONTENT

3.1 ADMINISTRATION OF AND CHARGEABILITY TO COMPANY TAX IN NIGERIA

3.1.1 Administration of Companies Income Tax

The administration of Company income Tax Act and the tax is under the care and management of the Federal board of Inland Revenue (Ariwodola: 2000; 132). Going by the provision of Section 1(1) Companies Income Tax Act)

There shall continue to be a board of which the official name shall be the Federal Board of Inland Revenue (in this act referred to as the “Board”) whose operational arm shall be called and known as the Federal Inland Revenue service (in this Act referred to as “the service”)

3.1.2 Composition of the Board

Different categories of people, stakeholders and interest group serve as the board of Inland Revenue. While the president shall appoint the

chairman of the board, other members according to section 2(a),(b),(c),(d),(e),(f)(g),(h),(i) are;

- b) Directors and head of departments of service;
- c) Director with responsibility for planning, research and statistics in the Federal Ministry of Finance
- d) a member of the national Revenue Mobilisation Allocation and Fiscal Commission;
- e) a member from the Nigerian national Petroleum Corporation not lower in rank than an executive director;
- f) a Director from National Planning Commission;
- g) a Director from Nigerian customs Service;
- h) the Registrar general of the Corporate affairs commission;
- i) the legal adviser to the service

The quorum and powers of the board are stated in section 2(3) and section 3(1),(2),(3),(4),(a),(b),(5),(6) of the Act.

3.1.3 Chargeability to tax

A company is a different entity from its share holders (Shalomon vs Shalomon), therefore, just like any other individual, a company is also chargeable to tax. Though “the principal officer or manager in Nigeria of every company shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this act for the assessment of the company and payment of tax”(section 37 CITA), section 36 CITA clearly states that “A Company shall be chargeable to tax”

- a) In its own name

- b) In the name of any principal officer, attorney, factor, agent or representative of the company in Nigeria, in like manner and to like amount as such company would have been chargeable
- c) In the name of a receiver or liquidator, or of any attorney, agent or representative thereof in Nigeria, in like manner and to like amount as such company would have been chargeable if no receiver or liquidator had been appointed

Note that, while (a) and (b) above relate to a going concern company while (c) is in respect of any company in receivership or in liquidation.(Ariwodola:137)

SELF-ASSESSMENT EXERCISE 1

- What is the composition and duties of the board that administer Company income tax in Nigeria?
- How will a company be charged to tax in Nigeria?

CONCLUSION

From the discussion in this unit, it could be gleaned that even though tax is compulsory but it is not an exercise to put unnecessary burden on both individual and cooperate organization. Tax is just a social responsibility of both individual and cooperate organization towards the welfare of the society. In Nigeria, the administration of Company income tax is basically under the jurisdiction, care and management of the Federal board of Inland Revenue.

5.0 SUMMARY

We have in this unit, discussed

- Administration of company taxation in Nigeria
- Company's' chargeability to tax

6.0 TUTOR-MARKED ASSIGNMENT

1. A company is distinct from its share holders when it comes to the issue of tax, therefore, as share holders are chargeable to tax so also the company. Examine the justiciability of this position

1. Examine critically, the provision of section 36 CITA Cap C21 Laws of the Federation of Nigeria as regards the chargeability to Nigerian Company tax

7.0 REFERENCES/FURTHER READING

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UNIT 2 COMPANY TAX EXEMPTION AND RELIEFS

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4.0 CONCLUSION

5.0 SUMMARY

6.0 TUTOR-MARKED ASSESSMENT

7.0 REFERENCES / FURTHER READING

INTRODUCTION

As you are aware right from the first unit of this course, tax is a compulsory payment imposed by government on the citizenry in a country. However, in order to reduce the burden of taxation on both individual and corporate entity and in a bid to encourage prompt and proper tax payment, government allows certain categories of people at a certain time not to pay tax; this is known as tax exemption or tax holiday. During this time, any individual or corporate organization enjoying it will pay less amount of money that are supposed to be paid as a tax.

In this unit, the constituent of Tax exemption will be examined, not only that, reasons and benefits of tax exemption and different categories of tax exemption will also be discussed.

2.0 UNIT OBJECTIVES

At the completion of this topic, you are expected to be able to:

- Explain what Tax exemption is
- Appreciate different categories of tax exemptions in Nigeria.
- Discuss the benefit of tax exemption to both to the state and individual.

3.0 MAIN CONTENT

3.1 COMPANY TAX EXEMPTIONS AND RELIEFS

3.1.1 DEFINITION OF TAX EXEMPTION

Tax exemption otherwise known as “tax holiday” is the most widespread tax incentive. Tax exemption simply means a period of exemption from the payment of taxes imposed by the government and this exemption may be complete or partial. (Ayua I.A:1996:306). Tax exemption may also relate to industry, regions or type of investment (F.M Andie 1968). Tax exemption is that which is not taxed while tax Relief is a reduction in the amount of tax you have to pay, especially when you are using the money for a particular purpose, such as buying property (Hornby A.S: 2000:1227)

From the foregoing what we can describe tax exemption to be is an incentive inform of nonpayment of tax for a specific period of time. The nonpayment may be total

or partial; and it is done in order to encourage investment and guaranteed some level of relief to the tax payers. Tax exemption begins with the day of initial production or the day of first commercial sale, because tax exemption has been generally regarded as an industrial investment device. (F.M Andie).

3.1.2 CATEGORIES OF COMPANY TAX EXEMPTIONS

3.1.2.1 Pioneer Industries Tax Exemption

The major reason for tax holiday is to encourage and stimulate private investment in the country economy. Exempting them from payment of tax for some years is also a booster for stability and growth of such business.

In Nigeria, the pioneer companies relief was first introduced by the Aid to Pioneer Industries Ordinance, 1952, which was superseded by the industrial Development (Income Tax Relief) Act 1958. The 1958 Act liberalized and extended the former aid to pioneer industries and provided that the establishment and development of industrial and commercial enterprises might be encouraged by way of income tax relief (Ayua: 1996: 316).

The 1958 Act was repealed by the industrial Development (Income Tax Relief) Act 1971 and the law has now been consolidated in the industrial Development (Income Tax Relief) Act cap 179 LFN 1990. In this CAP, tax relief grant is 3 to 5 years and it is available to both foreign and indigenous industries with the required initial investments for the foreign company at #150,000 and indigenous company at #50,000. According to section 12 of the Act, a pioneer company is forbidden from carrying on a trade or business other than its pioneer enterprise. Where this occurred section 6 provides that such company will be liable to tax in respect of those profits otherwise the profits of a pioneer company are exempted from tax.

What we are saying here is that, cognizance is taken of the newness and relevance of the products by the companies and the tax holiday period is subject to a maximum of 5 years. During this time, there is total exemption from tax of the company's profit during the pioneer period. (Ariwodola: 2000:15).

Not only that a pioneer company is entitled to claim the benefit of capital allowances at the end of its tax relief period thereby extending a tax free period of five years by another period during which a pioneer company pays no tax (Ayua: 317).

For a company to be granted a pioneer status under the Act, the following conditions must be satisfied:

- a) Federal Executive Council must be satisfied that any industry is not being carried on in Nigeria on a scale suitable to the economic requirement of Nigeria or is not being carried on at all.
- b) There are favourable prospects of further development in Nigeria of such industries in Nigeria, and
- c) It is expedient in the public interest to encourage the development or establishment of such industries in Nigeria. (Lekan et al: 2006: 413).

3.1.2.2 Exemption and Relief of Chargeable Gains

In Nigeria, going by CITA sec. 8 thereto profit or gain derived from business are subjected to tax, once the profit of such company accruing in, derived from, brought into or received in Nigeria, but some categories of profit are also exempted from tax. The profits exempted from Tax according to section 19 (1) to CITA and as outlined in (Ariwodola: 2001: 244-251) are as follows:-

1. Gain accruing to –
 - a) An ecclesiastical, charitable or educational institution of a public character.
 - b) Any statutory or registered friendly society;
 - c) Any co-operative society registered under the Co-operative Societies Law of any State.
 - d) Any trade union registered under the Trade Unions Act;

According to section 27(1), CITA, the accruing gain of the above listed institutions must not be derived from any disposal of any assets acquired in connection with any trade or business carried on by the institution or society, not only that, the gain must applied purely for the purpose of the institution or society as the case may be.

2. Gains accruing to any Local Government Council S. 28 (1).

3. Gains accruing to any company, being a purchasing authority established by or under any law in Nigeria, empowered to acquire any commodity in Nigeria for export from Nigeria; or
4. Gains accruing to any corporation established by or under any law for the purpose of fostering the economic development of any part of Nigeria in so far as the gains are not derived from the disposal or any assets acquired by the corporation in connection with any trade or business carried on by it or from the disposal of any share or other interest possessed by the corporation in a trade or business carried on by some person or authority. S 28 (2).
5. Grains accruing on disposal of investments held as part of any superannuation fund and other statutory retirement benefit scheme to the same extent as income derived from the assets would be exempt under S.20 of PITD (S.20.1). Disposal of a right to, or any part of any sum payable out of any superannuation fund shall also not be chargeable. (S.29.2).

“Superannuation Fund” means a pension, provident or other retirement benefits fund, society or scheme approved by the Joint Tax Board under Section 21 (1) (g) of PITD.

Grains accruing on disposal by any person of a decoration awarded for valour or gallant conduct which he acquires otherwise than for consideration in money or money’s worth (S.30).

6. Grains accruing from a disposal of Nigerian government Securities (S.31).
Nigerian Government Securities include Nigeria treasury bonds, savings certificates and premium bonds issued under the savings Bonds and certificates Act.
7. Gains accruing on disposal of land compulsorily acquired by an authority having and exercising such powers (S.9).
8. Gains accruing in connection with the disposal of an interest in or the right under any policy of assurance or contract for a deferred annuity on the life of any person (S.33).

On some of the other exemptions and relief provisions in the Act Ariwodola 2001 stated further:

- i) S.35 exempts sums obtained by way of compensation or damages for any wrong or injury suffered by an individual to his person or his profession or vocation. This includes wrong or injury or enticement. Sums obtained by way of compensation for loss of office exceeding N10,000 in any year of assessment is however chargeable.
- ii) S.36 exempts gain accruing on disposal of a dwelling house (with a maximum land area up of one acre or such larger area as the board may determine) which has been the individual's only or main residence throughout the period of ownership up to the time of disposal or up to the last twelve months before the date of disposal. So far as it is necessary for the purposes of this section to determine which of two or more residences is an individual residence for any period.
 - a) The individual may conclude that question by notice I writing to the Board given within two years from the beginning of that period. This can be varied by a further notice in writing to the Board as respects any period beginning not earlier than two years before the given of the further notice.
 - b) The question shall be concluded by the determination of the Board. The individual may appeal Commissioners against that determination within thirty days of service of the notice by the Board.
- iii) A gain accruing on disposal of tangible and movable assets shall not be chargeable gain if the total value of the consideration does not exceed N1,000.
- iv) A motor vehicle the carriage of passengers is an exempt's asset for CGT purposes unless it is of a type not commonly used as private vehicle and is unsuitable to be so used (S.38).
- v) S.39 exempts assets acquired by way of gift and disposed of in a similar manner.
- vi) S.40 exempts capital gains accruing to a diplomatic body.
- vii) Double taxation relief is applicable to CGT as it is applicable to income tax under PITD and company's income tax under CITA with the substitution of the words capital gains for income and profit and CGT for income tax.

The following exemptions have been included from 1990

- a) Gains arisen from takeover absorption or merger provided that no cash payment is made in respect of the shares disposed or acquired. (S.32A).

Gains arisen in respect of disposals of securities Unit Trust provided the proceeds are re-invested (S.32B). Not only that, from 1st January 1998, Stock and shares of every description are also exempted. (Ariwodola: 2001:247)

Furthermore, going by section 19 (2) CITA, 1990, the federal executive council may exempt by order:

- a) Any company or class of companies from all or any of the provisions of the Act, or.
- b) From tax or all or any profits of any company or class of companies from any source on ground which appear to be sufficient.

Not only that, section 19 (3) stated that the federal executive council may order amend, add to or repeal any exemption made by notice or order, in so far as it affects a company.

3.1.2.3 Important Duties and Long Terms Fiscal System Relief

Relief from custom duties on imports of equipment and construction materials lowers the cost of firm's capital equipments whilst relief from duties on imports of raw materials and semi-processed materials enhances the competitiveness of the firm in establishing a domestic or foreign market. Thus relief from import duties may also take the form of differentiation between types of industries and between the destination of the products produced by these industries, namely, as to whether for internal use or for export markets. (Ayua: 1996: 312).

On the long-term fiscal system, according to Ayua, is geared towards the stabilization of tax charges, and this tax holiday usually entitles the approved enterprise to the following benefit.

- i. Stabilisation of all tax rates at the level prevailing when the enterprise was approved and for an extended period of say 25 years.
- ii. Exemptions from any modification in tax assessment and collection procedure during this period, and
- iii. Exemption from new taxes introduced during this period.

3.1.2.4 Commonwealth Income Tax Relief

If a company which has paid or is liable to pay tax under the Companies Income Tax Act 1961 for any year of assessment on its profits satisfies the Board that it has paid or is liable to pay commonwealth income tax for that year in respect of the same part of its profits, it will be entitled to tax relief under the Act. On this if the Company is a Nigerian company, rate of tax if it does not exceed one-half of the rates of tax in Nigeria, and in any other case, half of the rate of tax in Nigeria. (Orojo: 1979: 160).

3.1.2.5 Double Taxation Relief

Double taxation is the levying of tax on the same items by different tax authorities. In double taxation, the same income received is being taxed twice. To lessen the burden imposed by double taxation on the recipient, various countries have therefore made provisions for double taxation relief. Not only that, in order to aid the actualization of relief from double taxation, many countries including Nigeria had entered into Double Taxation Agreement. The taxes that are subject to this agreement in Nigeria include Personal Income tax, Companies Income Tax, Capital Gain Tax and Petroleum Profit Tax (Lekan et al : 2005:449).

Amongst the items exempted from double taxation are

- i) The remuneration of a professor or a teacher who is resident for not more than years in the other country for teaching purpose.
- ii) Government persons except the recipient is ordinarily resident in Nigeria
- iii) Air craft and shipping profits
- iv) Dividends paid by a UK company to a Nigeria residents who has no permanent establishment in the UK
- v) Payments to a students or apprentice during his full time education or training in Nigeria.
- vi) The income is derived by a resident in UK provided he is not in Nigeria for at least 183 days and the services are rendered for a UK employer (Lekan etal:451).

In double taxation, arrangement for any allowance by way of credit must be made not later than 2 years after the end of the year of assessment. Amongst the countries that has

entered into double taxation agreements DTA with Nigeria are; Kingdom of Belgium, French Republic, Government of Canada, Government of Romania and Kingdom of Netherlands.

SELF-ASSESSMENT EXERCISE 2

- What do you understand by tax exemption or tax holiday and what are the rationale behind it?
- Explain some statutory or administrative ways of checking double taxation in your country.

4.0 CONCLUSION

In order to alleviate the burden of taxation on corporate organization, the law gives room for nonpayment of tax at a certain period of time, and this is known as tax exemption or tax holiday. This exemption may be partial or total. That is, such company may be exempted from the payment of the total amount or certain percentage of tax may be exempted from payment for certain period of time.

One of the major reasons for company tax holiday is to lessen the burden of tax on the company in order to allow for stability and growth of a company. Not only that, it is also a weapon to attract foreign investment and re-investment in the economy. In nut shell, tax exemption can be a very useful tool in the hands of the developing countries to attract foreign capital as the foreign firm may be reluctant in the first instance to come because of poor investment climate in some countries. Tax exemption therefore reassures them that their presence is needed.

In conclusion, it is pertinent to note that, tax exemption is a global phenomenon and not peculiar to Nigeria. All the countries of the world normally look for avenue to lessen the burden of tax on their citizenry. Therefore, the issue of tax exemption is both intra and international in nature, and that's why countries all over the world try to avoid higher tax boarding by entering into Double Taxation Agreement (DTA).

5.0 SUMMARY

We have in this unit, discussed

- What tax exemption is
- Companies tax exemptions and reliefs

6.0 TUTOR-MARKED ASSIGNMENT

1. Critically examine what you understand by tax exemption or tax holiday.
2. List and explain the conditions that a company must satisfy before it can be granted a pioneer status
3. Although company gains are charged to tax but some categories of gains attracted some tax relief using statutory authorities, examine some of them.
4. Explain what you understand by double taxation and the items exempted therein.

7.0 REFERENCES/FURTHER READING

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MODULE 6
WOMEN AND SPECIAL GROUPS TREATMENT TO TAX
(PERSONAL RELIEFS)

UNIT 1 IMPOSITION OF PERSONAL TAX AND INCOME CHARGEABLE

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3.1 IMPOSITION OF PERSONAL TAX AND INCOME CHARGEABLE

3.1.1 Imposition of Tax

3.1.2 Persons and Income Chargeable

4.0 CONCLUSION

5.0 SUMMARY

6.0 TUTOR-MARKED ASSESSMENT

7.0 REFERENCES / FURTHER READING

1.0 INTRODUCTION

The Personal Income Tax Act makes provisions for the imposition of tax on individuals, families, trustees, communities and estates throughout the country, and the liability to personal income tax in Nigeria does not depend on the domicile (where you are living) or nationality (your mother country) of the tax payer. Profit arising from a trade, business, profession or vocation, from any source inside or outside Nigeria are chargeable here if the taxpayer happens to be resident in Nigeria. Foreign residents are also taxable here if they have income arising from a Nigerian source (Ipaye:21).

In this unit, the imposition of tax on individual and the income chargeable will be discussed

2.0 UNIT OBJECTIVES

At the completion of this topic, you are expected to be able to:

- Explain how tax is imposed on individual
- Know the categories of persons chargeable?
- What incomes are chargeable?

3.1 IMPOSITION OF PERSONAL TAX AND INCOME CHARGEABLE

3.1.1 Imposition of Tax

Personal taxes are imposed on income of individuals, communities and families. The imposition of personal tax is stated in section 1 of personal Income Tax Act as follows:

There is hereby imposed a tax on the income-

- a) Of individuals, communities and families; and
- b) Arising or due to a trustee or estate

This shall be determined under and be subject to the provisions of Personal Income Tax Act. Note however that, income tax is payable on anything that can be described as an income. And an income includes any amount deemed to be income under the Act

3.1.2 Persons and Income Chargeable

Tax of an amount to be determined from the table set out in the Sixth Schedule (in this Act referred to as 'income tax') shall be payable for each year of assessment on the total income of-

- a) Every individual other than persons covered under paragraph (b) of this subsection or corporation sole or body of individuals deemed to be resident for that year in the relevant state under the provision of this Act; and
- b) The following other persons, that is-
 - i) Persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force, the Nigerian Police Force other than in a civilian capacity;
 - ii) Officers of the Nigerian Foreign Service;
 - iii) Every resident of the Federal Capital territory, Abuja; and
 - iv) A person resident outside Nigeria who deserves income or profit from Nigeria.

An individual (not an itinerant worker) can only be assessed to income tax if he is deemed to be resident in a state for the year of assessment. The residence factor is very important in determining whether or not an individual is liable to income tax (Ariwodola: 2001:12). The categories of exempted tax here is the personal emoluments of any person serving as other rank (section 2 (7) Personal Income Tax Act).

Other person chargeable is:-

- a) Itinerant workers (section 2(3))
- b) Community (section 2(4))
- c) Families (section 2(5))
- d) Trustees (section 2(6))

The income chargeable is generally treated in section 3(1) a-f of the Personal Income Tax Act

SELF-ASSESSMENT EXERCISE 1

- With the provision of Section 1 of PITA, discuss how Personal taxes are imposed on income of individuals, communities and families
- List and explain the categories of persons chargeable to tax under PITA?

4.0 CONCLUSION

From the discussion in this unit, it could be gleaned that even though tax is compulsory but it is not an exercise to put unnecessary burden on both individual or cooperate organization. The major reason for tax relief is to lessen the burden of tax on the people in a given society. Not only that, the unit has also exposed the fact that not all income are chargeable to tax save those treated in section 3(1) a-f of the Personal Income Tax Act.

5.0 SUMMARY

We have in this unit, discussed

- How tax is imposed on individual
- The categories of persons chargeable to personal tax?
- What incomes are chargeable?.

6.0 TUTOR-MARKED ASSIGNMENT

5. Resident in Nigeria is very vital when considering the chargeability to tax of an individual-Discuss

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UNIT 2 PERSONAL TAX EXEMPTIONS AND RELIEFS

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3.2.1 Personal Allowances

3.2.2 Married Allowances

3.2.3 Children Allowance

3.2.4 Dependent Relative Allowance

3.2.5 Life Assurance Relief

3.2.6 Disposal on Account of Death

3.2.7 Pension and Provident Fund

3.2.8 Disable Persons Allowance

4.0 CONCLUSION

5.0 SUMMARY

6.0 TUTOR-MARKED ASSESSMENT

7.0 REFERENCES / FURTHER READING

1.0 INTRODUCTION

To relief the tax payers' burden, the law under certain circumstances exempts payment of tax. Not only that, some categories of people are also given certain allowances in order to alleviate their economic burden of tax incidence.

In this unit, some personal tax reliefs and mode of claiming same will be discussed. Not only that, the tax treatment of women and some special groups (as it has to do with reliefs) will also be emphasised.

2.0 UNIT OBJECTIVES

At the completion of this topic, you are expected to be able to:

- Know about personal tax reliefs
- How women and disable people treated to tax in Nigeria.

3.2 PERSONAL TAX EXEMPTIONS AND RELIEFS

Personal relief are those allowed to an individual tax payer which are set off against his gross income in order to ascertain his taxable income, that is, the amount of income on which tax is to be charged. Personal reliefs are available only to individual and not to companies. Unlike trading losses, there is no carry forward to reduce tax liability for the following year. Personal reliefs are usually granted to individual ordinary resident in Nigeria. The point to note here is that reliefs are not automatically given. They have to be formally claimed on a signed and dated return. Their effect is to reduce the tax chargeable under an assessment. The reason for personal reliefs would seem to be:

1. the amount of expenses and number of dependant considerably reduce ability to tax on the full emolument; and
2. a taxpayer must be left with enough to live on (Ayua. 1996:82-83)

According to Ayua, the reliefs are therefore designed to adjust tax between taxpayer according to pay. Personal family commitments are thus taken into consideration in determining the tax liability of every individual tax payer. The tax system therefore helps the taxpayer to maintain his family.

The following allowances are granted under sec. 3 of PITD 1993 as amended for the purpose of determining the taxable income of an individual:

3.2.1 Personal Allowances

A tax payer is granted a personal allowance of #3,000 plus 15 per cent of earned income. The effect therefore would be that more money will be left in the hands of the taxpayer. Personal allowance is allowed in arriving at the chargeable income for tax purposes only in respect of earned income. Earned income includes income from trade, business, employment, profession or vocation but does not include investment income such as rents, dividends, interests or royalties (Ayua: 83).

3.2.2 Married Allowances (Or Wife's Allowance)

An allowance of #300 is given in respect of a wife living with or maintained by the tax payer or a former wife to whom the taxpayer pays alimony under the order of a court. The tax payer must be resident in the State in the year of assessment. (Ayua : 83). A tax payer claiming the married man allowance cannot claim for deduction of alimony at the same time.

3.2.3 Children Allowance

An allowance of #1000.00 is given for each unmarried child maintained by the taxpayer in the year immediately preceding the year of assessment. The following conditions must be met before the allowance can be claimed.

- i) The child must be under the age of sixteen in the preceding year; or
 - ii) If the child is over sixteen years of age he was receiving full-time education at a recognized University. College, School or other educational establishment or articulated or indentured in a trade or profession in that year.
- (Ayua:84)

3.2.4 Dependent Relative Allowance

#1,000.00 is the maximum allowance given in respect of dependants maintained by the taxpayer. The dependent relative must be:

- i) the widowed mother of the taxpayer or his spouse or
- ii) Must be incapacitated by old age or infirmity from maintaining himself or herself. Where the claim is in respect of the widowed mother, it must be supported by evidence that the husband is dead and in respect of any other relative under the age of 65, there must be a doctor's certificate confirming that the relative is incapable of supporting himself or herself by virtue of the infirmity. Where two or more taxpayers contribute towards the maintenance of the dependent relative, the allowance will be divided proportionately between them. (Ayua: 85).

3.2.5 Life Assurance Relief

The taxpayer is given some relief for the insurance premium paid on his life or that of his wife. The life Assurance Relief shall not exceed 10 per cent of the Capital assured or #2000.00 or one fifth of the total income in appropriate circumstances.

To claim this relief, the taxpayer must show that in the preceding year he had insurance on his life or on the life of his wife (or vice versa) and that the premiums have been paid with an insurance company lawfully carrying on business in Nigeria. (Ayua: 85).

Other additional reliefs which were once granted include:

- a) a deduction of not more than 25 per cent of the taxpayers total income in respect of his equity shareholdings in a company floated exclusively for the purpose of research and development;
- b) a deduction for donations made to approved research institutions and centers subject to a maximum of 10 per cent of the taxpayer's chargeable income for the year of assessment;
- c) a deduction of #2,000 in the case of a disabled person who uses special equipment and the services of an attendant in the course of a paid employment provided the deduction does not exceed 10 per cent of the earned income of the person for that yea.(Ayua : 86)

3.2.6 Disposal On Account Of Death S.8.

On the death of an individual any assets of which he was competent to dispose of shall for the purposes of this Act be deemed to be disposed of by him at the date of his death and acquired by the personal representatives or either person on whom the assets devolve for a consideration equal to.

- a) In a case where the amount of the consideration for which the asset was last disposed of by way of a bargain made at arm's length is ascertainable to that amount;
- b) In any other case, the market value of the asset at that date; (subsection 1)
- c) The gains which accrue in consequence of subsection (1) of this section shall not be chargeable to capital gains tax under this Act (subsection 2)

The personal representatives shall be treated as having the deceased residence and domicile at the date of death. (subsection 3).

On a person acquiring any asset as legatee-

- a) No chargeable gain shall accrue to the personal representatives and
- b) The legatee shall be treated as if the personal representatives acquisition of the asset had been his acquisition of it.(subsection 4).(Ariwodola : 2001: 250-251)

3.2.7 Pension and Provident Fund

Contributions to approved pension or provident fund scheme also qualify for relief. It is important to note that the scheme must be approved by the Joint tax Board before any relief can be granted to the contributors; and the amount to be granted cannot be higher than N5, 000.00 in any one year.

3.2.8 Disable Person allowance

An additional allowance of N3,000.00 or 20% of earned income (whichever is higher) is available to a disabled person who uses special equipment and the services of an attendant in the course of paid employment(section 33(3)(e))

SELF-ASSESSMENT EXERCISE 2

- List and explain the categories of persons chargeable to tax under PITA?
- Critically examine the tax treatment of the following categories of people:
 - a) Married women,
 - b) children
 - c) disabled persons

4.0 CONCLUSION

From the discussion in this unit, it could be gleaned that even though tax is compulsory but it is not an exercise to put unnecessary burden on both individual or cooperate organization. The weaker sex like women, children and disabled persons are accorded some reliefs and allowances. The resultant effect is that, by this relief, the tax payer will be able to manage his meager recourses to the extent of still having some fund left to take care of other family commitments.

Significantly however, the relevant tax authority may require a claimant to support his claim for relief with documentary evidence before that he is entitle to such claim(s), and if in the opinion of the tax authority the evidence is inadequate or if the supporting evidence is not convincing, the relevant authority may refuse to allow the deduction or allow such part only of the amount claimed as the relevant tax authority may decide (Ariwodola: 78)

5.0 SUMMARY

We have in this unit, discussed

- How women and disable people are treated to tax in Nigeria.

6.0 TUTOR-MARKED ASSIGNMENT

1. Resident in Nigeria is very vital when considering the chargeability to tax of an individual-Discuss
2. Critically examine the tax treatment of the following categories of people:
 - a) Married women,
 - b) Children
 - c) Disabled persons
 - d) Dependent Relative Allowance
 - e) State the position of the law as relates to tax relief on the followings:
 - a) Pension and Provident Fund
 - b) Life Assurance Relief
3. Resident in Nigeria is very vital when considering the chargeability to tax of an individual in Nigeria-Discuss

7.0 REFERENCES/FURTHER READING

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