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**Nigeria Personal Income Tax (Amendment) Act
2011: Implications for Tax Administration and
Enforcement**

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Abstract

This paper critically reviews the implications of Nigeria Personal Income Tax (Amendment) Act 2011 as they affect personal income tax administration in the hands of tax authorities as well as employers, employees and individuals as it relates to compliance issues of payment, collection, and remittance of personal income tax. This

explorative study relied on the review of relevant literature on Personal Income Tax Administration in Nigeria and the reactions of stakeholders on the new income tax amendment legislation. The major implication of the Amendment Act is that it provides good combination of a relaxed tax regime that is more tax- payer- friendly than the principal Act, while also specifying stricter tax collection and enforcement regulations that prescribe stiffer penalties and controls over tax payments and remittance defaults. Against the background of these implications the involvement of professional tax and accounting bodies, and tax authorities in the education and enlightenment of employers and tax payers are considered imperative.

Key Words: Personal income tax administration; Personal Income Tax (Amendment) Act 201; Tax collection and enforcement regulations

Introduction

Personal Income Tax (“PIT”) according to Decree No.4 of 1993 is a tax imposed on the incomes of individuals, communities and families. It is also charged on the incomes due to a trustee or an estate. Since the enforcement of personal income tax through Decree No.4 of 1993, amendments have been made to this decree almost on 10year basis all in the effort to overcome challenges that are identified with the actualisation of the objectives of the tax regime.

It has been evident that personal income tax in Nigeria had remained the most unsatisfactory, disappointing and problematic of the tax system in Nigeria. The problems associated with personal income tax have invariably influenced the spate of its amendment as deliberate efforts towards addressing the problems identified with it from time to time. The latest of such amendment is that contained in the Personal Income Tax (Amendment) Act 2011.

This paper reviews the implications of the Personal Income Tax (Amendment) Act 2011 on personal income tax administration and tax revenue against the background of the challenges it seeks to resolve.

The paper is divided into six sections addressing issues concerning: Concept and classification of Tax, Overview of Personal Income Tax system in Nigeria, Problems of Personal Income Tax system in Nigeria, Highlights of key changes and implications of the Personal Income Tax (Amendment) Act 2011, Conclusion and recommendation.

Concept and Classification of Tax

Tax: Black's Law Dictionary defines tax as a monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue. Most broadly, the term embraces all governmental impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, imposts, and excises. Although a tax is often thought of as being pecuniary in nature, it is not necessarily payable in money.

The Oxford English Dictionary also defines tax as a compulsory contribution to the support of the government, levied on persons, property, income, commodities. Akanle (1991 p.1) defines tax as “a compulsory levy imposed on a subject or upon his property by the government having authority over him”. Black's Law Dictionary describes tax as a ratable portion of the produce and labour of the individual citizens, taken by the nation, in the exercise of its sovereign rights; for the support of government, for the administration of the laws, and as the means for continuing in the operating the various legitimate functions of the state.

Taken together, all these definitions throw up at least three essential characters of a tax. First, it is a compulsory levy. Secondly, it is imposed by government. Finally, the money raised is expected to be used for public purposes or *to* encourage social justice within the community. The definitions also indicate that not all income yielding measures of government are to be referred to as taxes neither are all government charges compulsory or referred to as tax as some charges imposed are by way of penalties or fees.

Taxes are classified into various forms that include: proportional, progressive and regressive taxes; direct and indirect taxes details of which are as given below:

Proportional Tax: also known as flat tax is one, which according to Osemeke (2010) whose rate remains constant as the base increases. This is a tax whose ratio to income remains constant when moving up the income scale. In other words, it is a tax which is levied at the same rate at all levels of income. With this tax regime each person pays the same proportion of his income, irrespective of amount of his income.

Progressive Tax: existing if the tax rate increases as the base increases (Ibid.) The ratio of tax under Progressive Tax is that the ratio of tax to income increases as income increases. This tax system draws a common criticism that it can produce disincentive effects by discouraging hard work and tax avoidance and evasion tendencies. This tax system relies on the principle of 'ability to pay' and therefore considered more equitable than the proportional and regressive tax systems.

Regressive Tax: Regressive tax is defined by the Black's Law Dictionary as a tax structured so that the effective tax rate decreases as the tax base increases. In effect, a regressive tax is where the ratio on tax to income declines when moving up the income scale, that is, a tax which takes a decreasing proportion on income as income rises.

Digressive tax: the rate increases at a decreasing rate as the base increases, that is, the rate of increase is constantly less than the increases in the tax base.

Direct and Indirect Taxes

Direct Tax in the general sense, is one levied directly on the income and property of individuals and companies paid directly to the Government by the persons on whom it is imposed (often accompanied by a tax return filed by the taxpayer) (Siwisa ,2005). The burdens of direct tax are not usually shiftable on the ground that the taxes are payable directly by the individuals and the companies. Some

of the advantages advanced for direct taxation include progressiveness and equitability, having being based on the ability to pay and, more economical to collect. On the other hand, the major disadvantage of direct tax, particularly progressive tax, is the attraction it has for tax evasion and avoidance by those that consider unfavourable to them.

Indirect Taxes, simply put are taxes collected by an intermediary (such as a retail store) from the person who bears the ultimate financial burden of the tax (such as the consumer). Indirect Taxes operate on the principle of Pay As You Acquire (PAYA), as the tax is inbuilt into the purchase price of goods (Osemeke, 2010). The benefits of indirect tax include its ease of payment, and difficulty it has against evasion, while its weakest point from the point of its administration the uneconomical collection challenges it presents to tax collection authorities.

Overview of Personal Income Tax system in Nigeria

Personal Income Tax (“PIT”) is the oldest form of tax in the country as it was first introduced as a community tax in northern Nigeria in 1904 and later implemented through the Native Revenue Ordinances to the western and eastern region in 1930 and later incorporated into Direct Taxation Ordinance No.4 of 1940. Personal Income Tax is considered the oldest form of tax in the country. It was first introduced as a community tax in northern Nigeria in 1904, before the unification of the country in 1914, and was later implemented through the Native Revenue Ordinances to the western and eastern regions in 1917 and 1928, respectively. Among other amendments in the ’30s, it was later incorporated into Direct Taxation Ordinance No.4 of 1940. The need to tax personal incomes throughout the country prompted the Income Tax Management Act (ITMA) of 1961. In Nigeria, personal income tax for salaried employment is based on pay- as- you earn (PAYE) system and several amendments have been made to the 1961 Income Tax Management Act.

The history of personal income tax law in Nigeria is traceable to the Raisman Commission of 1957, the recommendations of which were

incorporated in section 7024 of the 1960 constitution. The section provided that the Federal Government had exclusive powers to levy tax on the income of all limited liability companies while the Federal and State governments enjoyed concurrent powers over personal income tax. Prior to 1961 each region had its own tax law on personal income tax. However, with the enactment by the Federal Government of the Income Tax Management Act (ITMA) 1961 acting under its constitutional powers, each region amended its laws to conform to the Act. The need to tax personal incomes throughout the country prompted the Income Tax Management Act (ITMA) of 1961. In Nigeria, personal income tax (PIT) for salaried employment is based on a pay as you earn (PAYE) system and several amendments has been made to the 1961 ITMA Act. For instance, in 1985 PIT was increased from N600 or 10 per cent of earned income to N 2,000 plus 12.5 per cent of income exceeding N 6,000. In 1989, a 15 percent withholding tax was applied to savings deposits valued at N 50,000 or more while tax on rental income was extended to cover chartered vessels, ships or aircraft. In addition, tax on the fees of directors was fixed at 15 per cent. These policies were geared to achieving effective protection for local industries, greater use of local raw materials, generating increased government revenue among others. Since the implementation of the Structural Adjustment Programme (SAP), however, taxes have been used to enhance the productivity and competitiveness of business enterprises. The current legislation is the Personal Income Tax Act (PITA) 1993, which repealed the Income Tax Management Act (ITMA) 1961 and the Income Tax (Armed Forces and Other Persons) (Special Provisions) Act 1972.

Problems of Personal Income Tax System in Nigeria

Personal income tax in Nigeria is known to have been unsatisfactory, disappointing and problematic than all the other Nigeria tax system (Oyebanji, 2006; Salami, 2011; Osemeke, 2010). The problem of unremitted deductions from PAYE system particularly among government ministries and agencies as well as lax adherence by all the three tiers of government to the approved list as provided in the Taxes

and Levies Act 21 of 1998, have over the years attracted the attention of the Joint Tax Board. This problem, which is more predominant with iterant self employed tax payers than it is with salary earners with known permanent address. Voluntary compliance is lacking among individual engaged in trade and business and this wilful default manifests in tax avoidance, evasion and delayed payments, making of false claims in respect of children, wife ,dependent relatives, life assurance premium and the false declaration of income receipts from trade, business, profession, vocation or employments Adinkrah (1984). Incidences of tax avoidance and evasion are traceable more to professionals and experts in accountancy, law firms, and insurance companies under the guise of tax planning.

Personal Income Tax (Amendment) (PITA) Act 2011

The Personal Income Tax (Amendment) Bill was assented to by the President in December 2004 but dated the Act 14th of June 2011. The controversy on the implementation date was resolved by the Joint Tax Board when it fixed it to be the 1st of April, 2011 (JTB, 2013). The principal challenges of the old Act which this Amendment Act addresses include the enhancement of a more equitable tax system, the redistribution of income, and the introduction of a simplified process of compliance that encourages involuntary tax compliance and increase in tax revenue to the Government (Ibid).

The highlights of key changes in the Personal Income Tax (Amendment) Act 2011 (PITA,2011) include:

1. Consolidation and increases in Personal Relief Allowances.

The Personal Income Tax (Amendment) Act, 2011 has introduced a consolidated tax free allowance. All the previously segregated personal income tax relief or allowances under the Personal Income Tax Act, 2004 are now consolidated into a single Consolidated Tax Relief Allowance (“CTRA”).The N5,000 plus 20 percent of earned income of the old Act is replaced with a Consolidated Relief

Allowance (CTRA) to be computed as the higher of N200, 000 or 1 percent of gross income plus 20 percent gross income. In effect the CTRA has also substituted the previous relief allowances such as housing allowances (N150,000), transport allowance(N20, 000), entertainment (N6, 000), children allowance (N5, 000) etc .The additional implication of this amendment is that CTRA stand fully claimable by all individuals who are liable to pay income tax under the Personal Income Tax Regime, irrespective of whether are in paid or self employment. With Consolidated Relief Allowance, the era of lengthy pay structure has become irrelevant, considering that irrespective of the structure adopted by employees, the new CRA has been streamlined claim of tax relief and deductions.

2. Increase in minimum Tax Rate and Introduction of New Tax Rates

Section 37 of the Amendment increases the minimum tax payable from 0.5 per cent of total income to 1 per cent of total income. The implication of this increase is that low income earners which includes National Youth Service Corps members, interns and contract staff are now brought into the tax net.

The new tax rate is now to be based on the provisions of the sixth schedule of the Act as follows: First N300, 000 taxed @ 7 percent Next N300, 000 taxed @ 11 percent Next N500, 000 taxed @ 15 percent Next N500, 000 taxed @ 19 percent Next N1, 600, 000 taxed @ 21 percent Above N3, 200, 000 taxed @ 24 percent.

While this amendment generally has a significant reduction of income of tax paid by low income earners it nevertheless will affect income earners differently depending on their income band, with some within higher income band to a certain range paying higher and others within relatively lower income band paying lower taxes.

Table 1: The Amendment Act provides a Revised graduated tax bands

Old Income Band	Old Rates	New Bands	New Rates
First N30,000.00	5%	First N300,000	7%
Next N30,000	10%	Next N300,000	11%
Next N50,000	15%	Next N500,000	15%
Next N50,000	20%	Next N500,000	19%
Above N160,000	25%	Next N1,600,000	21%
		Above N3,200,000	24%

Source: Personal Income Tax (Amendment) Act, 2011.

3. Provision of Specific Tax deductible contributions

The amendment provides for the following as tax deductible income: National Housing Fund Contribution, National Health Insurance Scheme, Life Assurance Premium, National Pension Scheme and gratuities. Taxpayers can take advantage of these allowable deductions as there is since no ceiling is placed to the amount an income earner can contribute it can be used as a tax avoidance scheme to the advantage of the tax payer and to the detriment of tax authorities. Employers can review their pension policies while employees are at liberty to determine the ceiling of their contributory pension deductions in order to take maximum advantage of the provisions of the amended Act.

4. Taxation of Expatriate Income

According to the amendment Act, expatriates who meet all the conditions for tax exemption including being liable to tax in another country may now be exposed to tax in Nigeria if such other country

does not have a double tax agreement with Nigeria. The subsection of the old PITA, 2011 which provides that a non Nigerian employment be taxed to the extent that the duties of employment are performed in Nigeria has been deleted. This implies that such individuals will be liable to tax on their worldwide income notwithstanding that the duties of their employment were only partly performed in Nigeria. Also, the 183 day rule has been modified to include period of temporary absence or employee's annual leave or temporary periods of absence in any 12 month period. This is considered to pose some challenges regarding temporary absences from Nigeria to perform employment duties abroad (Oserogho 2012). However, Double Taxation Treaties (DTT) relating to Personal Income Tax shall only now have effect once they are ratified by the National Assembly of the Federal Republic of Nigeria.

5. Duty to Keep Books of Account

PITA, 2011 creates a new sub section 6 in section 36 of the old Act and introduces the presumptive tax regime which makes it easier to tax the income earners, particularly in the informal sectors who fail to keep records. This is in addition to the provision that failure or refusal to keep adequate and proper books of accounts for purposes of computing Personal Income Tax is an offence, which on conviction carries a penalty of N50,000 for individuals and N500,000 for corporate employers.

6. Failure to deduct Personal Income Tax

Persons, employers or corporations are obligated to deduct tax under the 2011 PIT Act, and having deducted PIT and fails to remit the tax deducted to the relevant revenue authorities within thirty (30) days from the date the amount was deducted or the obligation to deduct the tax arose, such a defaulter shall be obligated to pay: i) a penalty of an amount of 10% of the personal income tax not deducted or remitted in addition to ii) paying the tax withheld or not remitted and lastly iii) paying interest at the prevailing Monetary Policy Rate, (MPR) of the Central Bank of Nigeria on the latter two items as against the

commercial rates of the previous legislation. Tax authorities are now required to apply to the High Court for a warrant of distraint before exercising their powers to distraint for failure by tax payers to pay final and conclusive tax liability under the law.

Employers are now also expected to file details of all emoluments paid to employees for the preceding year with the relevant tax authority, not later than the 31st of January of every year. Penalty for failure to observe the above now attracts a penalty of N500,000.00 for corporate body and N50,000.00 for individuals. Excess tax paid under the PAYE scheme shall now be refunded within 90 days after assessment by the relevant tax authority with the tax payer having the option to request for its set off against future taxes.

Section 18 (2) of the 2011 PIT Act has now authorised the Accountant General of the Federal Republic of Nigeria to deduct directly from the budgetary allocation of any government agency, department or ministry any un-withheld and un-remitted taxes, and to transfer such deduction to the beneficiary State Government upon written request by such a State Government.

7. Tax Appeal Tribunal

The Tax Appeal Tribunal (TAT) was established by Section 59 of the Federal Inland Revenue (Establishment) Act, 2007. Section 14 of the PITA, 2011. The Tax Appeal Tribunal replaces the defunct Body of Appeal Commissioners. This body is established to adjudicate over disputes arising from the operations of the FIRS Act, and other Acts listed in its first schedule (PITA included). In other words, this provision of the amended Personal Income Tax Act only brings it in line with the existing provision of the FIRS Act. The TAT is now to provide an independent outlet for aggrieved taxpayers complaints, and speedy resolution of disputes

8. Residency

Section 10 of the PITA, 2004 is amended by Section 4 of the PITA, 2011 and now defines the period of residency in Nigeria to include the

period of annual leave or temporary period of absence. This clause captures itinerant tax avoiders and brings them into the tax net. Similarly, there is an amendment of the definition of “Principal Place of Residence in the PITA, 2011. Itinerant worker is redefined to include any individual irrespective of status who works in more than one state for at least 20 days in at least 3 months of every assessment year.

9. Taxable Benefit in Kind (BIK)

PITA provides that Benefit in Kind (BIK)-benefits or other perquisites are to be considered in determining an employee's gross emolument for CRA in Section 5. The import of this provision is that Political Office Holders with a retinue of domestic staff, official cars and occupying official quarters, for instance, will have to pay taxes in respect of these benefits. In the view of JTB (2013), “it may also be necessary, in view of the PITA, for employers to plan their BIK policy around non-cash benefits, so that employees can take maximum advantage of the provisions of the amended Act”.

10. Non –Taxability of Reimbursable expenses

PITA’s re-definition of Section 3(b) of taxable income exempts reimbursable expenses in the form “any sum or expenses incurred by the tax payer in the performance of his duties, provided the employee has no intention of making any profit or gain from the underlying transaction. This amendment perhaps provides tax cover for non-payroll re-imbusement of reimbursable expenses. Employers with a policy that pays reimbursable expenses to employees

11. Tax Clearance Certificate Demand made mandatory

The amended Act now requires Ministries, Departments and Agencies (MDAs), and banks to demand Tax Clearance Certificates (TCCs) - and by extension a Taxpayer Identification Number - in respect of certain (specified) transactions in Section 21. A Taxpayer Identification number (TIN) is required to be quoted on every TCC issued by a tax authority. A penalty of N5million or imprisonment or

both upon conviction is prescribed for any defaulting authority that does not request for a TCC where one is required.

12. Stiffer Penalty for Non-compliance

Stiffer penalties introduced by PITA, 2011 for non-compliance includes but not limited to the following: A person who engages in bank business that fails to render returns or keep books is now to pay N500, 000 as fine (for corporate) compared to N5000 in the principal Act; failure to keep book of accounts is now an offence that attracts a fine of N500, 000 for corporate bodies and N50, 000 for individuals; failure to demand for a TCC and verify it, now attracts a fine of N5 million or 3 years jail or both upon conviction.

13. Membership of State Inland Revenue Service

Section 87 of the Principal Act sub section 2 is amended to expand the qualification of the Chairman of State's Inland Revenue Service board to include the membership of a recognised professional body. This is in addition to making chairman's appointment to be made by the Governor for the confirmation of the House of Assembly. The directors and other members of the Service are now to be representatives of the State's Senatorial Districts.

Discussion, Implications, Conclusion and Recommendations

The PITA (2011) is considered to have made bold effort at bringing the Personal Income Tax Act in line with existing realities in the Nigerian economy, and the National Tax Policy of the Government, which aims at tax burden reduction, equitable redistribution of income, promoting tax compliance, and a radical shift from direct to indirect taxation (JTB, 2013). The amendments made a good combination of a relaxed tax regime that can be considered more tax - payer- friendly than the principal Act with strict tax collection and enforcement regulations that prescribes stiffer penalties and controls over tax payments and remittance offences and administration. .

Contributions and incomes exempted from personal income tax in Nigeria, with all the personal income tax allowances and relief are now consolidated in the legislation of the Personal Income Tax (Amendment) Act, 2011. This amendment is likely to bring a decline in PAYE revenue to the tax authorities (JTB, 2013), and would also pose serious challenge to the revenue budget of tax authorities who would now be more inclined to intensify efforts at enforcing penalties for all the tax payment and remittance defaults in the amended Act in order to widen and deepen government tax revenue.

Against the background that direct and progressive tax regime usually encourage tax avoidance strategies by tax payers, the advent of the PITA, 2011 would afford employers a good opportunity to carry out PAYE review and payroll restructuring and tax planning that take lawful advantage of the lee ways provided by the amended Act. In particular, employers may now well begin to consider the option of off-payroll payments of reimbursable expenses to employees in other to take lawful advantage of the provision of non-taxability of reimbursable expenses (Ibid). It may also now be necessary, in view of the amended tax legislation, for employers to plan their Benefit in Kind (BIK) policies around non-cash benefits, and review their pension policies in order for their employees to take maximum advantage of the provisions of the amended Act.

With the wide range implications of Personal Income Tax Amendment Act (2011), it becomes imperative for the tax authorities at various levels, Nigeria professional Accounting bodies, the Chartered Institute of Taxation of Nigeria, CITN, and their members to carry out sufficient education and enlightenment campaigns, for all the stakeholders connected/affected by the amended Act. It is also pertinent to recommend that employees, employers and individual tax payers take advantage the services of tax experts in the same way various tax authorities utilize the services of Tax Consultants.

References

- Adinkrah, K.O. (1984). A new tax source for development in Ghana and Nigeria and its effects on peasants. *Journal of Private and Property Law*. 5 (2), 21-28
- Akanle, O. (ed.) (1991). *Tax Law and Administration in Nigeria*. Tax Law Administration in Nigeria. Lagos: NIALS,
- Ayodele O. (2006). Tax Policy Reforms in Nigeria; Research paper No.2006/03. United Nations University. Available at: publication@wtder.unu.edu
- Chris Whitehouse (1999). *Revenue Law Principles and Practice*, (17th ed.) London: Buerworths.
- FRN (Federal Republic of Nigeria) (2002). Personal Income Tax (Amendment) Act 1993 No.104). Operation of Pay As You Earn (PAYE) Regulations 2002. *Official Gazette*. Federal Ministry of Finance
- FRN (2011). (Federal Republic of Nigeria). Personal Income Tax (Amendment) Act. *Federal Government Official Gazette* 115(98), A381-393.
- JTB-Joint Tax Board (2013). Highlights Of The Personal Income Tax (Amendment) Act, 2011. Retrieved from: jtb.gov.ng/node/95
- Osemeke, M. (2010). *Practical Approach to Taxation and Tax Management*. Benin City: Ethiope Publishing Corporation.
- Oserogho (2012). Updates on Personal Income Tax (Amendment) Act 2011. www.oseroghoassociates.com
- Oyebanji, J.O. (2005). *Principles and Practice of Taxation in Nigeria*. Ibadan: Frontline Publisher.
- Phillips, J (1997). *The paucity of administrative capacity as a major impediment to the government in raising revenue in Nigeria*. Jos: University Press Limited.

- Salami, A (2011). Taxation, Revenue Allocation and Fiscal Federalism in Nigeria: Issues, Challenges and Policy Options. *Economic Annals. Lvi (189)* 20-21
- Siwisa, B (2005). *Revenue mobilization in Africa: Concept of Best Practice*. Yaunde: Princes Publication.
- The Constitution & the Taxpayer in Akanle* (ed.) (1991). Tax Law & Tax Administration in Nigeria, NIALS, Lagos,
- The New Webster's Dictionary of the English Language*, College Edition. India: Surject Publications.
- Yerokun, O. (1997). *Nigeria Revenue Law Report INRLR Part1*) Lagos: Nigeria Revenue Project Publication.