

Institute of Advanced Legal Studies
School of Advanced Study
University of London

Busayo O. Oke

Taxpayers rights protection in Nigeria

MA 2011-2012
Taxation (Law, Administration and Practice) (Tax)

MA INTERNATIONAL TAXATION

2011/2012

Institute of Advanced Legal Studies

THESIS:

TAXPAYERS RIGHTS PROTECTION IN NIGERIA

SUPERVISOR:

Dr. Philip Baker QC

STUDENT REGISTRATION NO: F2018

2nd AUGUST 2012

INDEX

Chapter One: Taxpayers' rights

- 1.1. Introduction p. 4
- 1.2. Human Rights and Taxpayers' Rights p. 5
- 1.3. Classification of Taxpayers' rights p. 6

Chapter Two: Nigerian Tax System

- 2.1. Structure of the Nigerian tax system p. 8
- 2.2. Tax administration in Nigeria p. 11
- 2.3. Introducing Tax Identification Numbers p. 13
- 2.4. Tax Courts p. 15
- 2.5. Tax reform in Nigeria p. 17

Chapter Three: Protection of Taxpayers' Rights in Nigeria

- 3.1. Tax resistance in Nigeria p. 20
- 3.2. Legal framework p. 21
- 3.3. Taxpayers' Rights
 - 3.3.1. Legal rights
 - Right to ownership of property p. 23
 - Right to disposal of property p. 25
 - Right to a court order before sale of immovable property p. 25
 - Right to refund of excess tax p. 27
 - Right to be searched only by a person of the same gender p. 30
 - Right to private life p. 30
 - Right to fair trial p. 32
 - Right of appeal p. 35
 - Right to object to a revised assessment and right not to be subjected to punitive assessment p. 37
 - 3.3.2. Administrative rights – "Service Charter" p. 38

Chapter Four: Proposed Reform

4.1. Amending the existing “Service Charter” p. 43

4.2. Introducing a new “Taxpayer Bill of Rights” p. 44

Chapter Five: Conclusion p. 49

Bibliography p. 50

CHAPTER ONE:

TAXPAYERS' RIGHTS

1.1. Introduction

Nigeria has had a very long history of taxation, so also has it had a long history of abuses. The Nigeria tax landscape can be correctly described to be unfriendly and infested with a myriad of double taxes. A distinct taxpayers' bill of rights is non-existent and the scanty and scattered taxpayers' rights are poorly administered and at times, intentionally violated.

In 1929, a violent up-rising of women occurred because of a perceived abuse of the rights of taxpayers. The Aba Women's war prompted colonial authorities to drop their plans to impose a tax on the market women.¹ The protest was primarily born out of concerns and fears that British Colonial administration and its warrant chiefs would introduce tax applicable to women².

Protection of taxpayers' rights has not been a front burner issue in Nigeria. At present, there is no express legislation specifically addressing the issue of taxpayers' rights protection. However, certain general rights provisions exist and can be construed and applied in protecting taxpayers' rights. Some of such rights can be gleaned from the provisions of the Constitution of the Federal Republic of Nigeria 1999 (Constitution) and the African Charter on Human and Peoples Rights³ (African Charter).

With respect to the modern approach towards protection of taxpayers, do we have similar experience in Nigeria and at the African Court of Justice and Human Rights? Many countries, particularly those that are members of OECD, have evolved a tax charter and entrenched taxpayer's rights and human rights in their legislation. What experience do we have in Nigeria? What is the role of the Federal Inland Revenue Service (FIRS)?

Nigeria does not have a codified bill of rights in a separate document, but does have specific provisions in tax statutes that guarantee specific rights. An evaluation of Nigerian taxpayer's rights protection offers answers to these questions.

¹ See also <http://www.blackpast.org/?q=gah/aba-womens-riots-november-december-1929>.

² See also <http://www.blackpast.org/?q=gah/aba-womens-riots-november-december-1929>

³ http://www.africa-union.org/official_documents/treaties_%20conventions_%20protocols/banjul%20charter.pdf. The Charter was signed on 13/07/1999 and ratified on 23/07/2001.

This thesis aims to provide an overview of the rights of taxpayers in Nigeria. It analyses the domestic and international framework of taxpayers' rights protection as well as identifies areas, which require further attention.

1.2. Human Rights and Taxpayers' Rights

The concept of taxpayers' rights is closely related to the notion of Human Rights. A quick snap at history reveals that the Human Rights movement commenced shortly after the Second World War. The United Nations Charter and the Universal Declaration of Human Rights were adopted. These twin documents laid the foundation for renewed deliberations, commentaries and writings on Human Rights issues. This coincided with the spread of both democracy and decolonization. At his stage, however, most of the Human Rights documents did not directly provide for taxpayers' rights.

The rights of taxpayers came into focus later in the 4th quarter of the 20th century. From this period onward the concept of Human Rights protection began to have significant influence on the idea of protecting taxpayers' rights⁴.

In 1987, the International Fiscal Association, for the first time, organized a taxation and human rights seminar⁵. It explored a number of tax issues influenced by the application of the European Convention on Human Rights. Lots of effort and energy have been deployed by scholars, tax practitioners and tax authorities in the form of seminar, workshops and research work in Europe and other advanced nations on this subject matter⁶. This resulted in citizens' awareness of their rights as taxpayers. They sought redress for breach in the, courts and tax authorities have gone ahead to put in place tax charters and even promoting bills at the parliament to legalise taxpayers' right protection.

The modern evolution of taxpayers' rights is succinctly captured in the writing of Hatice Yortsever⁷, where he stated:

⁴ Bogumil Brzezinski: "Taxpayers Right: Some Theoretical Issues", Protection of Taxpayers 'Rights, European, International and domestic perspective. ISBN 97883-7601-863-8, ISN 1897-4392, page 17.

⁵ Taxation and Human Rights, Kluwer Law and Taxation Publisher, Rotterdam 1988

⁶ Taxpayers' Rights and Obligations: A Survey of the Legal Situation in OECD Countries, OECD Paris 1990.

⁷ Hatice Yortsever: "Anatomy of Taxpayers' Right: Case Study of Turkey", Pakistan Journal of Social Science, [2010], Issue 5. See also <http://www.medwelljournals.com/fulltext/?doi=pjssci.2010.334.346>.

“Development in the world about the protection of taxpayers and taxpayers’ rights is stated to have undergone three stages, namely, protection of taxpayers, expansion of tax base and establishment of taxpayers’ rights. The first stage is the protection of taxpayers as an extension of general constitutional protection. The second stage is the process of expansion of tax base in the process from World War II to the 1970s. In this process, taxpayer-administration relations intensified and as a result, the framework of legal protection was filled with legislation, administrative procedures and judicial decisions. At the third stage with the tax reforms in 1980-1990 periods, the protection of taxpayers was carried to a broader ground. A transition was made from the concept of protection of taxpayers with state content to the concept of taxpayer rights with taxpayer content and declarations of taxpayer rights were issued.”

It is clear that levying taxes may violate Human Rights such as the right to private property or the right to freedom from arbitrary deprivation of property (without fair compensation). This non-economic aspect of taxation can no longer remain as a secondary preoccupation.

The importance of respecting Economic Human Rights is stressed by the Peruvian economist Hernando de Soto, who claims that private property rights were behind the suicide by immolation of an informal street trader in Tunisia, Mohammed Bouazizi, on December 27, 2010: *“The Arab Spring has economic roots and they are mainly about the lack of legal property and business rights.”*⁸

1.3. Classification of Taxpayers’ Rights

There is no universal or uniform system of classifying taxpayers’ rights. Some work has been done by Duncan Bentley on taxpayers’ rights classification⁹. Similarly, Hatice Yurtsever while writing on taxpayers’ right protection structured his paper in a manner that suggests a possibly different classification system.¹⁰

⁸ The economist explains: *“An hour before he flicked on his lighter, a policewoman, backed by two municipal officers, had expropriated his two crates of pears (\$15), a crate of bananas (\$9), three crates of apples (\$22) and a second hand electronic weight scale (\$179). While the loss of a total of \$225 might not seem sufficient to justify suicide, consider the implications for a poor extralegal entrepreneur like Bouazizi: Without his goods, he would not be able to feed his family – or avoid bankruptcy since he couldn’t pay the informal creditors from whom he had borrowed the money to buy that fruit; without that scale, he no longer had access to standardized markets and his accountability to customers; when the police terminated his arrangement to park his stand, he lost his informal property right.”* Available: <http://www.internationalpropertyrightsindex.org/property-rights-arab-spring-a226>.

⁹ Duncan Bentley: Taxpayers’ Rights Theory, Origin and Implementation, Series on International Taxation.

¹⁰ Hatice Yurtsever, op cit. Footnote 10.

Bentley had stated that a two-tier model of taxpayers' rights contains two categories: primary legal rights and secondary legal rights and primary and secondary administrative rights.¹¹ According to Bentley, primary legal rights are those granted by constitutions and international legal instruments. Secondary legal rights on the other hand are rights contained in conventional legislation, which comprises both substantive and procedural laws. Primary administrative rights are in the same nature as secondary legal rights, except that they are based on administrative regulations and subsidiary legislation issued by the relevant authorities. Secondary administrative rights on the other hand are the rights that the tax administration recognises as necessary to be respected but not worth being made the subject of a regulation.¹²

Hatice Yurtsever, in his paper *Anatomy of Taxpayers' Rights: Case Study of Turkey*¹³, had categorised taxpayers' rights under the following headings:

- Rights before a tax audit.
- Rights during a tax audit.
- Rights after a tax audit.

This dissertation will follow Bentley's two-tier model of taxpayers' rights: legal rights and administrative rights.

¹¹ D. Bentley, "Classifying Taxpayers' Rights" [in] *Taxpayers' Right: An International Perspective*, School of Law, Bond University, Gold Coast 1998. See also D. Bentley, *Taxpayers' Right: Theory, Origin and Implementation*, Kluwer Law International (2007), page 110 – 137.

¹² *Ibidem*, pp. 129 – 133.

¹³ *Op cit* footnote 3.

CHAPTER 2:
NIGERIAN TAX SYSTEM

2.1. Structure of tax system

Nigeria operates a federal system of government with power shared among three tiers of government: Federal, State (36) and Local Governments Areas (774). The Constitution vested each tier of government with powers in its area of jurisdiction particularly in the tax arena¹⁴.

Virtually all the major taxes are within the exclusive legislative jurisdiction of the Federal government, while states are allowed to collect from individuals and unincorporated groups. Even though local government authorities do not have substantive legislative powers, they charge and collect such rates and levies as may be authorized by statute of the relevant State government.

Direct taxes

Prior to Nigeria's independence, Nigeria had only one Income Tax Law, which was the Income Tax Ordinance. This was a consolidation of the Income Tax Ordinance (No 29) of 1943 and later amendments. Both companies and individuals were taxed under the same Ordinance.

After independence in 1960, the government enacted three major tax laws, namely:

- 1- Federal Income Tax Act (FITA) 1961;
- 2- Income Tax Management Act (ITMA) 1961; and
- 3- Companies Income Tax Act (CITA) 1961;

This reform clearly separated for the first time the administration and collection of both companies' income tax and personal income tax.

In 1967, Capital Gains Tax (CGT) was introduced by the promulgation of Decree 44 of 1967. In 1972, CGT was also extended to cover stocks and shares. As of 2012, capital gains are taxable at the rate of 10%, for both companies and individuals.

During the Nigerian Civil War, which lasted from 1967-1970, Super Tax Decree of 1967 imposed Super Tax. The tax was imposed on profit in excess of the “standard deduction” of 5,000 pounds or 15% of share-capital, whichever was greater. This Decree was repealed only in 1972.

The Personal Income Tax Act (PITA), Decree 104 of 1993, effectively repealed the ITMA. The PITA has been successively amended over the years. The most extensive is the Personal Income Tax (Amendment) Act of 2011.

As of 2012, individuals are subject to tax at the following rates¹⁵:

Taxable income (NGN)		Rate (%)
first	300,000	7
next	300,000	11
next	500,000	15
next	500,000	19
next	1,600,000	21
above	3,200,000	24

PITA - Effective tax rates from 1986 to 2012¹⁶

Year	1986	1991	1992	1993	1995	1997	1998	2001	2012
Percent (%)	51.25	26.25	36.75	35.83	14.58	19.58	14.17	13.75	17.50

CITA 1961 was repealed and later replaced with the Companies Income Tax Act (CITA) in 1979, with amendments in 1993¹⁷. As of 2012, the standard corporate income tax rate is 30%. A special reduced rate of 20% applies to Nigerian companies:

- Engaged in agricultural production or mining of solid minerals in the first 5 years of business, if turnover is not more than NGN 500,000.
- Manufacturing companies and companies engaged wholly in export, within the first 5 years of operation, if their turnover does not exceed NGN 1 million.

¹⁵ Sixth Schedule PITAM.

¹⁶ Osita Aguolu, “Personal Income Tax (Amendment) Act: Will the Government Achieve Its Objectives?” Bulletin for International Taxation, 2012 (Volume 66), No. 7, Published online: 21 June 2012.

¹⁷ J.A. Arogundade, Nigerian Income Tax & Its Dimension, Spectrum, pages 14 -18

Tax incentives

The government of Nigeria has over the years allowed tax incentives and exemptions, which are intended to boost investment¹⁸. For example:

- Pioneer Companies: The Industrial Development (Income Tax Relief) Act makes provision for the grant of tax relief to pioneer companies. The pioneer status is granted mainly to companies in any industry, which in the opinion of the National Council of Ministers, is not being carried on in Nigeria on a scale suitable to the economic requirements of the country.
- Export Free Zone Exempt Profit: A company which has incurred expenditure in its qualifying building and plant equipment in an approved manufacturing activity in an Export Processing Zone is granted 100% capital allowance in any year of assessment. This makes the cost of capital acquisition entirely deductible in the year in which the qualifying expenditure was incurred.
- Solid Minerals Mining: Another example is in Part IV of the Minerals & Mining Decree, (now Act)¹⁹ which gives various tax incentives to operators in the solid minerals mining sector.
- Hotels Income Exempt from Tax: Exemption of 25% of income in convertible currencies derived from tourists provided the income is utilized within 5 years for the building or expansion of new hotels, conference centers and new facilities for tourism development.
- Locally Manufactured Plant: 15% investment tax credit is allowed for a company producing totally manufactured plant, machinery or equipment.
- Replacement of Obsolete Plant: 15% investment tax credit for a Company, which has replaced entirely obsolete plant and machinery.

VAT

The Military Government introduced value Added Tax in Nigeria in 1993 after promulgating Decree No 102 of 1993.²⁰ Presently, a bill to amend the Value Added Tax Act is before the National Assembly of Nigeria. The Bill proposes the following:

- An increase in the VAT rate from 5% to 10%.²¹

¹⁸ <http://www.nipc.gov.ng>

¹⁹ <http://www.placng.org/lawsofnigeria/>

²⁰ See <http://www.babalakinandco.com/resources/lawsnigeria/LAWS/93102value%20added%20tax.htm>

- Inclusion of a Tax Threshold. This presupposes that the National Assembly shall determine a VAT free annual turnover threshold. The amount of the yearly turnover, including all duties and taxes, which constitute the liability threshold, shall be the amount of N 6,000,000.00.
- Under the existing law, VAT revenue is distributed to the Federal Government, States and Local Governments in percentages of 15%, 50% and 35% respectively. However the Bill seeks to introduce distribution of VAT to the National Information Technology Development Agency (NITDA), Police Reforms and Education Fund.²²

Other taxes

In addition to the taxes mentioned above, the following taxes are levied: Petroleum Profit Tax, Sales Tax, Custom and Excise Taxes, Stamp Duty, Education Tax and Information Technology Tax.

The profits of a company engaged in petroleum operations are taxed under the Petroleum Profits Tax Act 1959 (PPTA).

The Education Tax Act of 1993 imposes an education tax on companies registered in Nigeria (2% of assessable profits). The tax is paid into an Education Fund to be used for the purposes of financing primary, secondary and higher education as well as ancillary activities such as staff development and conference attendance, works centers, library systems, research equipment and maintenance and execution of the 9-year compulsory education programme²³.

Information Technology Tax is payable by all companies and enterprises with annual revenues of more than NGN 100 million. It is imposed at the rate of 1% of the company's profit before tax and is collected by the FIRS on behalf of the Nigerian Information Technology Development Agency (NITDA). The information technology tax is deductible for income tax purposes.

²¹ See Section 6 of the VAT (Amendment) Bill, 2010.

²² See section 47 of the VAT (Amendment) Bill 2010.

²³ Now the Tertiary Education Trust Fund Act, which repeal the Education Trust Fund Act.

2.2. Tax administration in Nigeria

In Nigeria, different bodies administer taxes. Federal Taxes are administered separately and differently from State Taxes.²⁴ In 1961, companies' income tax became a Federal Tax, and Personal Income Tax became a regional tax.

Federal taxes

FIRS administer Federal Taxes and Revenue. Section 2 of the Federal Inland Revenue Service (Establishment) Act 2007 (FIRSA), clearly stipulates the objective of the FIRS, which provides thus:

“The object of the Service shall be to control and administer the different taxes and laws specified in the First Schedule or other laws made or to be made from time to time by the National Assembly or other regulations made there under by the Government of the Federation and to account for all taxes collected.”

Specific functions of the FIRS are listed in Section 8 of FIRSA.

The Federal Board of Inland Revenue (FBIR) is also established with the principal mandate of overseeing and supervising the FIRS. Section 7 of the FIRS Act provides thus:

“The Board shall-

(a) provide the general policy guidelines relating to the functions of the Service;

(b) manage and superintend the policies of the Service on matters relating to the administration of the revenue assessment, collection and accounting system under this Act or any enactment or law;

²⁴ Before Nigeria's Independence, Income Tax administration was centralised and administered by the Governor – General. In 1958, the Income Tax Administration Ordinance No39 of 1958 established the FBIR which commenced operation on January 1, 1959. In 1961, ITMA established a Joint Tax Board (JTB). The JTB was mandated to ensure uniformity in tax administration by various tax boards and to resolve disputes between tax authorities.

(c) review and approve the strategic plans of the Service;

(d) employ and determine the terms and conditions of service including disciplinary measures of the employees of the Service;

(e) stipulate remuneration, allowances, benefits and pensions of staff and employees in consultation with the National Salaries, Income and Wages Commission; and

(j) do such other things which in its opinion are necessary to ensure the efficient/performance of the functions of the Service under this Act.”

The public perception of the FIRS has been mixed.²⁵ From a notoriously corrupt, inefficient and ineffective bureaucracy, the agency has recently received recognition as one of the few public institutions that is doing relatively well.²⁶

This Day newspaper awarded the FIRS the Government Agency of the Year 2008 Award for initiating “a revolutionary tax collection system that has helped increasing the revenue profile of the Federal Government”.

State Taxes

State Taxes are administered by the State Inland Revenue Services (SIRS), which in turn are supervised by the State Inland Revenue Board (SBIR). Section 87 of PITA establishes the SBIR and the functions of the SBIR are stipulated in Section 88 of PITA.

2.3. Introducing Tax Identification Numbers

The Joint Tax Board (JTB) is a national body created by ITMA 1961. It has over the years continued to play a role in the development of tax administration in Nigeria. The Joint Tax Board membership comprises the Federal Inland Revenue Service (FIRS), 36 State Boards of Internal Revenue (SBIRs). Other co-opted members include: Federal Road Safety Commission (FRSC), Revenue Mobilization, Allocation and Fiscal Commission (RMAFC), Federal Capital Territory (FCT), Federal Ministry of Finance (FMF) and Nigeria Immigration Service (NIS) as observer²⁷.

²⁵ C. Ukeje and K. Olayode, “The Federal Inland Revenue Service as a Pocket of Effectiveness: Evidence and Contradictions of Tax Administration in Nigeria” (unpublished).

²⁶ Abiola Sanni, “Recent Developments in Company Income Taxation in Nigeria”, *Bulletin for International Taxation*, 2011 (Volume 65), No. 1; Published online: 22 November 2010.

²⁷ See the Personal Income Tax Act LFN 2004.

The JTB's functions include uniformity in the enforcement of the provisions of PITA by various SBIR²⁸. It is currently working on a Tax Identification Number (TIN) which will uniquely identify all taxpayers and will be available nationwide. The objective of the scheme is as follows:

1. To have reliable and centralized information on all taxpayers in the country, this would allow the sharing of information among all the tax authorities.
2. To create a national platform for the registration and the allocation of a unique identification number to all taxpayers to aid effective tax administration processes.
3. To automate tax registration activities for all levels of government and therefore facilitate a sustainable platform for revenue generation.

The benefits of this project will include among others:

1. Filling of existing loopholes in the country's tax system.
2. Enhancing taxpayer identification and registration thereby bringing more taxpayers into the tax net.
3. Minimizing errors and mistakes associated with manual registration.
4. Reducing the issues of multiple taxation, which has been a major challenge to taxpayers and administrators.
5. Enhancing of information sharing among relevant agencies in the country.
6. Minimizing or eliminating cost of tax compliance as a result of greater accuracy in capturing data of taxpayers; with the new electronic system, tax authorities will be able to effectively collate access, analyze and retrieve data with ease.
7. Facilitating a more efficient system of tax assessment and collection as well as tax audit and investigation.
8. Enhancing voluntary compliance thereby allowing tax authorities to focus on review and verification of claims by taxpayers.
9. Minimizing leakages in tax collection, eliminating corruption in the tax system and enabling tax authorities to ascertain the actual income and taxes of all registered taxpayers.

The pilot phase of the scheme is already being concluded and only very few states are included, however, other states were expected to be included by July, 2012.²⁹

²⁸ See JTB UTIN Handbook. See also <http://www.jtb.gov.ng/utin/handbook.pdf>

²⁹ See JTB TIN Handbook.

2.4. Tax Courts

The Tax Appeal Tribunal (TAT) was established in accordance with the Federal Inland Revenue Service (Establishment) Act 2007 (“FIRSEA”)³⁰. TAT formally took off pursuant to the Tax Appeal Tribunals Establishment Order 2009 issued by the Minister of Finance.³¹ By this enactment, TAT replaced the former Body of Appeal Commissioners (BAC) and Value Added Tax (VAT) Tribunals. It was inaugurated on 4 February 2010. Appeals from the decisions of the FIRS now lie to the TAT.

TAT has jurisdiction to settle disputes arising from the operation of all of the federal taxing statutes listed in the First Schedule to that Act³².

The TAT is not conferred with criminal jurisdiction. Where evidence of criminality is discovered, the TAT is obliged to forward such information to the office of the Attorney General of any State or any relevant law enforcement agency³³.

According to the Tax Appeal Tribunal (Procedure) Rules 2010 (TATPR)³⁴: “A *person aggrieved by an assessment or demand notice made upon him by the Service or aggrieved by any action or decision of the Service under the provisions of the tax laws administered by the Service may appeal against such action, decision, assessment or demand notice within the period stipulated hereunder*”³⁵, generally, “*30 days from the date on which the action, decision, assessment or demand notice which is being appealed against, was made by the Service*”.³⁶

Paragraph 15(5) of the First Schedule to the FIRS Act provides that “*All appeals before the Tax Appeal Commissioners shall be done in public.*” This overrides the Petroleum Profit Tax Act in that it provides that trial shall be done in camera.

The Federal High Court, on points of law, can hear appeals to the Tax Appeal Tribunal (TAT) only.³⁷ The appeal is notified to the Secretary within 30 days.³⁸

³⁰ Section 59(1) of FIRSEA: http://www.tat.gov.ng/sites/default/files/docs/TAT_ESTABLISHMENT_ACT.pdf.

³¹ Available: <http://tat.gov.ng/content/tat-establishment-order>.

³² First Schedule of FIRSEA: http://www.tat.gov.ng/sites/default/files/docs/TAT_ESTABLISHMENT_ACT.pdf.

³³ See Paragraph 12, 5th Schedule, FIRS Act.

³⁴ Available: <http://tat.gov.ng/content/tat-procedure-rules>.

³⁵ Order III.1 of TATPR.

³⁶ Order III.2 of TATPR.

³⁷ Order XXIV.1 of TATPR.

³⁸ Order XXIV.2 of TATPR.

Prior to the establishment of the TAT, the Body of Appeal Commissioners was the tax tribunal of first instance. Most states however did not establish a Body of Appeal Commissioners (BAC). This had grossly deprived most taxpayers of the right to a speedy appeal expected under the BAC structure. The introduction of the TAT is intended to effectively address this challenge. No taxpayer should be shut out of the tax appeal structure due to failure of the relevant authorities to constitute such a vital adjudicatory body.

It was publicly stated that: *"It is no doubt that the establishment of the TAT would reduce the incidence of tax evasion, ensure fairness and transparency of the tax system, minimize the delays and bottlenecks in adjudication of tax matters in traditional court system, improve the tax payers' confidence in our tax system, provide opportunity for expertise in tax dispute resolution, provide a venue for effective involvement of parties, focus on facts rather than legal technicalities and promote early and speedy determination of matters without compromising the principle of fairness and equity."*³⁹

Despite these efforts, the applicability and practicability of the right to speedy trials is still suffering severely in Nigeria. The TAT is still a very slow tribunal, like its predecessor the Body of Appeal Commissioners. The FIRS legal and prosecution department is not assisting in ensuring speedy trials by its organization and preparation for trials. Despite being constituted in 2010, as of May 2012, no judgment has been delivered in any of the Zones. The best that has been noticed has been consent judgments and rulings⁴⁰.

One of the most disturbing issues is the independence of the Tax Appeal Tribunal. It is the Minister of Finance that specifies by official gazette, the number of zones matters and places in relation to which the Tribunal may exercise jurisdiction.⁴¹ The commissioners of the TAT are equally to be appointed by the Minister⁴² and can be removed by the Minister⁴³. This puts in question the independence of the TAT and the confidence of aggrieved taxpayers even when they file an appeal before the TAT. This puts in doubt the applicability of the fair hearing principle of *nemo judex in causa sua*⁴⁴.

³⁹ Available: <http://tat.gov.ng/node/1>.

⁴⁰ Records available from the TAT Secretariat and from reported decisions in the Tax Law Reports of Nigeria.

⁴¹ 4th schedule, paragraph 1(2) of the FIRS Act.

⁴² 4th schedule, paragraph 2(1) of the FIRS Act.

⁴³ 4th schedule, paragraph 5(3) of the FIRS Act.

⁴⁴ No man should be a judge in his own cause.

In Nigeria, there is a general reluctance to settle disputes through the court system. A similar situation is experienced in the tax landscape, where aggrieved taxpayers show strong reluctance to seek legal redress. Some of the reasons advanced for this apathy are:

- Delay in justice delivery;
- Corruption amongst judicial officers;⁴⁵
- Corruption amongst tax officials;⁴⁶
- Bias of judicial officers to their employers (the Government);
- Threats from the Revenue Authority; and
- Uncertainty of the outcome.

Another very sad but true cause of litigation apathy is the practice of tax investigators and auditors requesting bribes from taxpayers to conceal concerns, even if they are genuine and valid concerns raised by the taxpayers.

Because of the above challenges, many taxpayers especially in the oil and gas sectors started opting for arbitration as a dispute resolution option. However, the Federal High Court in the recent case of *Federal Inland Revenue Service v Nigerian National Petroleum Corporation*⁴⁷ held that tax disputes are not arbitrable in Nigeria. The learned Justice stated thus:

“The exclusive jurisdiction conferred on this Court in respect of revenue matters is not by accident in view of the historical evolution of the Federal High Court.... It is clear that the above provisions are all encompassing and leaves no one in doubt that this Court has the exclusive jurisdiction in any dispute relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the Government of the Federation is a party. And in any dispute connected with or pertaining to taxation of Companies and other bodies established or carrying oil business in Nigeria and all other persons subject to Federal taxation.”

2.5. Tax reform in Nigeria

In the beginning of the 21th Century, the Nigerian tax system was viewed as unduly complex, low revenue yielding, poorly administered and largely inequitable. The need for review of the

⁴⁵ US V Jim Bob Brown see <http://fcpa.shearman.com/?s=matter&mode=form&id=187>

⁴⁶ http://www.tax-news.com/news/SEC_Accuses_US_Firm_Of_Bribing_Nigerian_Tax_Officials_28570.html

⁴⁷ (2012) 6TLRN 1

Nigerian tax system resulted in the constitution of a Study Group⁴⁸ in 2002 and of a Working Group to review the recommendations of the Study Group⁴⁹.

The Working Group and the Study Group agreed that the Nigerian tax system should encourage economic growth. The Study Group disagreed with the recommendation of the Working Group on the replacement of the existing tax system with a broad-based income tax and expenditure taxes.⁵⁰

A few years later, the federal government had initiated nine executive tax bills in the National Assembly in 2005: A Bill for an Act to establish the Federal Inland Revenue Service; A Bill for an Act to amend the Companies Income Tax Act; A Bill for an Act to amend the Personal Income Tax Act; A Bill for an Act to amend the Value Added Tax Act; A Bill for an Act to amend the Petroleum Profits Tax Act; A Bill for an Act to amend the Education Tax Act; A Bill for an Act to amend the National Sugar Development Council Act; A Bill for an Act to amend the National Automotive Council Act; and A Bill for an Act to amend the Customs, Excise Tariffs etc. (Consolidation) Act.

The problems found in the Nigerian tax system had been ignored for many decades. Professor Epiphany Azinge stated in the “Colloquium of the taxpayers money” in Lagos on 19th January 2011 that “*one of the reasons for this neglect is Government’s heavy reliance on revenues derived from oil, as a result of which little or no attention had been given to revenue from other sources such as taxation.*”⁵¹

According to Professor Is-haq Olanrewaju Oloyede, “*Oil alone accounts for 40 percent of the country’s GDP, 70 per cent of budget revenues, and 95 percent of foreign exchange earnings. Nigeria’s dependence on petroleum is much greater than that of many other major producing countries.*”⁵²

⁴⁸ “Nigerian Tax Reform in 2003 and Beyond”, Main Report of the Nigerian Tax System (July 2003) (“Study Group Report”)

⁴⁹ “Nigerian Tax Reform 2003 and Beyond. Report of the Working Group on the Review of the Report of the Study Group on the Review of the Nigerian Tax Reform” (March 2004) (“Working Group Report”).

⁵⁰ Working Group Report, Introduction, supra note 15, p. 5; para. 2.1.1, p. 7.

⁵¹ http://www.nials-nigeria.org/round_tables/19th_jan_taxpayersmoney.pdf, p.1

⁵² Professor Is-haq Olanrewaju Oloyede, “*Repositioning the Nigeria’s Tax System: Suggested Policy Measures*”, p.1.

Table 1: Relative Importance of Petroleum as at 2005

Country	Oil as a % of GDP	Oil as a % of Government Revenue	Oil as a % of Exports
NIGERIA	40	70	95
NORWAY	10	25	15
ALGERIA	30	65	80
VENEZUELA	28	65	70
MEXICO	2	30	6
INDONESIA	10	25	15

Source: Adapted from IFS, OECD Reports

The participants in the “Colloquium of the taxpayers’ money” highlighted the inherent problems that affect taxpayers’ rights:

- Insufficient information available to taxpayers creates uncertainty
- Lack of clarity in taxation powers of each level of government
- Use of aggressive and unorthodox methods for tax collections.⁵³

⁵³ http://www.nials-nigeria.org/round_tables/19th_jan_taxpayersmoney.pdf, p.6

CHAPTER III:

PROTECTION OF TAXPAYERS' RIGHTS IN NIGERIA

3.1. Tax resistance in Nigeria

The exercise of the taxing power of the State throughout history has not been without resistance. The citizenry or subjects have repeatedly resisted imposition of taxes, most times violently. History is replete with accounts of revolts and resistance to imposition of taxes.

In Nigeria several tax revolts have been experienced. The most popular was the Aba Women riots of 1929. Thousands of Igbo women congregated at the Native Administration centres in Calabar and Owerri as well as smaller towns to protest both the warrant chiefs and the taxes on the market women. The women feared that the taxes would negatively impact on the business of the market women. The women forced warrant chiefs in some locations to resign. They also broke into European stores, Barclays Bank and prisons, releasing prisoners. Native courts were also attacked.

The colonial administration eventually drafted in the police and troops to quell the protest and to restore order.⁵⁴ The women riots led to the effective reversal of the taxes sought to be imposed and the abolition of the warrant chief system.⁵⁵

In Okigwe Division of the old eastern region of Nigeria, women from December 5th to 15th, 1938 staged another round of protests. The women were reacting to a spate of arrests of men by the police for failing to pay their 1938 tax.

In 1956, women staged another tax revolt in Aba and Onitsha, the leading commercial centres of eastern Nigeria. A finance law was passed in April 1956 by the Eastern Region government. The law sought to impose taxes on urban and rural women whose total income exceeded 100 pounds per annum. More than a thousand women took to the streets demanding a reversal. The government later amended the law.⁵⁶

⁵⁴ www.blackpast.org

⁵⁵ www.ngex.com/Nigeria/history/aba_wome_riotshtml

⁵⁶ John N. Orji "Igbo Women from 1929 -1960, West Africa Review

A very recent example of taxpayers' challenge of State taxing powers was the 2007 increase in VAT from 5% to 10%. Civil society groups and labour unions resisted the move and the Government was forced to reverse it.

3.2. Legal framework

At the national level, the protection of taxpayers' rights is contained in the Constitution of the Federal Republic of Nigeria (1999) ("Constitution") and in codified tax laws. The Federal Inland Revenue Service (Establishment) Act (FIRS Act) 2007 (FIRSA) is the principal enabling legislation in the Nigerian Tax system. FIRSA is not a taxing legislation because it does not impose any tax burden on taxpayers. Several taxpayers' rights are provided in the FIRSA.

FIRS published a Service Charter, but Nigeria is still lacking a Taxpayer Bill of Rights.

At the international level, Nigeria signed and ratified almost all the United Nations Human Rights treaties including the International Covenant on Economic, Social and Cultural Rights (1993) and International Covenant on Civil and Political Rights (1993). Nigeria is yet to sign the Optional Protocol to the International Covenant on Civil and Political Rights, thus not recognizing the competence of the UN Human Rights Committee (UNHRC) to consider complaints that the Covenant has been breached.

Nigeria has ratified the African Charter on Human and People's Rights (1983) ("African Charter") as well as the Protocol to the African Charter on the Establishment of African Human Rights Court (2004). There is no record of any taxpayer's rights case being heard or decided before this court.

The idea of adopting a treaty dealing with human rights in Africa started in Nigeria in 1961, at the Congress of African jurists in Lagos.⁵⁷ After a process that took decades, the African Charter came into force on 21 October 1986.

The African Charter has been passed into law in Nigeria. This is required as Nigeria is a "dualist" country. In the absence of an express guarantee or declaration by the Nigerian Constitution, the African Charter as a domestic law fills that gap.

⁵⁷ Sheila B Keetharuth, "Major African legal instruments", http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/7_Keetharuth.pdf, p, 167.

Article 45 of the African Charter creates the African Commission on Human and Peoples' Rights (African Commission) with the goal of promoting and protecting human and peoples' rights under conditions laid down by the charter. No known taxpayers' rights abuse case has been recorded so far but the Charter remains a good legal instrument for taxpayer right protection.

Until recently the Constitution and other Human Rights instruments have not been consulted and applied in the practice of taxpayers' rights protection. Aggrieved parties have always sought legal redress under the scanty provisions and protections in very old tax statutes. However, very important rights relevant to the taxpayer are contained in both the Constitution of the Federal Republic and the African Charter⁵⁸.

Some of the visible taxpayers' rights that can be seen in Nigeria are:

- Right to ownership of property - Sections 43 and 44 of the Constitution; Article 14 of the African Charter
- Collective right to natural resources and property - Article 21(1) of the African Charter
- Right to a court order before sale of immovable property - Section 33(6) of FIRSA; Section 86(6) of CITA; Section 104 of PITA
- Right to refund of excess tax - Section 23 of the FIRSA; Sections 49(1) and 50(1) of PPTA; Section 90 of CITA; Section 16(1) (b) of VAT Act
- Right to be searched only by a person of the same gender - Section 36(4) of FIRSA
- Right to information - Freedom of Information Act, 2011
- Right to private life - Section 37 of the Constitution; Section 29(5) of FIRSA
- Right to fair trial - Section 36(1) of the Constitution; Article 7 of the African Charter
- Right of appeal - Section 59 of FIRSA; Section 32(2) of PPTA; Section 43(2) of CGTA
- Right to object to a revised assessment – Section 69 of CITA

⁵⁸ The African Charter has been ratified and domesticated in Nigeria. It is now a domestic law based on the provisions of section 12 of the 1999 Nigerian Constitution. See *Abacha and Others v Fawehinmi* (2001) AHRLR 172 (NgSC 2000), where it was decided that the African Charter on Human and People's Rights is enforceable in Nigeria.

3.3. Taxpayers' rights

Following Bentley's classification of taxpayers' rights, we will distinguish between legal rights and administrative rights.

3.3.1. Legal rights

RIGHT TO OWNERSHIP OF PROPERTY

Constitution of the Federal Republic of Nigeria

Section 43(1) of the Constitution provides for the right to private ownership of property. The Section provides as follows:

"Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria".

Also, section 44(1) of the Constitution provides that:

"(1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things -

(a) requires the prompt payment of compensation therefore and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria."

However, section 44(2) (a) of the Constitution provides:

"Nothing in subsection (1) of this section shall be construed as affecting any general law (a) for the imposition or enforcement of any tax rate or duty."

African Charter

Article 14 of the African Charter provides as follows:

“The right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

The Nigerian Constitution has clearly subjected the fundamental right to own property to the taxing power of the State. Upon a close perusal of this section, it becomes obvious that the right to own property is subservient to the power to tax. The provision of the African Charter is not significant. It has subjected the right to property to two clear limitations: (a) general interest of the community and (b) provision of appropriate laws.

It is not in doubt that taxation leads to interference with the right of enjoyment of property. But the drafters of the Constitution and the African Charter have conferred superiority to the taxing power of the State over and above the right to property.

It is worth noting that these provisions have not been tested in courts in Nigeria. It will be interesting to observe how they are applied in tax cases in Nigeria. In *Interplay v Ukraine*, the European Court held that delaying VAT refunds is an abuse of the right to peaceful enjoyment of possession.⁵⁹ This in effect means that excess tax paid by a taxpayer is the property of the taxpayer but in the possession of the tax authority. The tax authority does not have any powers over properties that it is not entitled to and where it persists in keeping such property (i.e. excess tax), it will be offending the right to property. Incidental to the right to property is the right to possession and enjoyment of property. Jurisprudentially, these sub rights are incidents of ownership and are implied in the right to own property.

In Nigeria, despite the guarantee of a tax refund by Section 23 of the FIRS Act and Section 16(1) (b) of the VAT Act, the FIRS is yet to comply with these provisions by failing to refund excess tax whether in the form of VAT or arising from the withholding tax system, notwithstanding the crippling effect of this practice on businesses⁶⁰. One devastating impact of non-remittance of excess tax is on the cash flow of the company or business or individual. This situation is further worsened by the high inflation rate in Nigeria, which gradually erodes the real

⁵⁹ *Intersplav v Ukraine*, ECTHR Judgment of Jan 9, 2007 Application No. 803/002.

⁶⁰ Nigeria @ 50: Top 50 Tax Issues October 2010 from http://www.pwc.com/en_NG/ng/pdf/nigeria-top-50-tax-issues.; see also <http://www.ngex.com/business/public/newsinfo.php?nid=2>

value of such un-refunded sum. This practice of non-refunding is a huge infraction on the legal and constitutional rights of taxpayers in Nigeria.

No doubt, similar contentions as canvassed in the ECTHR can be presented before Nigerian tribunals and courts, perhaps the conclusions may be similar.

COLECTIVE RIGHT TO NATURAL RESOURCES AND PROPERTY

African Charter

Article 21(1) of the African Charter provides as follows:

“All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it.”

This article establishes a collective right, which may be relevant in the tax area. According to Sheila B. Keetharuth, this right can be breached in case of land alienation and of dismissal of indigenous communities’ customary land rights.⁶¹ This may occur by tax law. If so, Article 21(1) becomes relevant for the protection of taxpayers’ rights.

The Charter gives no definition for the term “peoples” or “people”, leaving the African Commission with the task to interpret the term.⁶²

RIGHT TO A COURT ORDER BEFORE SALE OF IMMOVABLE PROPERTY

By way of an obligation on the FIRS on the one hand and a right to the taxpayer on the other hand, a court order authorizing the FIRS to sell immovable property belonging to a defaulting taxpayer is required by FIRSA, CITA and PITA. But this obligation does not apply to goods, chattels and other personal effects belonging to the debtor/taxpayer.

⁶¹ Sheila B Keetharuth, “Major African legal instruments”, http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/7_Keetharuth.pdf, p, 172.

⁶² Sheila B Keetharuth, “Major African legal instruments”, http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/7_Keetharuth.pdf, p, 172.

FIRSA

Section 33(6) of the FIRSA provides as follows:

“Nothing in this section shall be construed so as to authorize the sale of any immovable property without an order of a High Court, made on application in such form as may be prescribed by the rules of court.”

CITA

The same rule is contained in section 86(6) of CITA.

PITA

The new section 104 of the PITA as amended has introduced several novelties with respect to the power to distrain, viz:

- It is mandatory for relevant tax authorities to apply to a High Court for issuance of a warrant to distrain properties of defaulting taxpayers.
- The tax authorities are authorized to keep the distrained properties for 14 days after which, if the sum is not paid, the goods may be sold; and
- Before an immovable property can be sold an order of court must be obtained.

The FIRS has very wide powers with respect to the right to distrain properties of defaulting taxpayers. In *I-D Sam Nig. LTD v Lagos State IRS*⁶³ the Lagos State High Court held as follows:

Where a taxable person fails and/or refuses to make the necessary tax payments, sanctions are prescribed in the relevant tax laws, which include, but are not limited to the power to distrain. There is no doubt that the claimant has the right to distrain for non-payment of tax.... This section also empowers an officer authorised in writing by the relevant tax authority to break open any building or place in the day for the purpose of levying distress and he may call for the services of the Police to assist in that regard. Things distrained may be kept at the cost of the taxable person for a period of fourteen days, and if all outstanding are not paid, the goods may be sold.

⁶³ (2011) 5 TLRN

The amendment to the Personal Income Tax Act, in 2011, effectively introduced amendments with respect to the power to distraint property in personal income tax matters. The implication of this provision is that for distraint and sale of immovable property both a warrant and an order of the court must be sought and obtained at both stages, while for a movable property only a warrant to distraint will suffice. This amendment has clearly reduced the wide powers of the FIRS and SIRS with respect to distraint and sale of immovable property. The court has therefore been conferred with powers to check likely abuse of powers by Revenue Authorities.

Mention must be made of the fact that the above amendment applies only with respect to personal income tax disputes, but does not apply to Petroleum Profit Tax and Companies Income Tax disputes.

Similar provisions should be included in other tax laws; this will ensure that there is uniformity in the relevant tax laws and equal treatment of taxpayers.

RIGHT TO REFUND OF EXCESS TAX

Nigeria operates a Withholding Tax System (WHT),⁶⁴ which means that in qualifying transactions the paying party is required to deduct at source any payment due to a taxable persons or companies. Where a taxpayer has overpaid tax (which usually is due to the WHT regime), he is entitled to either a refund of the excess tax or set off against a future tax.

FIRSA

Section 23 of the FIRSA provides as follows:

“(1) there shall be refunded to taxpayers, after proper auditing by the Service, such over-payment of tax as is due.

(2) The service shall decide on who is eligible for the refund mentioned in subsection (1) of this section subject to such rules and conditions as may be approved by the Board.

(3) Any tax refund shall be made within 90 days of the decision of the Service made pursuant to subsection (2) of this section, with the option of setting off.

⁶⁴ Sections 60, 61 & 62 of CITA and Sections 68,69,70 & 71 provides for deduction of tax at source from rent, interest, dividend and directors fees.

(4) For the purpose of tax refund, the Accountant-General of the Federation shall open a dedicated account into which shall be paid monies for settling such refunds.

(5) The Service shall administer the dedicated account as created by virtue of section 23 (4).

(6) For the purpose of the dedicated account, the Service shall prepare an annual budget for tax refund to be funded from the Federation Account as may be approved by the National Assembly.”

This provision of section 23 of the FIRSA has been applauded as one of the most innovative provisions of the Act. Despite the existence of these provisions and rights in the FIRS Act, no steps have been taken by the FIRS to put into operation the provisions of this section 23 of the FIRS Act. This has placed countless taxpayers in a precarious position that often involves taxpayers having millions of naira and dollars standing to their credit. This situation is likely to and in some instance is already affecting the cash flow of many companies' and businesses, which in turn exposes such unpaid sums to the risk of value erosion by reason of inflation; it also affects the time value of money.

Mention must be made that the FIRS is yet to set up a system for tax refund and hundreds of companies, businesses and individuals have billions of naira in credit with the FIRS. Several companies have complained about the adverse effect of this practice on their cash flow. Section 23 of the FIRSA gives an option to affected companies and businesses to institute legal action against the FIRS compelling it to set up the necessary machinery for tax refund.⁶⁵

PPTA

Taxpayers can seek relief under section 49(1) of the PPTA, where by error or mistake they supply certain wrong information, which forms the basis of an incorrect tax assessment. The section empowers a taxpayer who has paid excess tax by reason of the error to seek relief from the FIRS within a period of 6 years.

A taxpayer has a right to claim repayment of any excess tax within a period of six years after the end of the accounting period to which it relates. Section 50(1) of the PPTA provides as follows:

⁶⁵ http://www.citn.org/others/NIGERIA_SPEAK_TAX_PAPER2.pdf

“Save as is otherwise in this Act expressly provided, no claim for the repayment of any tax overpaid shall be allowed unless it is made in writing within six years next after the end of the accounting period to which it relates and if the board disputes any such claim it shall give to the claimant notice of refusal to admit the claim and the provisions of sections 36 and 37 of this Act shall apply with any necessary modifications.”

CITA

A similar rule is contained on section 90 of CITA:

“(1) If any company which has paid tax for any year of assessment alleges that any assessment made upon it for that year was excessive by reason of some error or mistake in the return statement or account made by or on behalf of the company for the purposes of the assessment, it may, at any time not later than six years after the end of the year of assessment within which the assessment was made, make an application in writing to the Board for relief. (...)

(4) A determination by the Board under this section shall be final and conclusive”

A good incentive that can arrest this situation will be the imposition of interest on any unpaid sum held by the FIRS. This will compel the FIRS to creatively comply with the express provision of the law. Realizing the amount of interest that is likely to be claimable from it, the FIRS will no doubt force itself to set-up the needed machinery to comply with the law.

VAT

The VAT system requires that whenever input VAT exceeds output VAT, the party obligated to pay VAT shall be entitled to a tax refund.

Section 16(1) (b) of the VAT Act provides as follows:

- (1) A taxable person shall, on rendering a return under subsection (1) of section 15 of this Act –*
- (a) if the Output tax exceeds the Input tax, remit the excess to the Board; or*
 - (b) if the Input tax exceeds the Output tax, be entitled to a refund of the excess tax from the Board on production of such document as the Board may from time to time require.*

This provision re-enforces the provisions of section 23 of the FIRS Act on refund of excess tax.

These provisions have not been complied with. Mention must also be made that this is a violation of the right to property as guaranteed in both the Constitution and in the African Charter. This practice is posing a grave financial threat to many companies especially those in the gas sector and construction sector⁶⁶.

RIGHT TO BE SEARCHED ONLY BY A PERSON OF THE SAME GENDER

In cases of serious tax infraction or suspicion of tax abuses, the FIRS is authorized to carry out inspections, searches, seizures, make copies of evidence, obstruct or break into premises etc. However, in the course of carrying out any of these activities, the FIRS Act forbids the search of a person to be carried out by a person of the opposite gender. In other words, a man can only be searched by another man and vice versa. This is an attempt to protect the cultural and religious sensibilities of most Nigerians. Similar provisions with respect to search are contained in the Penal Code and Criminal Code applicable in Nigeria. Where this provision is breached it can be the basis for an action for assault. But such an infraction will not affect the admissibility of any evidence so illegally obtained.⁶⁷ This rule of evidence reduces the protection intended under the provisions of this section.

FIRSA

Section 36(4) of the FIRSA provides as follows that:

"No person shall be bodily searched under this section except by a person who is of the same gender as the person to be bodily searched."

RIGHT TO PRIVATE LIFE

Constitution of the Federal Republic of Nigeria

Section 37 of the Constitution provides for the right to privacy. This has far reaching tax implications that will be analysed. The provision stipulates that:

⁶⁶ <http://www.pwc.com/ng/en/press-room/diversity-of-vat-laws-make-compliance-difficult-for-multinationals.jhtml>

⁶⁷ In Nigeria, evidence illegally obtained are still admissible in courts
http://journals.cambridge.org/abstract_S0020589300046248

“The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected”.

However, section 45 of the Constitution allows for derogation from this right by any law for any exception that is reasonably justifiable in a democratic society and is in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedoms of other persons.

This provision confers a general right on taxpayers to be entitled to their privacy. However, there is a derogation stated in section 45 of the Constitution. However, such derogations are not absolute. Where the taxing authority seeks to exercise its very wide powers to search and investigate, it must be conducted in a manner that will not offend the provisions of section 37, and such an action must clearly fall within the exceptions and situations in section 45. Any exercise of power beyond sections 37 and 45 will be an infraction on a taxpayer’s rights and will be unconstitutional. It must be noted that the constitutional provision uses the word “citizen”. Whether or not this provision can be interpreted and expanded to cover non-resident personal income taxpayers, resident and non-resident companies, is yet to be ascertained.

FIRSA

Sections 26, 27, 28 and 29 of FIRSA are laws that derogate from the right to privacy.

Section 28 of the FIRS Act empowers the FIRS to demand from every bank, quarterly information on transactions above N5, 000, 000 in the case of individuals and N10, 000, 000 in the case of companies and names and addresses of all new customers and other information with respect to customers.

Section 29 of FIRSA empowers an authorized officer to have free access at all reasonable times to lands, buildings, places, books, documents, computers and other electronic devices etc. for the purposes of collecting tax or carrying out any other function lawfully conferred on the service. The officer is also empowered to make copies of such documents. The authorized officer can also enter upon any land, building or place. Any occupier is obliged to assist the officer, answer questions orally, in writing or by statutory declarations.

For clarity, Section 29(1) of the FIRS Act provides as follows:

“Notwithstanding anything to the contrary in any other enactment or law, an authorized officer of the Service shall at all reasonable times have free access to all lands, buildings, places, books and documents, in the custody or under the control of a public officer, institution or any other person, for the purpose of inspecting the books or documents including those stored or maintained in computers or on digital, magnetic, optical or electronic media, and any property, process or matter which the officer considers necessary or relevant for the purpose of collecting any tax under any of the relevant enactment or law or for the purpose of carrying out any other function lawfully conferred on the Service or considered likely to provide any information required for the purposes of any of those enactments or any of those functions and may, without fee or reward, make extract from, or copies of, such books or documents.”

However, this very wide power is limited by Section 29(5) of FIRSA, which restricts the exercise of the above powers to require either the consent of an occupier or an authorization by a judicial officer.

Section 29(5) provides as follows:

“Notwithstanding subsection (1) of this section, the authorized officer shall not enter any private dwelling except with the consent of an occupier or pursuant to an authorization issued under subsection (7) of this section.”

Section 29(5) of the FIRS Act restricts the power of an authorized officer to enter any private dwelling except with the consent of an occupier or based on a judicial authorization. This is a legislative response to the practice of high handedness and arbitrary sealing of business premises of taxpayers, while tax liabilities are being contested.⁶⁸

While it is important for the revenue authority to have reasonable access to information on taxpayers, it is important to know that a proper balance must be struck with the right to privacy. In the course of exercising the powers of the service to access information, certain infractions may be committed. For example, the powers to obtain banking information by FIRS are too broad and no provision is made for judicial checks and balances before application and disclosure. This is a typical instance of the law going outside the spirit of this fundamental right. The Nigerian Constitution clearly guarantees the right to privacy. The exceptions for derogation

⁶⁸ “Are Governments Really Empowered to Outsource Tax Collection?,” Thisday Newspaper of September 8,2009, by Afolabi Elebiju

are public safety, public order, public health, and public morality among others. In other words, overriding public interest must be shown to exist. Where this is not sufficiently shown, it is my opinion that these powers to access information by the FIRS cannot be effectively and legitimately exercised. It is my opinion that the affected taxpayer can proceed to court to seek legal redress.

RIGHT TO FAIR TRIAL

Constitution of the Federal Republic of Nigeria

Right to a fair hearing or fair trial is provided for in Section 36(1) of the Constitution. It is trite that tax disputes are mostly civil in nature and where they involve elements of criminality; they are to be transferred from the Tax Appeal Tribunal to a regular High Court. Whether the dispute is civil or criminal in nature, several rights have been guaranteed. Section 36(1) and (2) of the Constitution provide as follows:

- (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.*
- (2) The proceedings of a Court or the proceedings of any Tribunal relating to matters mentioned in subsection (1) of this section (including the announcement of the decision of the Court or Tribunal) shall be held in public.*

African Charter

The corresponding provision of the African Charter is Article 7, which provides as follows:

“Every individual shall have the right to have his cause heard. This comprises:

- (a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;*
- (b) the right to be presumed innocent until proved guilty by a competent court or tribunal;*
- (c) the right to defence, including the right to be defended by counsel of his choice;*

(d) the right to be tried within a reasonable time by an impartial court or tribunal.”

The right to fair hearing is a well-established principle for trials in Nigeria. It applies in all judicial and quasi-judicial proceedings (even in administrative tribunals). In *Oged V Iheanyichukwu*⁶⁹, the Court held that:

“Fair-hearing is a fundamental constitutional right as entrenched in the 1999 constitution as amended. And the breach of fair-hearing in any proceedings without more vitiates such proceedings in their entirety; it renders the entire proceedings null and void“

From the above decision, it is clearly that the principle of fair hearing applies to every proceeding. These proceeding may take any form, including tax related proceedings. It has been argued in some quarters that the TAT is an administrative type of body⁷⁰. While others have argued that the TAT is a judicial body. Proponents of the latter view rely on paragraph 20(3) of the Fifth Schedule of the FIRS (Establishment) Act, which says the Tribunal shall be deemed to be a civil court for all purpose.

Whether or not the TAT is a judicial or quasi-judicial Tribunal, the requirement of fair hearing applies to it. As one of the pillars of the principle of fair hearing, Courts and Tribunals must ensure that from the fair assessment of a reasonable man, that there is no likelihood of bias in the course of determining a tax dispute. Where a case of bias or likelihood of bias is proven, it vitiates the proceeding in its entirety. The court will treat this as excess of jurisdiction, which in turn means that the court has acted *ultra vires* and therefore without jurisdiction. In *Okupe v FBIR*⁷¹, the court held as follows:

But it cannot be gainsaid that excess of jurisdiction is manifested where there has been a complete disregard of the fundamental conditions of the administration of justice and where there has been shown a real likelihood of bias or prejudice in the Tribunal, the court has always held that there has been excess of justice.... If that is the case, the court may think of remitting same back for trial or re-trial before another Tribunal.

⁶⁹ <http://easylawonline.wordpress.com/category/fair-hearing/>

⁷⁰ *Addax Petroleum Development (Nig) Ltd V FIRS*(infra)

⁷¹ (2010) 2 TLRN

RIGHT TO APPEAL

FIRSA

A right of appeal by either the taxpayer or the FIRS or both, is conferred by the FIRSA. Where a taxpayer disputes any decision of the taxing authority, the taxpayer can exercise this right to appeal. The right to appeal is a legislative safeguard against the excesses or likely abuses by offices of the Revenue Authority. In *Okupe v FBIR*⁷² the court clearly stated that:

The Legislature of this country wisely entrusts to the Respondents the duty to operate the tax laws of the country, but in doing so, the legislature provides safeguards for the liberty of the taxpayer and in particular safeguards from arbitrary and capricious assessment and/or assessments which are not made bonafides or which are perverse. Whichever way one looks at the matter, an assessment like the present one which in defiance of the mandatory provisions of the PITA, denies to the Taxpayer his statutory rights of objection and as if that was not enough demonstrates clear and unequivocally to him that any objection he may attempt to make against such assessment has already been refused, cannot be otherwise than perverse. We cannot allow such assessment to stand and an order of certiorari must issue to quash such assessment.

Section 59 of the FIRS Act, establishes the Tax Appeal Tribunal, which has the powers to settle disputes arising from the operations of the FIRSA. In *Addax Petroleum Development (Nig) Ltd V FIRS*⁷³ the TAT held that ‘*The Tax Appeal Tribunal is an administrative tribunal set up to determine the correctness of assessments to tax without undue fixation with formality*’.

It must be pointed out that both the Constitution and the rules of evidence apply to the TAT. Paragraph 20(3) of the Fifth Schedule to the FIRS Act, provides as follow: “*Any proceeding before the Tribunal shall be deemed to be a judicial proceeding and the Tribunal shall be deemed to be a civil court for all purposes*” These presuppose that the TAT is bound by the provisions of both the Constitution and the Evidence Act. An appeal from the TAT lies to the Federal High Court, according to Paragraph 17 of the Fifth Schedule to the FIRS.

⁷² (Supra)

⁷³ TLRN Volume 7 , delivered on July 5, 2012 at the Lagos Zone of the TAT.

PPTA

The Board is empowered under Section 31 of the PPTA to require and obtain information of any company's petroleum operation. This demand can be directed at a company or a representative of the company. This power of the Board, where exercised, can be appealed against to a judge of a High Court. Section 32(2) provides that:

“An appeal shall lie from any direction of the Board made under this section to a judge of the High Court”.

CGTA

The right to appeal contained in FIRSA is supported by the provisions of the CGTA, which guarantees and safeguards the right of appeal by an aggrieved taxpayer. Section 43(2) of the CGTA provides as follows:

“An appeal shall lie against any assessment to capital gains tax made in accordance with section 54 of the Companies Income Tax Act, or section 59 of the Personal Income Tax Act, as the case may be (as applied under this section) to the body of Appeal Commissioners established under section 53 of the Companies Income Tax Act.”

RIGHT TO OBJECT TO A REVISED ASSESSMENT AND RIGHT NOT TO BE SUBJECTED TO PUNITIVE ASSESSMENT

CITA

Where FIRS serves a notice of additional assessment on a taxpayer, such a taxpayer shall be entitled to object to such an assessment. Section 69 of CITA provides as follows:

- (1) If any company disputes the assessment it may apply for the Board, by notice of objection in writing to review and revise the assessment made upon it.*
- (2) An application under subsection (1) of this Section shall –*
 - (a) Be made within thirty days from the date of service of the notice of assessment;*

PITA

According to section 57 of PITA, notice is required by law to be served on the taxpayers, and it opens a right of objection to the taxpayers to enable them to challenge any disputable assessment. It has been decided by the Court in the case of *Okupe vs. Federal Board of Inland Revenue*⁷⁴, that non-service of this statutory notice is a breach of the rights of the taxpayer.

In most instances the law stipulates the time frame within which a person or an authority is required to comply with clearly stated obligations. However, it is common practice for the Revenue Authority to flout such binding obligations with utter disdain and notoriety⁷⁵. A typical case in point is the practice of issuing a Notice of Refusal to Amend on taxpayers. In other words, when a Revenue Authority issues a Notice of Additional Assessment on a taxpayer, the taxpayer may if necessary respond with a Notice of Objection. The Revenue Authority is thereafter required to either accept the objection and reverse the additional assessment (in part or whole) or issue a Notice of Refusal to Amend (NORA).

Prior to April 7, 2011, it was mandatory for a taxpayer interested in filing an appeal to wait for a NORA to be issued before its right of appeal could arise. This effectively conferred on the Revenue Authority plenty of power to abuse and to occasion avoidable delay. This situation created serious delays for taxpayers. On April 7, 2011, the Tax Appeal Tribunal, Lagos Zone, delivered a landmark ruling in *Oando Supply and Trading Ltd v FIRS*⁷⁶ wherein it held that a period of 90 days is deemed to be reasonable time within which the Revenue is expected to issue its decision, failure of which will amount to an implied or deemed NORA. In clearer terms the Tribunal held thus:

“Where a taxpayer files a Notice of Objection to FIRS, the latter, if they do not agree with the taxpayer’s objection in any material particular must issue their NORA within a reasonable time. We must suggest 90 days. The Tribunal can treat FIRS failure to issue NORA within reasonable time or at all as a “deemed decision”.... Desirable as they may be NORA as part of FIRS internal complaint handling procedure is now optional from the point of view of the taxpayer. Of course when the taxpayer complains, FIRS must treat the complaint fairly, justly and speedily.”

⁷⁴ (2010) 2 TLRN

⁷⁵ *Oando Supply and Trading Ltd v FIRS* (infra)

⁷⁶ (2011) 4 TLRN, 128-129

It is also settled law, that taxing authorities must not be capricious and vindictive. The power to impose tax cannot be exercised beyond the express provisions of the law. Therefore in making assessments a taxing authority must operate strictly within the confines of the enabling law. Even where taxpayers are in default, the law enables taxing authorities to impose penalty and atimes interest. The taxing authority cannot go beyond the express powers conferred by the law to impose anything beyond the due tax, penalty or interest. The courts have also held that tax must not be taken as an instrument for punishment, even where the taxpayer is guilty. In *Okupe v FBIR*⁷⁷, the court held thus:

It is my view that though there is abundant evidence that the appellant was guilty of failure or wilful default in the supply of information or disclosure concerning his sources of income, the officials of the Board have no right or power under the law to inflict any assessment which is or tends to be of a punitive nature upon him and I conceive that it is my duty in the public interest, to ensure that officials of the Revenue Board are discouraged and in fact prevented from using their power of taxation as a punitive measure

3.3.2. Administrative rights - “Service Charter”

Though the FIRS do not have a “Taxpayers’ Rights Charter”, it has a “Service Charter” released on April 19, 2006.⁷⁸

This charter does not have the character of a law adopted by a parliament, but of an administrative document specifying the standards that the tax administration wishes to comply with. Taxpayers are not able to enforce the rights in a court.

The Charter has the following outline:

1. INTRODUCTION
2. OUR VISION
3. OUR SERVICES

⁷⁷ Supra

⁷⁸ Available at www.servenigeria.com/charters/finance-inlandrevenue.doc, last visited on 13/6/2012.

4. OUR CLIENTS
5. PERFORMANCE, TARGETS AND CUSTOMER EXPECTATIONS
6. OUR OBLIGATIONS
7. OUR EXPECTATIONS FROM CLIENTS
8. OUR COLLECTIVE RESPONSIBILITY
9. OUR GRIEVANCE REDRESS MECHANISM

Taxpayers' rights are not mentioned as such but it is worth noting the FIRS declared mission, values and ethical code.

"Our Mission

To operate a transparent and efficient tax that optimizes tax revenue collection and voluntary compliance.

1. Transparent and Efficient Tax System

- ❖ *Clear to all*
- ❖ *Consistent*
- ❖ *Easy to administer*
- ❖ *No leakages*
- ❖ *Taxpayer focused*
- ❖ *Accountable – Inspire strong public confidence*

2. Optimizes Tax Revenue Collection

- ❖ *Expand Tax net*
- ❖ *Deepen Tax compliance level*

❖ *Support development efforts*

3. *Voluntary Compliance*

❖ *Friendly*

❖ *Enabling Environment*

(...)

Our Values

- *Professionalism*
 - *Competence and know-how; Accountability; Respect to taxpayers, constituted authority and colleagues*
- *Integrity*
 - *Honesty; Fairness; Transparency*
- *Efficiency*
 - *Speed; Convenience*

Our Ethical Code

A Tax Official shall

- *Be honest and impartial*
 - *Not collude with taxpayers to defraud or reduce tax obligations*
 - *Refuse gratification in any form*
 - *Not tarnish the image of the service*
 - *Pay tax promptly and correctly*
- *Be courteous, professional and diligent*

- *Be professional and competent on duty*
- *Educate and encourage the taxpayer to pay taxes as and when due*
- *Implement the tax laws fairly, uniformly and equitably.”*

More interesting are the FIRS’ obligations:

“OUR OBLIGATIONS

- *Staff: To relate with all our clients with courtesy and respect and give prompt service to all Nigerians at all times. To display competence and professionalism in the discharge of duties*
- *Management: To put in place an efficient tax policy and administration that will enhance voluntary compliance and career development of its employees and to give proper account of all its responsibilities to the nation.*
- *Client: Recognize the individual needs of each client and observe clients right to privacy and confidentiality.*

(...)

OUR COLLECTIVE RESPONSIBILITY

- *It takes two to tango; both FIRS and the taxpaying public should know that all should fight the war against corruption. Hence, all hands should be on deck to fight corruption.*
- *Don’t give, don’t take and Nigeria will be a better place for all to live in.”*

The Service Charter is not reliable for the following reasons⁷⁹:

- It is centred on the Revenue Authority.
- It is poorly circulated and unknown among stakeholders.
- Members of staff of the FIRS are not aware of its existence.
- It is not being applied or enforced by the FIRS.

⁷⁹ Based oral comments made by tax practitioners and lawyers in Nigeria.

- It is outdated.
- Poorly structured.
- Not signed by the Chairman of FIRS.
- Lacks any force of law.
- Very poor paragraphing and numbering.

When we compare the Service Charter with the OECD Taxpayers' Rights and Obligation – Practical Note⁸⁰, we conclude that the only basic taxpayers' rights mentioned in the Charter are the right to privacy and the right to confidentiality. Other basic taxpayers' rights not mentioned in the Service Charter are:

- the right to be informed, assisted and heard;
- the right of appeal;
- the right to pay no more than the correct amount of tax;
- and the right to certainty.

The efforts of the FIRS by releasing the Service Charter though commendable is insufficient and does not in any real way address the need for drastic improvements in protection of taxpayers' rights in Nigeria. The Service Charter is a worthless legal document in its present form because it does not have any force of law and is not binding. It was not even executed by any principal staff of the FIRS and is poorly publicised⁸¹. Most tax experts are not aware of its existence. The Charter has not been reviewed since its release even though it is meant to be reviewed once every three years⁸².

⁸⁰ OECD, *Taxpayers' Rights and Obligations: A Survey of the Legal Situation in OECD Countries* (Paris, OECD, 1990).

⁸¹ <http://firs.gov.ng/getdoc/3cca11c6-0e85-4ee6-bf46-4942befba8ed/FIRS-Service-Charter.aspx>

⁸² <http://firs.gov.ng/getdoc/3cca11c6-0e85-4ee6-bf46-4942befba8ed/FIRS-Service-Charter.aspx>

CHAPTER FOUR:
PROPOSED REFORM

4.1. Proposed Amendments to the “Service Charter”⁸³

The major defects associated with the subsisting FIRS Service Charter have been highlighted above. It should be centred on taxpayers and be clear in respect to the rights which are recognized to taxpayers. The “Service Charter” should mention also the following basic rights:

- Right to be informed, assisted and heard;
- Right to pay no more than the correct amount of tax;
- Right to certainty.

The Charter should summarise and explain taxpayers’ rights in plain language; in view of which I recommend that the following amendments be included in the Charter:

“Right to be informed, assisted and heard

You are entitled to have up-to-date information of the tax system and of your rights.

Right to pay no more than the correct amount of tax

You should pay no more tax than is required by the tax legislation. It is acceptable to reduce tax liability by legitimate tax planning.

Right to certainty

You have the right to a high degree of certainty as to the tax consequences of your actions”

One important aspect is that rights are clear. I suggest the following approach:

“You are entitled that tax officers:

- a. Act professionally in dealing with you.*

⁸³ Adapted from the “Model of Taxpayers’ Rights” contained in: D. Bentley: Taxpayers’ Rights: Theory, Origin and Implementation, Aspen Publishers, Inc, pages 395 and 396.

- b. *Treat you with courtesy, consideration and sensitivity.*
- c. *Listen to your concerns.*
- d. *Treat you as being honest in your tax affairs unless you act otherwise.*
- e. *Minimize the costs of complying with tax obligation.*
- f. *Help you to understand and meet your obligations.*
- g. *Make sure publications and other communications are clear, accurate, helpful and easy to understand.*
- h. *Keep looking for new and better ways to give you advice and information.*
- i. *Conduct, general education programmes for both existing and potential taxpayers.*
- j. *Be accessible and attend to your enquiries, whether by telephone, mail or in person, within specified times designed to minimize delay.*
- k. *Deal with urgent requests without delay, whether by telephone, mail or in person.*
- l. *Provide you quality service across the organization.*
- m. *Apologize for errors, fix them quickly and explain what went wrong and why.*
- n. *Make it clear that you can question the information, advise and services they are given.”⁸⁴*

In view of the quality of the relationship between tax authorities and taxpayers in Nigeria, merely improving the “Service Charter” does not guarantee the effective improvement to the protection of taxpayers’ rights in Nigeria. For this reason, we suggest that a “Taxpayer Bill of Rights” is enacted in Nigeria. This new instrument should have the force of law and confer on taxpayers’ rights that they can enforce in Court.

4.2. Introducing a new “Taxpayer Bill of Rights”

In view of the above, it is expedient to introduce a “Taxpayer Bill of Rights”. It is intended that it will be an Act of the National Assembly of Nigeria. I have detailed below, a draft of the document:

⁸⁴ See Tax guidance series, *Principles of Good Tax Administration – Practice Note* (2001) and *Taxpayer Rights and Obligations* (2003), which stressed the importance of outlining and communicating to taxpayers their rights and obligations. The IMF *Manual on Fiscal Transparency* said that ‘Taxpayers’ rights should be clearly stated’.

TAXPAYERS RIGHTS PROTECTION BILL⁸⁵

Enacted by the National Assembly of the Federal Republic of Nigeria –

PART I – BASIC TAXPAYERS RIGHTS

1. (1) All Taxes, including duties, excise, fees, levies and charges shall be imposed by law.
(2) It shall be illegal to impose and/or collect any Taxes, including duties, excise, fees, levies and charges not imposed by law.
(3) All discretionary powers conferred by law on the Revenue Authority, shall be exercised in the following manner:
 - (a) in a way appropriate and necessary to achieve the legitimate objective of the law;
 - (b) where there is a choice or choices between two or more appropriate measures, recourse shall be given to the least onerous;
 - (c) based on reasons, which shall be applied consistently, fairly and impartially and
 - (d) shall be fair and reasonable in matters of procedure and substance.
2. All rules, regulations and circulars applicable in the tax system shall be compiled and published accurately and regularly in a form that is accessible to all users.
3. Tax laws, subsidiary legislation and administrative decisions shall not have retroactive effect except to the extent that they are:
 - (a) Reasonable which may include consideration of one or more of:
 - (i) the limited consequences of retroactivity;
 - (ii) the error, lack of clarity or contradiction they aimed to correct;
 - (iii) urgent public interest.
 - (b) Serving a legitimate purpose and
 - (c) Proportionate in striking a fair balance between the State and the taxpayers.
4. (1) Tax rules shall be certain. If a provision is absurd, ambiguous, and contradictory or does not make sense, it shall apply to the taxpayer's benefit.

(2) If a tax provision or any part of it is uncertain that it cannot be applied, the court or the relevant authority responsible for its application shall not apply that provision or part of it.

⁸⁵ Adapted from the "Model of Taxpayers' Rights" contained in: D.Bentley: Taxpayers' Rights: Theory, Origin and Implementation, Aspen Publishers, Inc, pages 375 – 395.

Notwithstanding the provisions of any other law, where taxpayers can show that they are genuine and reasonable circumstances that prevent them from complying with the provisions of the law, the revenue authority shall have the discretion to grant appropriate reliefs.

5. (1) Notwithstanding the provisions of any other law:
 - (a) taxpayers shall pay only the amount of tax required by law;
 - (b) taxpayers that overpay tax shall be entitled to a full refund;
 - (c) taxpayers may elect to apply excess tax as tax credit in offsetting future tax obligations;
 - (d) except where specifically provided taxpayers shall pay domestic tax only ones on the same component of the tax base and shall receive relief for tax already paid in the calculation of further tax on the same component.
6. The tax authority shall not discriminate between taxpayers in the same position and shall allocate taxes fairly between taxpayers in different circumstances.

PART II: TAXPAYERS' RIGHTS DURING TAX AUDIT AND INVESTIGATIONS

7. (1) Taxpayers shall be given prior notification of an audit or a request to attend an interview, with brief details of the expected nature, scope and duration of the audit or interview, the information and records that will be required, the names and contact details of the revenue officers managing the audit or investigation.
 - (2) Taxpayers shall be given the opportunity to request postponement of the audit or interview if they have good reasons.
 - (3) The audit or investigation process and timeframe shall be explained in detail to the taxpayer or its representatives before an audit or investigation commences with the opportunity for discussion and clarification, including:
 - (a) the benefits of voluntary disclosure.
 - (b) the rights and duties of the taxpayer during a tax audit or investigation.
 - (c) The avenues for objection and appeal against assessments arising out of the audit.
8. Taxpayers shall be entitled to request for the presence of a lawyer or tax consultant during a tax audit and investigation.
9. (1) Tax audit or investigation shall not interfere unreasonably with the proper running of a taxpayer's business or cause it to suffer commercial loss as a direct result of the audit activity.

- (2) Meetings or interviews shall take place, where possible at mutually convenient times.
- (3) Audits shall take place during normal business hours unless otherwise agreed.
- 10. Taxpayers shall be entitled to reasonable time to collect information required unless search and seizure powers are exercised by the relevant tax authority.
- 11. Taxpayers shall have the right to take notes of conversations during a tax audit or investigations.
- 12. Taxpayers shall have the right to request for recording of all interview and sessions during the tax audit or investigation and be entitled to a copy of the records at the conclusion of the tax audit or investigation.
- 13. The entire tax audit or investigation shall be recorded in the form of a minute signed by representatives of both the revenue authority and the taxpayer
Provided that the taxpayer shall be entitled to refuse to sign the minutes or to sign the minutes with reservations.
- 14. The taxpayer shall have the right to request for all documents or information obtained during tax audits or investigations to be treated with confidentiality.

PART III SEARCH AND SEIZURE

- 15. In conducting authorized searches, revenue authorities shall:
 - (i) inform the occupant before the search takes place unless this could reasonably be expected to defeat the purpose of the investigation;
 - (ii) conduct search only during business hours or by appointment;
 - (iii) permit the taxpayer or a representative or occupier to attend the search;
 - (iv) provide a detailed receipt for anything taken, with an indication of when it will be returned;
 - (v) take a copy of documents or information rather than the original unless the original is critical to the investigation;
 - (vi) where the original document or information is seized normally give opportunity to copy the document or information before it is removed and
 - (vii) publish guidelines from time to time on powers involving access to premises, searches and seizures of information together with details of the rights and obligations of taxpayers.

PART IV: INFORMATION SOURCING

16. Notwithstanding the provisions of any other law:

- (1) taxpayer information shall be treated as completely confidential;
- (2) taxpayer information shall be used only for the assessment, enforcement and collection of tax.
- (3) there shall be clear rules governing the disclosure of taxpayer's information to other government departments, other taxpayers and third parties and the duties and responsibilities of those persons in relation to the taxpayer information.
- (4) officers of a revenue authority shall access taxpayer information only when required to do so in the performance of their duties.
- (5) unauthorized access to taxpayer information held by the revenue authority by any person, unauthorized browsing of such information and any unauthorized release of such information to a third party shall be an offence punishable upon conviction with a term of at least six months in prison or a fine or both.
- (6) revenue officers shall be personally liable for any misuse of information.

17. Notwithstanding the provisions of any other law, information required by the revenue authority shall be restricted to information relevant to the tax affairs of a taxpayer except to the extent that the revenue authority is required by law to perform other functions requiring additional information.

CHAPTER FIVE:
CONCLUSION

Together taken, the Constitution, tax codes and the “Service Charter” do not provide sufficient legal framework to ensure the protection of taxpayers’ rights. As pointed out in this thesis, administrative practices are not satisfactory. This should be revisited and compared to the practices of other countries and in the context of the OECD guidance in this area.

The African Charter and the Commission of Human Rights have not had a relevant role in the protection of taxpayers’ rights so far. They are perceived as powerless instruments in this respect, but this may change in the future. With the increasing awareness of these instruments, they may have the direct ability to safeguard taxpayers’ rights in the coming years.

The Service Charter is interesting in that it constitutes a guide to best practice in tax administration. However, Nigerian taxpayers are not provided with sufficient protection from potential abuse. Taxpayers are not able to enforce the rights in a court.

Nigeria should follow the US approach and attempt to have a Bill of Rights with force of law through enactment by statute. Considering the current status and the abusive administrative practices, statutory law should be preferred to administrative regulations.

The “Taxpayer Bill of Rights” could represent a turn from a “negative approach”, focused on avoiding direct violations of taxpayers’ rights to a “positive approach”, in which the tax regime aims to promote such rights.

Tax scholars, tax practitioners and tax authorities in Nigeria need to step up their activities like their counterparts in Europe by organising seminars, workshops, conferences and research in the field of tax payer’s rights protection and by so doing create awareness among the citizenry.

BIBLIOGRAPHY

1. Abiola Sanni, "Recent Developments in Company Income Taxation in Nigeria", Bulletin for International Taxation, 2011 (Volume 65), No. 1; Published online: 22 November 2010.
2. J.A. Arogundade, Nigerian Income Tax & Its Dimension, Spectrum, 1st Edition, Ibadan.
3. Afolabi Elebiju : "Are Governments Really Empowered to Outsource Tax Collection?," Thisday Newspaper of September 8,2009.
4. Centre for Tax Policy and Administration: Taxpayers' Rights and Obligations- Practice Note, prepared by the OECD Committee of Fiscal Affairs Forum on Tax Administration.
5. C. Ukeje and K. Olayode, "The Federal Inland Revenue Service as a Pocket of Effectiveness: Evidence and Contradictions of Tax Administration in Nigeria" (unpublished).
6. Ducan Bently : Taxpayers' Rights: Theory ,Origin and implementation, series on International Taxation volume 31
7. Federal Inland Revenue Service Charter
8. Richardson, G. 2005, 'A preliminary study of the impact of tax fairness perception dimensions on tax compliance behaviour in Australia', Australia Tax Forum.
9. Hatrice Yurtsever: Anatomy of Taxpayers' Rights: Case Study of Turkey, Pakistan Journal of Social Sciences, 2010, Volume 7, Issue 5.
10. Jinyan Li, "Taxpayers' Rights in Canada", Revenue Law Journal, 1997, Vol. 7, Issue 1, Article 6, page 86.
11. Joint Tax Board Uniform Tax Identification Number Handbook
12. M.N. Umenweke: The Power to Impose and Collect Consumption Tax in Nigeria – Attorney General of Lagos State v EKO Hotels Ltd & Anor, Vol 1, April 2012, Article 8, Page 150
13. Microsoft Encarta Encyclopaedia 2010

14. "Nigerian Tax Reform 2003 and Beyond. Report of the Working Group on the Review of the Report of the Study Group on the Review of the Nigerian Tax Reform" (March 2004) ("Working Group Report").
15. "Nigerian Tax Reform in 2003 and Beyond", Main Report of the Nigerian Tax System (July 2003) ("Study Group Report")
16. OECD, Taxpayers' Rights and Obligations: A Survey of the Legal Situation in OECD Countries (Paris, OECD, 1990).
17. Osita Aguolu, "Personal Income Tax (Amendment) Act: Will the Government Achieve Its Objectives?" Bulletin for International Taxation, 2012 (Volume 66), No. 7, Published online: 21 June 2012.
18. Philip Baker: The application of the European convention on Human Rights to Tax Matter in the United Kingdom.
19. Tax Law Reports of Nigeria Volumes 1, 2, 3, 4, 5 and 6.
20. Włodzimierz Nykiel, Matgorzata Sek: Protection of Taxpayers 'Rights, European, International and domestic perspective. ISBN 97883-7601-863-8, ISN 1897-4392

ELECTRONIC MATERIALS

1. www.blackpast.org
2. www.ngex.com/Nigeria/history/aba_wome_riotshtml
3. www.blackpast.org/?q=gah/aba-womens-riots-november-december-1929
4. www.unclefed.com/TxprBoR/index.html visited on 17/04/2012.
5. www.babalakinandco.com/resources/lawsnigeria/LAWS/93102value%20added%20tax.htm
6. www.jtb.gov.ng/utin/handbook.pdf
7. www.irs.gov/advocate/article/0,,id=98206,00.html
8. www.africaunion.org/official_documents/treaties_%20conventions_%20protocols/banjul%20charter.pdf
9. www.servenigeria.com/charters/finance-inlandrevenue.doc, last visited on 13/6/2012

10. http://www.africa-union.org/official_documents/treaties_%20conventions_%20protocols/banjul%20charter.pdf.
11. <http://www.medwelljournals.com/fulltext/?doi=pjssci.2010.334.346>.
12. <http://www.internationalpropertyrightsindex.org/property-rights-arab-spring-a226>.
13. <http://fcpa.shearman.com/?s=matter&mode=form&id=187>
14. http://www.tax-news.com/news/SEC_Accuses_US_Firm_Of_Bribing_Nigerian_Tax_Officials____28570.html
15. http://www.nials-nigeria.org/round_tables/19th_jan_taxpayersmoney.pdf, p.1
16. http://www.kas.de/upload/auslandshomepages/namibia/Human_Rights_in_Africa/7_Keet_haruth.pdf
17. http://www.citn.org/others/NIGERIA_SPEAK_TAX_PAPER2.pdf
18. <http://www.pwc.com/ng/en/press-room/diversity-of-vat-laws-make-compliance-difficult-for-multinationals.jhtml>