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AMBIGUITIES IN THE NIGERIAN TAX LAWS

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Abstract

Due to the special position of the fiscal legislation, some of the language used in couching the Nigerian Tax statute are technical and in some instances ambiguous. The resultant effects of these are problems of interpretation, language incorrectness and procedural inaptness which invariably make tax compliance and administration a zero act in Nigeria. This paper therefore examines the interpretative mechanism of legal language. The paper also examines some tax law provisions that are ambiguous, incorrect and inapt procedurally in the corpus of the Nigerian tax regime. In the final analysis, the paper posits that ambiguity and language incorrectness in the Nigerian tax provisions constitute a major clog to tax compliance, enforcement and administration in Nigeria. To check this, the paper recommends for the use of simpler and clearer language in couching the tax regimes as well as amendment to the ambiguous provisions to guarantee the effectiveness and functionality of the Nigerian tax laws.

Introduction

In tax compliance, enforcement and administration, the importance of clear and an unambiguous language can never be overemphasised. This is because, understanding of language in any document is very essential for either action or inactions. Unfortunately however, in Nigeria, some words used in the Nigerian tax statutes are full of ambiguity as well as incorrectness. The resultant effects of these are problem of inadequate tax compliance, collection and administration.

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In Nigeria, be it in personal or Companies tax law, there are many ambiguities in the language used which most time often compounded the understanding and assimilation of the tax provisions. The results of this in the contemporary Nigeria are failure in the revenue expectation and projection as against actual derivations. Effective communication between the taxpayer and tax officers aid easier and better successful tax collection. returns, compilation and administration. In a jiffy, if words used in the tax statutes are ambiguous, same will also affect tax activities negatively.

It is a fact devoid of fallacy that, both the collection and payment of tax has a lot to do with an effective communication. And, just like any other statutes, the problem of interpretation is also visible in some Nigerian revenue legislation too.¹ According to Adedokun,² some of the compilation according to came from the efforts to discover the meaning of some technical terms to which the Nigerian tax statutes do not provide a comprehensive definition in their interpretation clause.

Language is a subtle and complex instrument used to communicate an incredible number of different things³, and the basic means of conveying information is through statements or propositions. Understanding and appreciation of language can only occur where there is an effective communication. And, for an effective communication to take place, according to Schram's,⁴ the following must be present:

1. The sender > statute regulating Tax administration.
2. The channel > the Taxing authority.
3. Receiver > the payers.
4. The feedback > payment of the tax by the payer to the taxing authority

In the above, communication is perceived as a psychic as well as verbal understanding that exist between the sender and the receiver. It is through adequate understanding of tax language that tax payer will appreciate the psychology of tax and why they need to pay.

¹ Awake Magazine, December, 2003, p.1

² Adedokun K.A *Enforcement and Recovery of Income Tax in Nigeria* (Law, Practice and Procedure), (Corporate Transactions Ltd, Lagos, 2010), 133

³ Austine Cline: Language, Meaning and Communication; The Role of Language in Constructing Arguments<<http://atheism-about.com/od/critical thinking/a/language>>accessed on 27/1/2014.

⁴ "Welber's Schram's Model of Communication: Management Study Guide", available online at <www.management study guide.com/schramm-model-of-communication-htm>, accessed on 3rd June, 2014.

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Finding proper sequence of some of the Nigerian tax provisions is not easy, in fact, some of their provisions constitute paradox of constitutionalism and statutory order thereby conveying wrong meaning to the public and negating the purpose for which they were enacted; especially, if they are interpreted literally. It is important to embrace the views that communication is ability to convey in the simplest form the information or ideas which the recipient can easily understand; and ability on the part of the recipient to reciprocate in such a way that we can easily understand him.⁵

Researchers⁶ have now shown that vast part of the Nigerian tax regimes were couched in a highly technical language and some, over bloated with phrases, tenses and paragraphs which need expert diagnostic tools comprehending. Due to this, there had been an age long poser by some jurists on whether there is the need to create somewhat artificial distinction between the rules to be applied to a taxing Act and the rules to be applied to any other Act⁷. Structured into five sections, the next section is on the history of the Nigerian Tax regime while section three focuses on the interpretative mechanism of legal languages. Section four constitutes the nucleus of the paper. Therein, the article examines the ambiguity, incorrectness and the procedural inaptness in the Nigerian Tax Laws. The paper ends in the fifth section with conclusion and recommendations.

Brief History of Nigerian Tax Regime

A consensus historical belief among authors on the pre-independence taxation in Nigeria was that a system of direct taxation was in existence even before the coming into what is known today as Nigeria⁸. There were various forms of tax in Nigeria before the advent of colonial masters. Most of these taxes then were paid to the community leaders as well as the traditional rulers. Taxes were then paid substantially through physical as well as kind measure or simply by barter. Similarly, at that time, community willingly pay tax through offering free services such as clearing the bush paths, digging pit toilets,

⁵ Alimi Baba Gana "Communication System as an Effective Vehicle for Information," *Continental Journal of Information Technology*, Vol7, No: 1 (2003).

⁶ See Adedokun K.A., *op.cit.* (n 2), pp-132-133, Olokooba S.M "A Legal Analysis of the Taxation of Banking Business in Nigeria(1990-2010)", An un-published Ph.D. Thesis, Faculty of Law, University of Ilorin, 2012), p.275

⁷ Adedokun K.A., *op.cit.* (n.2) p-132

⁸ Abdulrazaq M.T *Principles and Practice of Nigerian Tax Planning and Management*, (Ilorin, Batay Law Publication, 1993), p.3, Ayua I.A *The Nigerian Tax Law* (Lagos Spectrum Law, Publishing, 1996), p.22, Lekan *et.al Taxation: Principle and Practice in Nigeria* (Silicon Publishing company, 2006), Olokooba *et al*, "Advocating for Progressive Tax System as a Panacea for Economically-Induced Conflicts in Nigeria" *International Journal of Humanities and Social Sciences*, Vol. 2(5), 2013, p.277.

wells, sweeping the market, and so on, for the good of the generality of the citizens of a village, town or and emirate.

During the pre-colonial era, taxation functions more or less on an ethical basis.⁹ Also some taxes were paid in form of farm produce. The most popular ones in the Yoruba speaking part of Nigeria, was called "Isakole". This was usually paid to the Obas. In the north, taxes like *Zakat*¹⁰, *Kurdin kassa*¹¹, *shukka shukka*¹² and *Jangali*¹³ were in vogue¹⁴. Other pre-independence taxes according to Okauru¹⁵ are *Kudin sarauta*¹⁶, *Kasasairan* tax¹⁷, *Hakki binimran* tax¹⁸, *Kaleram* tax¹⁹, *Warata*²⁰, *Kafelo*²¹, *Hidayya*²² tax. However, Income tax as it is known today was formally introduced in Nigeria in 1904 by the British Colonial Government led by the late Lord Lugard, using the income tax concept termed "community tax"²³. This was later modified and codified in 1917 and named "National Revenue Ordinance of 1917"²⁴. By 1940, the Tax Ordinance had been amplified, simplified, extended and applied in all the regions in Nigeria, excluding Lagos Township.

Prior to 1961 each region in Nigeria legislated on direct and indirect taxes. In 1961 there was a common tax law for the whole federation called "Income Tax Management Act (ITMA), 1961". The aim was to consolidate the various bits and pieces of tax laws and their amendments existing in the country then. This made it easy for tax administrators to have a common reference point of law that guided their work, and for the taxpayers to understand the provisions of the tax law and comply without much

⁹ Abdulrazaq M.T, *op.cit*, (n.9), p.13

¹⁰ Tax levied on Muslim faithful for charitable, education and religious purpose

¹¹ This was tax on agricultural produce

¹² This was tax on crops not liable to *zakat*

¹³ This was tax on cattle and life stocks

¹⁴ Amawhe ASC, "History of Taxation and FIRS Reforms", A Paper delivered at the Induction Programme of the Newly Recruited Staff of FIRS, Sept 2010, p.12

¹⁵ Okauru I.O (ed.), *Comprehensive Tax History of Nigeria*, (Safari Bonis Ltd, 2012), pp.70-71

¹⁶ This was an accession duty

¹⁷ This was gazing fee

¹⁸ This was tax paid to land owners as royalty

¹⁹ This was tax paid to the traditional rulers for land tilling

²⁰ One tenth of deceased estate paid to *sheu*

²¹ Gratification of gift by merchant to *sheu*

²² Tax paid to the *sheu* on Muslim festivals

²³ Due F.J "Income Taxation in Tropical Africa" (July/August British Tax Review, 1962), p.226

²⁴ Lekan S. *et. al Taxation. Principle and Practice*, (Silicon Publishing Company, Ibadan, 2006)p. 15

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coercion. However, the divergence in languages in Nigeria frustrated the aims and objectives of this Act because it was interpreted differently by different communities in part of the country; purposely to curry favour for some segment of the community.

The main tax laws in Nigeria today are Companies Tax, Personal Tax, Capital Gains Tax, Petroleum Profit Tax, Capital Transfer Tax and, lately, Value Added Tax²⁵. The sources of these taxes laws vary since tax system administered through statutes rather than common law *simplicita*²⁶. The substantive tax laws such as Companies Income Tax²⁷, Petroleum Profit Tax²⁸, Personal Income Tax²⁹, contains the bulk of the income tax laws and their general principles; there are nevertheless, the large numbers of other enactments which are directly relevant to their administration in Nigeria³⁰. Over the years, these enactments have cross-breed one another in such a way that engendered series of reforms and modifications in Nigeria's tax structure, law and systems useful to the implement of changes in policies³¹.

The Companies Income Tax law has witnessed several amendments after the replacement of the Companies Income Tax Act 1961 with Companies Income Tax Decree 1979.³² So also in the field of Personal Income Taxation, the 1979 Constitution

²⁵ For detail history of Nigerian Tax System up till 1992, see Abdulrazaq, M.T. *op. cit* (n.9)pp.20-23. see Ola, C.S. *Income Tax Law in Nigeria* (Heinemann Educational Books (Nig.) Plc. 1999), Ayua, I.A. *The Nigerian Tax Law*, (Spectrum Law Series, Lagos,1996) pp.22-37.

²⁶ Majorly amongst the sources of tax law includes, legislations, constitution, court judgment, circular of revenue officials, and opinion of income tax experts, budget and pronouncement of relevant ministries etc.

²⁷ CAP C21 Laws of the Federation of Nigeria, 2004

²⁸ CAP P13 Laws of the Federation of Nigeria, 2004

²⁹ CAP P8 Laws of the Federation of Nigeria, 2004

³⁰ Such as Federal Inland Revenue (Establishment Act)2007, Tax and Conventions official Circulars and Regulations.

³¹ Olokooba S.M., Adedokun A.A, and Adimula B, Akintoye, R "Tax Education and Mobilization: A Means to Sustainable Development in Nigeria", in Egbewole *et. al.* (ed.) *Law and Sustainable Development in Africa*, (Faculty of Law, University of Ilorin), p.415

³² For instance, Decree No. 98 of 1979, Decree No. 4 of 1985, Decree No. 12 of 1987, Decree No. 31 of 1989, Decree No. 55 of 1989, Decree No. 21 of 1991, and Decree No. 63 of 1991. The codification of all the amendments to Decree No. 28 of 1979 to Companies Income Tax Act (CITA),Cap.60 Law of the Federation of Nigeria, 1990. Series of amendments have also followed CITA, 1990. For instance, Decree No. 3, 1993, Decree No. 30, 1996, Decree No. 31 of 1996 and Decree No. 32, 1996, fiscal policy, 1997, fiscal policy, 1998 and fiscal policy, 1999.

has invalidated all previous laws on Personal Income Tax, hence the promulgation of Personal Income Tax Act 1993.³³

On Capital Gains Taxation, after the introduction of the Capital Gains Tax Act 1967 and Capital Transfer Tax Act 1979, some novel amendments have been affected. Notably amongst those amendments was the reduction of the Capital Gains Tax from 20% to 10% with effect from 1st January, 1996. Another amendment was the abrogation of the Capital Transfer Tax *via* the 1996 budget. The reason for this abrogation was that the government felt that such tax could not be implemented throughout the federation since not all the states in Nigeria produce oil. The Petroleum Profit Tax Act Cap 354 Laws of the Federation of Nigeria, 1990 which consolidated the Petroleum Profit Tax, 1959 and other amendments,³⁴ has also been amended severally³⁵. Education Tax Decree was promulgated in 1993³⁶ and the Value Added Tax was also introduced to Nigeria 1993³⁷ with an effective date of 1st December, 1993.

Interpretative Mechanism of Legal Language Examined

Interpretation generally refers to the decoding of dialectical formulations conceived in complex forms by a process of deductive and/or inductive reasoning.³⁸ The ascertainment of the intention of the draftsman is the proven duty of the courts and also, is what judicial review is all about. The courts in undertaking the task of constitutional interpretation often call back on the age long principles of statutory interpretation. Words

³³ This law actually replaced laws like Income Tax Management Act 1972. Income Tax Management (ITM), Uniform Taxation Provision (UTP) Act, 1972.

³⁴ For instance, Income Tax (Amendment) Act No. 65, 1966. Petroleum Profit Tax (Amendment) Act No. 1, 1967.; Oil Terminal Dues Act No. 9, 1969.; Petroleum Profit Tax (Amendment) Act No. 22, 1970. Petroleum Profit Tax (Amendment) Act No. 4, 1979.; Petroleum Profit Tax (Amendment) Act No. 2, 1975.; Petroleum Profit Tax (Amendment) Act No. 25, 1979.; Petroleum Profit Tax (Amendment) Act No. 95, 1979.;

³⁵ It has been amended via various Decrees like the Petroleum Profit Tax (Amendment) Decree No. 31, 1996. Petroleum Profit Tax (Amendment) Decree No. 18, 1998.; Petroleum Profit Tax (Amendment) Decree No. 30, 1999;

³⁶ See Education Tax Decree No. 7, 1993. Also see, Ogundele, E.A. *Elements of Taxation*, (Libri Service Nig. Ltd., Lagos, 1997) p. 24.

³⁷ This was done through VAT Decree No 102 of 1993 which repealed the states administered sales Tax Decree No. 7, 1986.

³⁸ Prof Lawrence Afeseghwa, The Supreme Court doctrine in the interpretation and construction of statute available at www.vanguardngr.com/2012/06/the-supreme-court-doctrine-in-the-interpretation-and-construction-of-statutes-2/ accessed on 12/6/14

have no proper or specific meaning until they are put in to a context of situation. For this, a word may bear:

- a. The meaning put upon it by the user.
- b. That put upon it by the recipient or
- c. The ordinary meaning.³⁹

The courts in their attempt to construct ambiguous statutory provisions have developed rules and principles which will aid them in this regard. As a result of the roles which the judges play in interpreting or construing statutes, Lord Devlin has concluded that, the law is what the judges say it is. While this may be the practical effect of the role which the judge's play in interpreting vague and ambiguous statutory provision,⁴⁰ the consequence is what metamorphosed from the fluid nature of words used by the legislative draftsman.

When confronted with an ambiguous statutory provision, the basic task before the judge is to ascertain the intention of the legislature. In ascertaining the intention of the legislature, the courts have developed some basic rules. The major ones that court used often are: the literal rule of interpretation, the golden rule of interpretation and the mischief rule of interpretation.

The Literal Rule of Interpretation

Literal rule of interpretation is more often expressed as the "grammatical interpretation." This rule enjoins the court not to travel outside the ordinary grammatical meaning of a statute. Words used in statute are, thus, to be construed in their usual grammatical sense⁴¹. Any piece of legislation should be construed on the literal meaning of the terms used. Such terms or words should be accorded their ordinary and their present day meaning. The proponents of this principle of interpretation contend that it is the duty of the court to decipher the object or intention of a particular statute.⁴²

In interpreting a statute, the use of literal interpretation is encouraged. However, the principle that the wording of a statute is to be construed literally is only a general

³⁹ *Ibid*

⁴⁰ *Ibid*

⁴¹ Obilade A.O, *The Nigeria Legal System*, (Spectrum, Books, Limited, Lagos, 2009), p.57

⁴² *Ibid*

principle which must be applied the wording is clear and unambiguous;⁴³ notwithstanding whether hardship would result from such interpretation or not.⁴⁴ However, if a statute is defective as a result of ambiguity, inconsistency or unreasonableness, then, such interpretation will have to be done with caution.

The Golden Rule of Interpretation

The Golden rule of interpretation enjoins the court to go beyond the ordinary meaning of the words of the statute to ascertain the legislative intent⁴⁵. This rule was formulated in the case of *Beck v. Smith*⁴⁶ wherein Park, B states.

It is a very useful rule in the construction of a statute to adhere to the ordinary meaning of the words used, and to the grammatical construction unless that is at variance with the intention of the legislature to be collected from the statute itself, or leads to any manifest absurdity or repugnance, in which case the language may be varied or modified so as to avoid such inconvenience but no further.

The golden rule as a matter of fact does not displace the literal rule but comes handy when the court has some difficulty in the strict application of the literal rule. In the recent past, the courts have had cause to resort to the Golden rule to cushion any defect in a statute. In a nutshell, where it is impossible to comply with the provisions of a statute when they are construed literally, the general rule is that the court would not adopt the literal interpretation⁴⁷, rather, they would interpret the provisions in such a way as to avoid the absurdity and at the same time reflect the intention of the legislature⁴⁸.

⁴³ Obilade, *op. cit.*, p.58

⁴⁴ *R v. Bangaza* (1960)5 F.S.C.1

⁴⁵ See *Akinosho v. Enigbokan* (1955)21 N.L.R.88

⁴⁶ (1836)2M & W 191 at p. 195

⁴⁷ As was held in *Commissioner of Police v. Okoli* (1966)N.N.L.R 1 at p.4, see also Obilade, *op. cit.*, (n.42)p.58

⁴⁸ Obilade, *op. cit.*, (n.42)p.58, see further, *Council of the University of Ibadan v. Adamolekun* (1967)1 ALL N.L.R 213

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The Mischief Rule of Interpretation

This rule enunciated in the *Heydon's cases*⁴⁹ was aimed at achieving the general policy of the statute by suppressing the evil the statute intended to avoid. The rule is also a guide to the courts when confronted with some difficulty in the literal interpretation. This rule enjoins that, to gather the intention of the statute and give effect to it, the court should pause and reflect on the following issues. Firstly, what was the common law position before the passing of the Act being interpreted; secondly, what was the mischief and defect for which the common law did not provide; thirdly, what remedy the parliament sought and appointed to cure, and fourthly, the true reason of the remedy⁵⁰.

Going by the mischief rule of interpretation, the role of the judges is always to apply such construction that shall suppress the mischief as well as inventions and evasion for continuation of the mischief. This principle is applicable only where the meaning of the statutory provision is ambiguous⁵¹. Apart from the use of the major rule of interpretation, courts also resort to the use of internal and external aid in interpreting the statute. Similarly, in some other circumstances, the general principles of interpretation such as the principle of *lex non cogit ad impossibilia*,⁵² *Ejusdem Generis Rule* are used.⁵³

Ambiguity, Incorrectness and Procedural Inaptness in The Nigerian Tax Laws

Tax is a product of statute and liability to it arises from the taxing statutes according to their true meaning and effect. This presupposes that if any tax is to be supported at all, it must be found within the clear language of a statute.⁵⁴ The position of the law in this regard was aptly captured by Lord Blackburn in *Coltress Iron Company v. Black*⁵⁵ that:

No tax can be imposed on the subject without the words in an Act of parliament clearly showing an intention to lay a

⁴⁹ (1584)3-Co. Rep 7

⁵⁰ As outlined in *Heydon's case* (1584)3 Co. Rep 7. See also, *Re Mayfair Property Co* (1898)2 Ch.28 at p. 35

⁵¹ *Balogun v. Salami* (1963)1 ALL N.L.R 129, see further, *Akerele v. I.G.P* (1955)21 N.L.R. 37, see also, *Obilade, op.cit.*, (n.42)p.60

⁵² The meaning of this is that a statute is to be construed in such a way as not to command what is impossible.

⁵³ This implies that where particular words of the same class are followed by general words, the general words must be construed to be similar in meaning to the particular words.

⁵⁴ *Adedokun, op.cit.*, (n.2), p.10, see also, *Styles v. Middle Temple* (Treasurer)(1899) Vol. 68 QB p.157

⁵⁵ (1881) 6 A.C 315.

burden on him. But when that intention is sufficiently shown, it is vain to speculate on what would be the fairest and most equitable mode of levying that tax.

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The above dictum confirms the fact that taxing statutes are essential component of tax system.⁵⁶ The tax rate, tax base as well as the tax payer's liability are all determined by tax law. A good tax law must conform to the followings; clarity of language, procedural aptness, and devoid of legal incorrectness for most people to understand. There is no doubt that a tax law that fulfils these requirements will definitely mobilize and educate tax payers by engendering the desired voluntary compliance culture⁵⁷. However, various existing tax laws in Nigeria are far from fulfilling these requirements, because, some of their provisions are unnecessary verbose and complicated⁵⁸. A few examples will reveal the pertinence of these observations.

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Section 2 (4) of the Personal Income Tax Act provides that, in the case of a village or other indigenous communities, tax may be imposed for any year only by the law of the territory on which that community is to found. Looking at this statement one is tempted to ask which law is referred to under this section since it is no longer valid for any state (or territory) to impose tax on an indigenous community in Nigeria. This provision therefore is a constitutional contradiction

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Furthermore, the Companies Income Tax Act⁵⁹ is characterised by provisions with complicated provisions and clumsy wording thereby raising serious problems of interpretations and implementation. A clear example is section 89 (b) Companies Income Tax Act which prescribes issuance of bench warrant against the director of a company in case of post-judgment default. This provision is a gross misconception and antithesis to the civil procedure jurisprudence in Nigeria because the judgment envisaged under the section is a monetary judgment obtained through civil proceedings. As such, issuance of bench warrant does not arise. Rather, the next step under the Sheriff and Civil Process Act⁶⁰ after obtaining judgment by the Federal Inland Revenue Service is the execution of

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⁵⁶ Adedokun, *op.cit.*, (n.2), p.10

⁵⁷ *ibid*

⁵⁸ *ibid*

⁵⁹ CAP C21 Laws of the Federation of Nigeria 2004

⁶⁰ CAP S6 Laws of the Federation of Nigeria 2004

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⁶¹ Comp

⁶² *Ibid*

the judgement either by writ of *fiery facias* (otherwise known as writ of execution) or garnishee proceedings.

In the same vein, section 100 of Companies Income Tax Act which empowers the President of Federation with unguarded discretion to alter rate of tax is not only loose and susceptible to abuse but also violates legislative equivalency doctrine and the principle of separation of powers enshrined in the 1999 Constitution. This constitutes legal incorrectness. Similarly, in another Nigerian tax law- The Personal Income Tax Act, section 104(3) empowers the chairman of relevant tax authority to "issue warrant" for levying distress. This "power" is clearly amount to usurpation of judicial power because a warrant is a writ *ejusden generis* with writ of *fifa*.

Furthermore, an eagle eye examination of section 53 (a) & (b) of Companies Income Tax Act⁶¹ which provides for self assessment of tax payable by company reflects huge confusion and absurdity. According to the section "Every company filling a return under section 53 (a & b) of this Act or required by notice of the board to file a return under section 59 of this Act shall:

(a). *in the return, compute the tax payable by the company for the year of assessment; and*

(b). *forward with the tax, evidence of direct payment of the whole or part of tax due into a bank designated for the payment of tax.*

The above provisions of Companies Income Tax Act are not clear when interpreted literally, especially sub section (b) thereof. The word "*designated bank*" for the payment is ambiguous because no bank is specifically mentioned as the designated bank for the payment in the whole section of the Act.

Also, the languages of the provisions of section 78 of Companies Income Tax Act⁶² which dealt with deduction of tax from interest, is also not clear. According to the section

⁶¹ Companies Income Tax Act (with 2011 Amendment.)

⁶² *Ibid*

where any interest other than interest on inter-bank deposit or royalty because due from one company to another company or to any person to whom the provisions at the personal income Tax Act apply the company making such payment shall, at the date when payment is made or credited whichever first occurs deduct that from tax at the rate prescribed in sub section (2) of this section and shall fortify pay over to the board the amount so deducted.

When reading through the above provision line by line, one will see that the inclusion of the word "any person to whom the provisions of the personal income Tax Act apply" is confusing because the provision under consideration is Companies Income Tax Act; therefore, the phrase "any person" is inappropriate here.

On procedural ambiguity in some Nigerian tax provisions, Olokooba⁶³ observed that the combined interpretation of sections 29 (1) and 31 (2) of Companies Income Tax Act⁶⁴ is fraught with ambiguity because a combined interpretation of the two sections constitutes misdirection of procedure on deductibility and assessment of the yearly company profit tax payable. While section 29 (1) provides that the profit of any company for each year of assessment from such sources of profit shall be the profits of the year *immediately preceding the year of assessment* from each source. Section 31 (2) restricts the losses that may be relieved in any year to the assessable profits from the trade or business in the *year which the loss was incurred*. This is procedurally confusing because one does not know which accounting principle is apt to be used here.

Furthermore, the provision of section 82 of Companies Income Tax Act is also fraught with ambiguity. According to the section

Any person who being obliged to deduct any tax under section 78, 79, 80, or 81 of this Act fails to deduct or having deducted fails to pay to the Board within twenty-one days from the date the amount was deducted or the time the duty to deduct arose,

⁶³ Olokooba S. M. "A legal Analysis of the Taxation of Banking Business in Nigeria (1990-2010)", (unpublished Ph.D. Thesis, Faculty of Law, University of Ilorin, 2012).

⁶⁴ CAP C21, Laws of the Federation of Nigeria, 2004

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⁶⁵ No 21
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shall be guilty of an offence and shall be liable to a penalty of 10 percent per annum of the tax withheld or not remitted, as the case may be.

The use of the word "or" in the section makes it confusing and ambiguous. The reason being that, sections 78, 79, 80, and 81 are all referring to deductibility and remittance of revenue within a specific period, using the words "or" makes section 81 exclusive and as if it's talking differently from the other sections on the same issue. In the opinion of the writers, "and" should have been the appropriate word.

In the same vein the provision of Taxes and Levies (Approved list for collection) Act 1998 is also not devoid of ambiguity and also full of constitutional inconsistency. Section 1 of the said Act provide for the responsibility for collecting certain taxes, and levies, e.t.c.

The section provides thus:

Notwithstanding anything contained in the constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, the federal Government state Government and local Government shall be responsible for collecting the taxes and levies....

First, this provision seems to be in inconsistency with the provision of constitution of Federal Republic of Nigeria. The words "Notwithstanding anything contained in the constitution of the Federal Republic of Nigeria" seem to be placing the provision of this Act above the constitution. This, to that effect and extent should render the provision ineffective because the Nigerian constitution is supreme ...and if any other law is inconsistent with the provisions of it, the constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

Further on Taxes and Levies (Approved list for collection Act)⁶⁵ Abiola Sanni,⁶⁶ observed that the Act gives a false and ambiguous impression of the actual tax system in

⁶⁵ No 21

⁶⁶ Abiola Sanni "Multiplicity of Taxes in Nigeria: Issues, Problems and Solution," *International Journal of Business and Social Sciences* Vol. 13(17), 2012; p.229 also available on-line at

Nigeria. He argued that a careful consideration of the provisions of the Taxes and Levies (Approved list for collection) Act No. 21 shows that the Act is not purely a Tax statute because it deal with 'power to collect and not power to impose'.⁶⁷ This is a semantic as well as structural ambiguity. Sanni⁶⁸ further argued that the drafter of Act No. 21 seems to be at a loss on the basic distinction between a tax and other related terms such as fees and charges. This argument is valid. In fact, Taxes and Levies (Approved list for collection) Act (Act No. 21) practically fails to achieve the aim for which it was enacted- that is to show a clear dichotomy between what constitute tax and other charges and levies. This ambiguity up till today is still affecting and bringing confusion into the taxing powers of the three tiers of government in Nigeria, hence the problem of double taxation.

The provision of section 18 of Federal Inland Revenue Service Act 2007 call for reconsideration as it may put two professions (law and accounting) at loggerheads. Section 18 (2) provides that a company before the Tax Appeal Tribunal shall be entitled to be represented at the hearing of an appeal by a solicitor or Chartered accountant or adviser. The same section in sub-section (3) provides that any proceedings before that tribunal is a judicial proceeding and the tribunal shall be deemed to be a civil court for all purposes. By combined effect of sections 2(1) and 24 of the legal practitioners Act⁶⁹ which provide that a chartered accountant has no business in legal representation in a judicial proceeding before a court and that it is only a person or persons called to the Nigerian Bar that are authorised to put a legal appearance for any person before any court of law in Nigeria;⁷⁰ for that, there seems to be an ambiguity in the procedural intent of section 18 (2) and (3) of the Federal Inland Revenue Service Act 2007.

Instances like the above pervade tax statutes in Nigeria and in a situation where substantive tax laws are riddled with verbose and complicated provisions; tax payers will not be effectively mobilized towards voluntary tax compliance. This is because, for any tax law to serve its purpose, it must be very clear, easy to understand and devoid of ambiguity.

<<http://connechin.ebscohost.com/c/articles/87607366/multiplicity-taxes-nigeria-issues-problems-solutions>>ccesed on 12/6/14

⁶⁷ Ibid

⁶⁸ Ibid

⁶⁹ CAP. L11, Laws of the Federation of Nigeria, 2004

⁷⁰ See *Okafor v. Nweke* (2007) 10 NWLR (pt 1043) 521 @ 531-532 para C-A, see also *Oketade v. Adewumi* (2010) ALL FWLR (pt 526) 511 @ 516

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Conclusion and Recommendations

Language is a vehicle of communication, as language can either make or mar messages. To drive home a message through effective communication between the sender and receiver, the language used matters a lot. Therefore, for the message and philosophy in taxation to be achieved, simple use of language is a *sin qua non*. It is the simplicity in language that can aid both tax compliance and administration. Simplicity of language will make the tax payer to understand the tax law, appreciate the tax demand and cooperate with tax officers to carry out their duty very efficiently thereby guiding against tax criminality.

Unfortunately in Nigeria, due to ambiguity and incorrectness in some Nigerian tax statute, interpretation has turned into a great task for the court and this is affecting tax compliance negatively. Most of the Nigerian tax payers are ignorant of Nigerian tax laws due to the technicalities in the Nigerian tax languages, and to make the matter worse; Nigeria tax administration is lacking competent hands⁷¹ to handle tax affairs professionally which now makes the taxpayer to see the tax authority as a plague to be avoided.⁷² Similarly, in exercising their rights when sued to court, due to the ambiguity and incorrectness in some of the Nigerian tax statute, the taxpayers are also denied the best opportunity from the last place of hope for the common man; the judiciary. This is so because according to the court in *Alhaji Ibrahim and Alhaji Aliyu Ahmadu v. Governor of Kogi state*⁷³, a tax provision under the Nigerian law must be interpreted literally. In nutshell;

“...in a taxing legislation,...one has to look merely at what is clearly said...there is no room for any intendment. There is no equity about a tax. Nothing is to be read and nothing is to be implied. One can only look fairly at the language used”⁷⁴

⁷¹ Nlerum F.E “Taxation in Nigeria Matter Arising” in Ikenna O (ed.) *Apogee Journal of Business Property and Constitutional law* Vol. 1. no4 p.6, see also Lekan S. and Sunday O. *Taxation Principle and Practice in Nigeria* (Ibadan Silicon publishing company, 2006)

⁷² Olokooba S.M. *Law of Taxation II* (National Open University Lagos, 2012), also available at http://www.nou.edu.ng/NOUN_OCL/pdf/Laws/LAW%20434%20OF%20TAXATION%20II.pdf, accessed on 9th September, 2014.

⁷³ (1960-2010) 1 N.T.L.R

⁷⁴ *Alhaji Ibrahim and Alhaji Aliyu Ahmadu v. Governor of Kogi state* (1960-2010) 1 N.T.L.R

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Abstract

However, despite the above quotation, due to various incorrectness, ambiguity and inaptness in some of the Nigerian tax statute, it is the humble submission of this paper that the rules of interpretation that is suitable for analysing tax language is a combination of the literal as well as the mischief rule of interpretation. Literal rule will be used in a situation where the words are straight forward and unambiguous. While mischief rule will be used in order to establish the purpose of the enactment and to cure the mischief therein due to incorrectness and ambiguities. The advantage of this is that, it gives the explanation of phenomena by the purpose the statutes are to serve rather than postulated "form" doctrine. To further achieve this, the following is therefore recommended

1. Simplicity of Tax language to ensure easy compliance. The underpinning idea for the simplicity of language in tax is to make the taxpayer see reasons and rationale behind what they are asked to pay. A tax law that is simply and elegantly drafted will enhance revenue generation.
2. Effective use of Tax Information Circular (TIC). TIC is a frequent annual publication on tax compliance and expiation on the meaning of tax languages by the Federal Inland Revenue Service. So effective and constant use will aid the understanding of tax language by the tax payers.
3. Amendment of all the identified sections to clear them of ambiguities and incorrectness in them
4. The combined use of Literal Interpretation as well as Mischief Rule in interpretation the Nigerian tax laws.
5. Expansion of courts attitude to tax law interpretation. This is because the court has a duty to pilot the laws and their application towards the progress of the common man.⁷⁵

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⁷⁵ Esho K. *Thoughts on Law and Jurisprudence* (MIJ Professional Publisher Limited n.d), p.284 see also *Customs v Barau* 1982 10 SC 48

* Lecturer
¹ See Lad
(1997), A
² Birnie at
at P.3.
³ Black L
⁴ Oxford
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