Taxation in Nigeria: an evaluation of the impact of the Companies Income Tax Act

Senior lecturer **Matthew Enya NWOCHA**[1]

Abstract

This Paper is written against the background of the need to strengthen Nigeria's tax laws for optimum contribution to public revenue and economic development in an era of widespread tax evasion and economic recession. The Paper has found among other things that defects and loopholes that exist in the Companies Income Tax Act (CITA) is the occasion for widespread tax evasion, the arbitrary and discriminatory application of the Act, and the political manipulation of the process. The result is that the Act is completely encumbered in achieving its objectives. To eliminate these encumbrances, the paper has recommended, among other things, the amendment of the law to place the wide discretionary powers of the president to impose on or exempt companies from taxation under the supervision and authority of the National Assembly and to place the powers of the Federal Board of Inland Revenue to distrain properties of defaulters under the jurisdiction of the courts.

Keywords: *tax laws, economic development, recession, investments, civil liability.*

JEL Classification: K22, K34

1. Introduction

Worldwide, governments levy tax for a variety of reasons. Principal among them are to raise public revenue needed for assorted public expenditures and, secondly, to balance the sectoral development of the economy. The tax laws operative in Nigeria are the Stamp Duties Act,[2] Petroleum Profits Tax Act,[3] Customs and Excise Management Act,[4] Casino Taxation Act,[5] Income Tax

[1] Matthew Enya Nwocha - Head of Postgraduate Studies, Faculty of Law, Ebonyi State University, Abakaliki, Nigeria, nwochaenyaeni@gmail.com

[2] Commencement date of the Act is 1st April, 1939.

[3] Commencement date is 1st January, 1958. The Act has been amended by the Petroleum Profits Tax (Amendment) Act, 2007.

[4] LFN, 2010. Excise duties were traditionally considered indirect taxation, due - in principle – for selling certain consumer goods, usually considered luxury. Economic theory recommends excise duties on goods with inelastic demand. In these circumstances, taxes price increases on excise goods does not cause significant reductions in the consumption of these goods, so budget revenues from excise duties are relatively stable. The scope of these special charges of consumption is particularly vast and it varies from country to country and includes mainly: alcohol and soft drinks, wine, tobacco products, gasoline, diesel, tea, coffee, soft drinks, cars, furs, jewelry, cosmetics etc. – see Mihaela Tofan, *Excise Duties in European Union. Relevant National Case-Law*, in Cătălin-Silviu Săraru, *Contemporary Challenges in the Business Law*, Adjuris - International Academic Publisher, Bucharest, 2017, p. 135.

(Authorized Communications) Act,[6] Capital Gains Tax Act,[7] Industrial Development (Income Tax Relief) Act,[8] Companies Income Tax Act,[9] Tertiary Education Trust Fund (Establishment etc),[10] Personal Income Tax Act,[11] Value Added Tax Act,[12] Taxes and Levies (Approved list for Collection) Act,[13] Minerals and Mining Act,[14] and the Federal Inland Revenue Service (Establishment) Act.[15] These laws are geared towards generating public revenue for the Nigerian government and also encouraging multi-sectoral economy growth. But as good as some of them might be, the greatest obstacle to raising public revenue by taxation in Nigeria is tax evasion. The Companies Income Tax Act is designed to tax the profits of companies that accrued in, were derived from, brought into, or received in Nigeria. The scope of this Paper is to evaluate the Companies Income Tax Act with a view to firstly isolating the defects in the law and recommending remedial approaches and, secondly, ascertaining its impact on Nigeria's economic development.

2. Conceptual framework

Taxation is a potent weapon in the hands of governments with which they regulate economic activities, raise revenue, and sanction negative economic engagements. Taxation has occupied a centre stage in the economic calculus since early scholarship. In 1776, Adam Smith wrote that the subjects of every State ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities in relation to the revenue which they respectively enjoy under the protection of the State. He further noted that: *Public stock and lands, therefore, the two sources of revenue which may peculiarly belong to the sovereign or commonwealth, being both improper and insufficient funds for defraying the necessary expense of any great and civilized State; it remains that this expense must the greater part of it, be defrayed by taxes of one kind or another; the people contributing a part of their own private revenue in order to make up a public revenue to the sovereign or commonwealth.*[16].

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[5] Commencement date is 1st April, 1965.
[6] Commencement date is 23rd April, 1967.
[7] Commencement date is 1st April, 1967
[8] Commencement date is 1st April, 1970.
[9] Commencement date is 1st April 1977. The Act has been amended by the Companies Income Tax (Amendment) Act, 2007
[10] Formerly Education Tax Act. Later amended in 2011 and rechristened. Commencement date remains 1st January, 1993.
[11] The Act has been amended by the Personal Income Tax (Amendment) Act, 2011. Commencement date is 25th August, 1993.
[12] The Act has been amended by the Value Added Tax (Amendment) Act, 2007. Commencement date is 1st December, 1993.
[13] Commencement date is 30th September, 1998.
[14] Commencement date is 1999.
[15] Commencement date is 16th April, 2007.
[16] Adam Smith (1776) *The Wealth of Nations,* Bantam Classic Edition/March 2003, (New York: Bantam Dell), p. 1042.

By definition, a tax is a compulsory levy imposed by the government on individuals, companies and other relevant entities doing business and making profit in the country.[17] It is a payment in return for which no direct and specific *quid pro quo* is offered by the government, and indirect benefit to different individual tax payers cannot be determined.[18] Taxation occupies a significant position in any nation's fiscal policy generating public revenue for government expenditure on roads, power and energy, infrastructure, education and other social services. Economists have offered various insights on the principles that determine the imposition of tax. One of them is the principle of equality whereby individuals and other taxable entities pay tax that is proportionate to their current income. By this, the burden of taxation is distributed equally among eligible taxpayers. The principle of proportionally enjoys early approval in Adam Smith's *The Wealth of Nations*. So also is the principle of certainty where he insisted that *the tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person.*[19] For Adebayo, to guard against corrupt tax administration, the taxpayers should not be subject to arbitrariness and discretion of tax officials.[20] There is also the principle of convenience where tax is levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it. A good illustration is the pay-as-you-earn (PAYE) system that is applicable to civil and public servants whose taxes are deducted at source or at the point of payment of their salaries. There is also the principle of economy which upholds the minimization of the cost of collection of taxes. The object of taxation might be jeopardized, if not frustrated, if the cost of collection of taxes outweighs the income that eventually comes into government coffers by it. This is what Adam Smith warned against when he stated that *every tax ought to be so contrived as both to take out and to keep out of the pockets of the people as little as possible, over and above what it brings into the public treasury of the State.*[21] Furthermore, a tax regime must be flexible enough to amend to conform with the changing realities of the economy and at short notice without disrupting the structure of taxation. This is referred to as the principle of flexibility. Under this, additional tax legislations can come and existing ones may be amended and due to the flexibility of the system the tax administration machinery will be able to absorb the changes and stay the course. Again, a tax regime must have a simplified computation procedure. This is referred to as the principle of simplicity. A complicated computation parameter may be difficult to administer or even to understand. The language of the law must not also be ambiguous for this may result in double taxation or aid tax evasion. Some economists also add the principle

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[17] Afolabi defines tax as a compulsory levy on the residents of a society by the government of that society. See L. Afolabi (1999) *Monetary Economics.* Lagos: Perry Barr Ltd., p. 113.

[18] Ademola Adebayo (1999) *Economics: A Simplified Approach*, 2nd ed. Lagos: African International Publishing Ltd.

[19] *Op. cit*., p. 1043.

[20] *Op. cit*., p. 114.

[21] Adam Smith, *op. cit.*, p. 1044.

of productivity, which they alternately refer to as the canon of fiscal adequacy. Under this principle, a tax system should be able to yield enough revenue for the treasury such that government should not have need to resort to deficit financing.[22] This is not a positive approach to taxation as it can easily lead to over taxation that would ultimately pose a constraint on economic enterprise in general. Depending solely on taxation to finance the budget can be a push back to, rather than boost, economic development. Scholars have also suggested the principle of buoyancy by which it is recommended that the tax revenue should have an inherent tendency to increase along with an increase in national income, even as the rates and coverage of taxes are not revised. There is also the principle of diversity in which it is advisable to have a diversified source of public revenue so that a reduction in the tax revenue from one or more sources would not significantly impact negatively on public revenue or on the growth of the economy, such shocks being absorbed or compensated for by other sources of taxation.

The point has been made earlier that taxation is a veritable means by which government raises revenue with which it finances government expenditure, redistributes income and wealth, manages the economy, protects infant industries, corrects balance of payment deficits, discourages the consumption of certain goods among other government functions and responsibilities. If this is the case, then taxation has a direct impact on the growth of the economy. The vision and ambition of most governments is to develop the economy and secure economic prosperity to its people. But the capacity of government to achieve these objectives is determined mainly by its ability to finance its economic development plans as well as its budgets and taxation plays a key role in the calculation as a major source of public revenue. It is against this background that we are set to examine the Companies Income Tax Act (CITA) as a source of public revenue in Nigeria and its ultimate significance and role in economic development in the country.

3. Impact of the Companies Income Tax Act (CITA) on economic development in Nigeria

The ultimate impact of the Companies Income Tax Act (CITA) on economic development in the country is measureable by its capacity to contribute to public revenue and the quantum or percentage of such contribution on the one hand, and the granting of exemptions to certain businesses where such grant is targeted at boosting the productive capacity of those set of business in such a way that there is a positive impact on economic growth on the other. Section 9 of CITA imposes taxes on the profits of any trade or business; the rent or any premium arising from a right granted to any other person for the occupation or use of any property; on in dividends, interests, royalties, discounts, charges or annuities; any source of annual profits or gains not falling within the preceding categories; any amount deemed to be income or profit under the Act or with respect to any benefits

[22] See H.L Bhatia (2006) *Public Finance,* (New Delhi: Vikas Publishing House Pvt Ltd.), p. 42.

arising from a pension or provident fund under the Personal Income Tax Act; fees, dues and allowances for services rendered and any amount of profits or gains arising from acquisition and disposal of short-term money instruments like federal government securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bonds.

Section 47 provides that a company shall be chargeable to tax in its own name; or the name of any principal officer, attorney, factor, agent, or representative of the company in Nigeria; or in the name of a receiver or liquidator, or of any attorney, agent or representative in Nigeria. Section 77(1) provides that not later than three months from the commencement of each year of assessment, the company shall pay provisional tax of an amount equal to the tax paid by such company in the preceding year in one lump sum. Again the Act makes provisions for deduction of taxes from source including interests,[23] rent,[24] dividends,[25] and payments owing to the company by individuals.[26] By section 82, any person who is obliged to deduct tax at source and fails to do so or after having deducted the tax fails to remit same to the Federal Board of Inland Revenue (the Board) within 21 days from the date the tax was deducted or the time the duty to deduct arose is guilty of an offence and liable to a penalty of one hundred percent per annum of the tax withheld or not remitted. These positive provisions of the Act if properly harnessed and implemented are capable of generating massive income and placing them at the disposal of government to inject back to the economy to boost economic activities.

Tax avoidance has become endemic in the country and may as well defeat the objectives of the Act. For this reason, the Act has made certain provisions to counter the malaise. Section 83 stipulates that if the person who is under obligation to deduct tax at source but failed to do so or to remit same is an officer of a government ministry, department, parastatal, institution or an agency of the Federal or State Government, or Local Government, the Federal Board of Inland Revenue may authorize the Accountant-General of the Federation in writing to deduct from the allocation of such ministry, department, parastatal, institution or agency of the Federal or State Government, or Local Government such amount of tax deductible plus interest at the prevailing commercial rate.[27] This is a sure way of beating tax evasion by the agencies of government. But what happens if the Board does not authorize the Accountant-General remains uncertain and the Act does not provide a solution. Section 87 empowers the Board to sue in a court of competent jurisdiction to recover any taxes owing to the government by a defaulting company together with accrued interest and cost of action. The court before whom the action is brought can issue a bench warrant for the appearance of a director or other officer

[23] Section 78 CITA.

[24] Section 79 CITA.

[25] Section 80 CITA.

[26] Section 81 CITA.

[27] The income of the Federal Government of Nigeria are shared monthly to the three tiers of government (Federal, State and Local Government) according to a formula designed by the Revenue Mobilization and Fiscal Commission.

of the company to attend the proceedings and when and if judgment is delivered against the company and the debt remains unpaid for six months after judgment, the director or officer may be subpoenaed to show cause why the debt remains unpaid.[28] The punishment for such default ranges from two thousand naira to twenty thousand naira or six months imprisonment.[29] Companies who make false statements or representations to evade tax or to under pay shall be guilty of an offence and upon conviction liable to a fine of one thousand naira or imprisonment for five years or to both fine and imprisonment.[30] And where any person appointed to assess or collect tax under the Act demands from any company an amount in excess of the authorized assessment of the tax; or withholds for his own use or otherwise any portion of the amount of the tax collected; or renders a false return, whether orally or in writing, of the amount of tax collected or received by him, or defrauds any person, embezzles any money, or otherwise uses his position to deal falsely or wrongly with the Board; or not being authorized under the Act to do so, collects or attempts to collect tax under the Act, such a person shall be guilty of an offence and liable to a fine of six hundred naira or imprisonment for three years.[31] Furthermore, the institution of proceedings for or the imposition of a penalty, fine or term of imprisonment under the Act is not a relief to any company from liability to payment of any tax for which it is or may become liable.[32] Any officer of the Federal Inland Revenue Service duly authorized in writing in that regard by the chairman of the Board may prosecute the offences under the Act on behalf of the Board.[33] We adjudge the punishments imposed by the Act as adequate to deter tax evasion by companies. But this is only so if the courts can prioritize the imprisonment arm of the punishment. Most Nigerians do not wish to go to prison or even be placed under detention however short the time mainly because of the social stigma that is the consequence of such imprisonment but also due to the political and career consequences of becoming an ex-convict. The need to avert all of these disadvantages is sufficient to motivate directors and officers of companies to comply with the Act and pay appropriate taxes. But if the courts shy away from the imposition of terms of imprisonment and rely on payment of fines for breach of the Act, then the objectives of the Act may well be defeated. First, the fines are too nominal and inadequate, the highest being twenty thousand naira under section 92 of the Act. With the current exchange rate of five hundred naira to one US dollar most companies can afford to continue to evade tax and treat their obligations with impunity in the likely hope, given the pervasive corruption in the country, that they would never be found out. Therefore, a heavier regime of fines effectively enforced would have been a deterrent.

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[28] Section 88 of CITA.

[29] Section 92 of the CITA. The current exchange of rate of the naira to the dollar is five hundred naira to US dollar. Though this fluctuates, but only marginally.

[30] Section 94 of the CITA.

[31] Section 95 of the CITA.

[32] Section 96 of the CITA.

[33] Section 102 of the CITA.

Notwithstanding the foregoing, and as another way of inducing economic development, the Act has created a number of tax exemptions for designated businesses and strategic sectors of the economy in other to generate growth and stability in those sectors. The Act provides in section 11 that interests payable on any foreign loan or on any loan granted by a bank to a company engaged in agricultural trade or business; or the fabrication of any local plant and machinery; or providing working capital for any cottage industry established by the company, are exempt from tax.[34] This section of the Act is aimed at encouraging agricultural production to induce availability of food and food products for local consumption and exports. By this, the Act equally contributes to the diversification of the economy which is a much needed economic development strategy in Nigeria whose economic has since political independence depended heavily on crude oil exploration and exportation to finance its annual budgets and development. With the glut in the international market and the consequent fall in the prices of crude oil, the nation's economy has been plunged into recession after years of running on a deficit budget. So, the Act by granting tax relief to the agricultural sector has boosted development in this area, the same way that it has encouraged growth in the manufacturing sector through the exemption of cottage industries from payment of tax.

The Act also exempts from tax, the profits of any company which is a statutory or registered friendly society and insofar as such profits are not derived from a trade or business carried on by such society; the profits of any co-operative society in like terms; the profits of any company engaged in ecclesiastical, charitable or educational activities of a public character in like terms; the profits of any company formed for the purpose of promoting sporting activities where such profits are wholly expendable for such purpose; the profits of any company being a trade union registered under the Trade Unions Act insofar as such profits are not derived from trade or business carried on by such trade union; dividends distributed by unit trust; the profits of any company being a body corporate established by or under any local government law or edict; the profits of anybody corporate being a purchasing authority established by an enactment and empowered to acquire any commodity for export insofar as it concerns the purchase and sale of that commodity; the profits of any company or any corporation established by the law of a State for the purpose of fostering the economic development of that State not including profits from any other trade or business; dividends, interests, rent, or royalty derived by a company from a country outside Nigeria and brought into

[34] There is however a proviso that where there is a moratorium on the loan, it shall not be less than eighteen months and the interest rate on the loan shall not be more than the base lending rate at the time the loan was granted. Again, S. 11 (4) defines agricultural trade or business as any trade or business connected with the establishment or management of plantations for the production of rubber, oil palm, cocoa, coffee, tea and similar crops; the cultivation or production of cereal crops, tubers, fruits of all kinds, cotton, beans, groundnuts, sheamuts, beniseed, vegetables, pineapples, bananas and plantains; animal husbandry including poultry, piggery, cattle rearing, fish farming and deep sea fish-trawling. Cottage industry is defined as an industry where the creation of products and services is home-based, rather than factory-based.

Nigeria through government approved channels; the interest on deposit accounts of a foreign non-resident company; the interest on foreign currency domiciliary account in Nigeria; dividend from investments in wholly export-oriented businesses; the profits of any Nigerian company in respect of goods exported from Nigeria in so far as the proceeds from such export are repatriated to Nigeria and applied exclusively for the purchase of raw materials, plant equipment and spare parts; the profits of a company whose supplies are exclusively inputs to the manufacturing of products for export; and the profits of a company established within an export processing zone or free trade zone insofar as one hundred percent production of such company is for export.

Again, by section 26 of the Act, in the assessment of a chargeable tax of a company the sum or percentage of the profit set aside for research and development shall be exempted. And by section 32, a company shall be allowed an investment allowance for any expenditure incurred for the procurement of new plants and equipment or the replacement of obsolete plant and machinery under section 41. Furthermore, section 34 grants a rural investment tax exemption to companies that incur capital expenditure on the provision of facilities such as electricity, water or tarred road for the purpose of their trade or business located at least 20 kilometers away from such facilities provided by government. All of these are geared towards the infrastructural development of Nigeria's vast rural communities and the economic empowerment of their indigenes and others engaged in rural businesses. Similarly, section 35 grants capital allowance to companies operating within or outside the exporting processing zone who are fully engaged in export trading or business, though with a proviso that this is only applicable where such companies are not already enjoying an investment allowance under the Act. Furthermore, a new company going into the mining of solid minerals is exempted from tax during the first three years of its operation.[35] Again, twenty-five percent of incomes in convertible currencies derived from tourists by a hotel is exempt from tax in so far as such income is put in a reserved fund to be utilized within five years for the building expansion of new hotels, conference centres and new facilities for the purpose of tourism development.[36] By section 39, a company engaged in gas utilization, that is to say, marketing and distribution of natural gas for commercial purposes, is allowed several alternative classes and degree of tax exemption. Section 45 makes provisions for avoiding double taxation on the profits of companies operating in Nigeria and in any other country where there exists a reciprocal tax agreement between Nigeria and such other country.

These tax exemptions in general are aimed at stimulating economic development by lifting the burden of taxation on certain classes of businesses and mitigating its impact on several others. It also encourages investment in key sectors such as agriculture, rural development, research and development, tourism and hospitality, manufacturing and industrialization, mobilization of exports, exploration of solid minerals, and energy and power as the provisions of the Act

[35] Section 36 of the CITA.
[36] Section 37 of the CITA.

discussed above have shown. However, in spite of the bold steps taken under the Act to foster economic growth, there are still glaring defects in the law and its implementation that needs to be addressed if its overall objectives must be attained. Section 23(1) (g) states that the profits of any company being a body corporate established by or under any local government law or edict is not subject to tax. This provision is strange in that it does not make any distinction between companies providing social or essential services and redeploying their profits back to such social or essential service and those purely engaged in businesses and profit making ventures for the sole benefit of the owners or shareholders. Tax exemption for the latter is unjustified. At least the provision in section 23(1) (i) compelling state-owned companies and corporations to pay taxes on profits derived from any trade or business other than purely for the economic development of the State ought to have applied in relation to local governments. There is nothing in the Act to justify the differential treatment. Again, section 23 (1) (j) of the Act exempting from tax *any profits of a company other than a Nigerian company which, but for this paragraph, would be chargeable to tax by reason solely of their being brought into or received in Nigeria* is clumsy, extremely ambiguous and, at least, inelegant. It is unclear whether the provision is referring to a new company coming or being received into Nigeria in which case the question would arise whether Nigeria can tax the company for profits made in a foreign country previous to its arrival in Nigeria and most likely paid tax on such profits at its country of emigration, or how would a newly arrived company that has done no business and made no profits be exempted from tax on a profit it has not made. If the intention is to exempt a newly arrived company from tax, then section 23(1) (j) should be couched with precision.

Furthermore, section 23(2) empowers the President of Nigeria to exempt by order made by him any company or class of companies from all or any of the provisions of the Act; or from tax all or any profits of any company or class of companies from any source and on any ground which appears to him sufficient. And further that the President may by order amend, add to or repeal any exemption made by notice or order under the Personal Income Tax Act[37] insofar as it affects a company. These are sweeping powers placed at the hands of the President and under his absolute discretion. These are very precarious powers and highly prejudicial to the efficacy of the Act in particular and to economic development in the country in general. This view is understandable against the background that political positions in Nigeria including the power and authority of the president are open to myriads of manipulations such as corruption, nepotism and even political vendetta. The businesses owned by the President's political followers and cronies are most likely not to pay taxes and nobody can prosecute them or the President might use his wide powers to exempt them from payment. This might sound like fiction but we have an illustration with the fight against corruption in the country where the two federal government agencies fighting corruption, namely, the Economic and Financial Crimes Commission (EFCC) and the Independent

[37] Earlier mentioned in the introduction as one of the sources of tax law in Nigeria.

Corruption Practices Commission (ICPC) both constituted by the President under enabling laws only arrest and prosecute members of the opposition party while the party in power continue to steal the nation dry without a single arrest of the principal perpetrators. The same thing applies even in the deployment of the armed forces and police forces to troubled zones and in elections where they are deployed to aid election rigging in favour of the ruling party. On the other hand, the President can use these huge powers to run down businesses controlled by his perceived opponents and enemies. Without amending section 23(2) to keep the President's powers in check, the Act would continue to be exposed to political manipulation and economic growth would continue to pay the price for it.

Again, section 33 of the Act taxes companies even when it has recorded a loss during an accounting period. It provides that where in any year of assessment the ascertainment of total assessable profits from all sources of a company results in a loss, or where a company's ascertained total profit results in no tax payable or tax payable which is less than the minimum tax, there shall be levied and paid by the company the minimum tax under the Act. This provision is unjustifiable. It is neither right in law nor in common sense. The stated objective of the Act is to tax company profits. It follows that where in a given accounting or assessment period a company has made no profits and this fact can be verified by the Board, then the company should for that year be exempted from tax. Taxing companies for years running where they suffer persistent losses can result in the company folding up thereby retarding economic growth. In this regard, the Act should be amended to impose taxes strictly on profits. In another breath, section 41 creates tax waiver for a company replacing its obsolete plant and machinery. Whilst it is understandable to have tax waiver for importation of plants and equipment needed by new companies to kick-start their productive capacity it is not justifiable to grant old companies who have been in business for decades and making profits all the period any waivers for replacement of the equipment which they use in their business. Such purchase should be subsumed within the capital investment of the company, which go hand in hand with the recurrent expenditure to keep the company in business. If this section is not amended to annul this waiver, a loophole would have been created for companies who are not acting in good faith to write off their chargeable profits as sums expended to procure a replacement for their obsolete plants and machinery.

Similarly, the provision of section 86 of the Act with respect to the distraining of the properties of a defaulting company has a number of problems. First, it is not realistic to distrain such properties without a court order. Distraining without a court order is most likely to yield civil liabilities against the executors particularly where the company in question seeks the intervention of the court. Second, the executors are not indemnified against the consequences of their actions. The Act itself seems to recognize this jeopardy when it restrained the Board or its authorized personnel from the sale of an immovable property without an order of a High Court. If immovable properties are exempted, what about other properties? The Act does not say. Third, the Act does not say what happens where

the executors of the tax commit crime in the process or go beyond their authority. Our contention here is that the best approach is to submit the entire process of distraining the properties of defaulters to the jurisdiction of regular courts. Again, like section 23 (2), section 89 is to the effect that the President of Nigeria may remit, wholly or in part, the tax payable by any company if he is satisfied that it will be just and equitable to do so. The argument earlier canvassed on this point subsists. A tax administration regime placed at the discretion of the President cannot make for an unbiased, objective and effective implementation. Offences under the Act are prosecutable under the sanction or authority of the Federal Board of Inland Revenue.[38] Again this is a Board appointed by the President. No action can be initiated by any person or authority in respect of the enforcement of the Act or its sanctions without the permission or authorization of the Board. If the Board does not act, or if compelled by mandamus exercises its discretion not to prosecute, then the matter ends there. Section 98 of the Act creates another enigma. By it, the offences and punishment under the Act do not affect any criminal proceedings under any other enactment. This is not realistic and in fact runs contrary to basic tenets of our criminal jurisprudence, to wit, that a single offence only attracts a single trial and punishment upon conviction. Our laws do not allow double jeopardy which the Act appears to promote by section 98. The *grundnorm* of the nation, the Constitution of the Federal Republic of Nigeria, 1999, has in section 36 (9) laid down the ground rules to the effect that no person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted *shall again be tried for that offence or for a criminal offence having the same ingredients* as that offence save upon the order of a superior court. When compared with this constitutional provision, section 98 of the Companies Income Tax Act becomes an invalid rule.

4. Recommendations

To set the Act on the path to achieve its set objectives, a number of amendments should be effected on it. First, section 23(1) (g) should be amended to be in consonance with section 23(1) (i) to the effect that companies and corporations established by government shall only enjoy tax exemptions if their trade or business are focused on the economic development of their areas, and any profits made outside such targets shall be liable to tax. Second, section 33(1) should be amended to exempt a company from tax in any assessment period where it has made a loss. Third, companies should not be exempted from tax for replacement of obsolete plant and machinery under section 41. Fourth, section 86 should be amended to place the power of the Board to distrain the movable properties of defaulters under the jurisdiction of the courts as we have it in relation to the sale of immovable properties. Fifth, the powers to exempt and impose tax on companies conferred on the President of Nigeria under sections 23(2) and 89 of the

[38] Section 97 of the CITA.

Act should be curtailed and placed under the approval and supervision of the National Assembly to avoid abuse. There is no developed economy where the President determines who should pay tax and who should not at will. Sixth, section 97 of the Act should be amended to place a duty and not a discretion on the Board to prosecute fairly and objectively all tax defaulters without discrimination on any extraneous grounds. And, finally, section 98 of the Act should be expunged as the same runs contrary to section 36(9) of the Constitution of the Federal Republic of Nigeria, 1999.

5. Conclusion

This work has addressed the co-relation between taxation and economic development in Nigeria. It has examined the positive provisions of the Companies Income Tax Act (CITA) and the contributions of the Act to the enhancement of public revenue, and to the stimulation of multi-sectoral economic growth in the country. The work has equally discussed the weaknesses of the Act which have created difficulties for the attainment of its objectives. Finally, the work has recommended steps to be taken in order to minimize, if not eliminate, the factors clogging its full contribution to economic development in the country.

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