

PROSECUTION OF TAX OFFENCES IN NIGERIA: LEGAL CHALLENGES

MARYAM OKORIE (LL.B; B.L; LL.M)

ASSISTANT CHIEF STATE COUNSEL

FEDERAL MINISTRY OF JUSTICE, ABUJA-NIGERIA

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INTRODUCTION

- Committing a tax offence is a significant hindrance to the progress of Nigerian society, as valuable revenue is continually lost due to criminal tax activities on a daily basis.
- While Nigeria's tax system may not have been the primary revenue source for the government in the past, with oil being the dominant and consistent revenue source, the dwindling income from crude oil, coupled with a growing population, has forced the government to aggressively seek alternative revenue sources, one of which is taxation.
- This has necessitated a renewed drive by the government to enforce existing tax laws by, among others, ensuring that there is criminal responsibility and accountability by those who violate tax laws or commit tax offences.
- This paper examines the legal challenges associated with prosecution of tax offences in Nigeria and proffers some solutions to these challenges.
- In this paper, I will be focusing on the following:
 - (i) Legal and institutional frameworks
 - (ii) Tax offences
 - (iii) Role of prosecution
 - (iv) Challenges in prosecuting tax crimes and
 - (v) Possible solutions.

LEGAL FRAMEWORK

- Nigeria has enacted a number of domestic legislation relating to taxes and taxation.
- Some of these laws specifically contain provisions that criminalize tax in its different forms as well as other predicate offences.
- The following are some of the relevant laws:
 - ✓ Constitution of the Federal Republic of Nigeria 1999 (as amended)
 - ✓ Economic and Financial Crimes Commission (Establishment) Act 2004;
 - ✓ Money Laundering (Prevention and Prohibition) Act 2022
 - ✓ Federal Inland Revenue Service (Establishment Act) 2007

LEGAL FRAMEWORK CON'D

- ✓ Companies Income Tax Act 2004
- ✓ Capital Gains Tax Act
- ✓ Customs Excise Tariffs Etc (Consolidated) Act CAP C49
- ✓ Petroleum Profit Tax Act
- ✓ Value Added Tax Act Cap. Vi Laws Of The Federation 2004
- ✓ Personal Income Tax Act 2004
- ✓ Petroleum Profit Tax Act 2004
- ✓ Value Added Tax Act 2004
- ✓ Proceeds of Crime (Recovery and Management) Act (POCA) 2022-this is the latest and most encompassing legislation. The act creates a platform to aid the fight against corruption, money laundering and illicit movement of stolen funds and tax evasion

INSTITUTIONAL FRAMEWORK

- Investigation, prosecution, and general enforcement of legislation relating to taxation is not an exclusive responsibility of any single institution in Nigeria.
- It is a shared responsibility.
- The following are the institutions responsible for investigating and prosecuting tax crimes in Nigeria
 - ✓ Legal units of Federal Inland Revenue Service, the State Internal Revenue Board and the Local Govt Internal Revenue Committee
 - ✓ Nigeria Police Force
 - ✓ Economic and Financial Crimes Commission (EFCC)
 - ✓ Independent Corrupt Practices and Other Related Offences Commission (ICPC)
 - ✓ Office of the Honourable Attorney General of the Federation and Minister of Justice (HAGF/MJ) – Federal Ministry of Justice.
- Note: The HAGF has oversight functions over law enforcement and corruption agencies with regards to prosecution of all offences in Nigeria.
- Note also: The EFCC, ICPC, Police etc have effective powers to freeze, seize and confiscate assets relating to tax crimes, corruption and illicit wealth.

INSTITUTIONAL FRAMEWORK CONTD.

The following are the courts with jurisdiction to try tax and taxation matters:

- ✓ The Federal High Court
- ✓ State High Courts
- ✓ The Tax Appeal Tribunals (this tribunal is set up under the Federal Inland Revenue Service Act)

TAX OFFENCES

- False tax statements and returns
 - Falsification tax clearance certificate and receipts
 - Failure to deduct and remit tax
 - False declaration and documentation
 - Counterfeiting documents
 - Unlawful assumption of an authorized officer's role
 - Making incorrect returns
 - Tax avoidance
 - Tax evasion
- Kindly note that tax crimes may be seen as a predicate offence for money laundering, bribery and corruption. Combating tax crimes is therefore crucial not only for preserving tax revenues but also for preventing and disrupting broader financial crimes and illicit activities.

ROLE OF PROSECUTION

- Prosecution acts as a powerful deterrent dissuading offenders and safeguarding against dishonest behaviour, particularly in the realm of financial crimes such as corruption, tax avoidance, and tax evasion.
- The threat of prosecution can deter citizens from participating in criminal activities.
- In order to secure a conviction for any of the offences, the burden lies on the prosecution to establish each element of the crime beyond reasonable doubt. However, in civil cases the proof is on the balance of probability. (i.e weighing evidence provided by both parties)
- Prosecution of tax offences unfortunately is low in Nigeria for a number of reasons some of which have been identified in the next slide.

CHALLENGES IN TAX PROSECUTION

- Complexity of tax laws
- Evidence gathering is difficult (i.e. complex financial transactions, digital and cross border transactions etc)
- Resource constraints (inadequate funding)
- Jurisdictional issues (tax crimes involve multiple jurisdiction, both national and international)
- Lack or inadequate international cooperation and Mutual Legal Assistance Agreements
- Legal defences (burden of proof, financial complexity, insufficiency of evidence etc)
- Lack of cooperation (witnesses and accomplices are unwilling to cooperate with LEA).
- Lack of synergy between investigators and prosecutors
- Sophisticated schemes (such as use of shell companies, offshore accounts, money laundering)
- Ambiguity in determining the prosecutorial authority for tax matters contributes to confusion among relevant agencies, hindering efficient prosecution of tax-related offences.
- Many Judges lack specialisation in adjudicating tax offences.
- Kindly note, the tax authority may carry out a tax audit and issue an additional assessment within six years from the relevant tax year. However, **statute of limitation** does not apply in the event of fraud, wilful default or neglect.

WAY FORWARD AND RECOMMENDATIONS

- The establishment of specialized tax courts, coupled with training and capacity including training and capacity building for judges in tax matters.
- Having effective criminal laws in place is critical for reducing non-compliance among persistent tax evaders and also acts as a general preventive measure.
- Laws should clearly define criminal tax offences.
- There should be a clear definition of who can be held criminal liable. This should include third parties eg companies, who either received or participated in assisting to evade tax.
- A criminal sanction (penalty) should apply if the offence is proven.
- More serious offences should be punished by more serious criminal sanctions.
- Collaboration and coordination between investigation and prosecution agencies.
- Whistle blower policy on tax should be encouraged.
- Alternative Dispute Resolutions (ADRs)

WAY FORWARD AND RECOMMENDATIONS CON'D

- Laws that criminalise tax offences should be effectively enforced in practice
- Comprehensive training and capacity building in criminal and civil procedures for judges, tax officials, investigators, prosecutors, etc is essential to ensure efficient handling of tax-related investigations and cases.
- Simplified tax regulations
- Streamlined evidence gathering
- Collaboration with stakeholders (tax authorities, business associations, civil society organizations, and other stakeholders)
- Investment in technology and use of technology in tax administration
- Strengthening international cooperation (strengthen partnerships with international counterparts)

QUESTIONS, ANSWERS AND GRATITUDE

- Thank you all for listening. I'm eager and more than happy to address any questions you may have.
- Immense gratitude to OECD Tax Academy Italy, the course leader and instructors.