

## Reflections on the Extant Finance Act on Administration of Personal Income Tax in Nigeria\*\*\*

### Abstract

*The current paper reflects on the rationale behind several initiatives sustained so far by stakeholders to review the personal income tax in Nigeria to attain international best practices. The supposed crescendo of the initiatives was attained recently when President Muhammadu Buhari assented to the Finance Bill into law, now known and referred to as the Finance Act, on 13<sup>th</sup> January, 2020. The new law seems to have brought along some notable changes in the administration of the Personal Income Tax (PIT) in Nigeria. Prior to the emergence of the new legislation, agitations for the review of the then PIT law were indeed striving. Thus with the unveiling of the new Act, experts have asserted that a new vista has been opened to promote fiscal equity in PIT by mitigating regressive taxation with its effect on reform of domestic income tax laws. It is also envisioned that the new Act shall align PIT laws with global best practices as well as introduce tax incentives for investments in the private sector driven economy. However, some stakeholders, and a vocal size too, have been of the opinion that the Finance Act has not only failed to address the pre-existing nagging issues in PIT laws such as double and multiple taxation, fate of non-filers and retention of some other wise abrogated PIT laws, among others. Thus, in that light, the current paper is thus, an academic contribution to firstly recapture the pre-Finance Act era coupled with the expectations of the new law on the administration of PIT in Nigeria and to highlight on the other hand, the challenges still trailing it's inauguration with a resolve to forging a way forward.*

**Keywords:** Reflections, Finance Act, Income, Personal Income Tax, Administration.

### 1. Introduction

#### Pre-Finance Act Era in Nigeria:

Hitherto the pre-existing Personal Income Tax Act (PITA) had posed some notable challenges both to the tax administrators and also, the taxable populace because of some of its provisions<sup>1</sup> perceived by the stakeholders as being overdue for either outright abrogation and or review to embrace current challenges, expectations, and aspirations of the concerned. For instance, there was and still an apparent absence of fair hearing in the power to distrain for goods or chattels<sup>2</sup> in the erstwhile law. For instance, the law has contemplated that, if payment of tax was not made within the time stipulated by the demand notice, the Board may in its form, take necessary steps to enforce its power to distrain<sup>3</sup>. Again, PITA had and still contains evidence of double jeopardy<sup>4</sup>. The clear construction of the law is that a criminal prosecution does not exclude penalties and thus does not relieve a person from liability to payment of tax for which he is or may become liable<sup>5</sup>. Another uncertainty was and still centres on clear interpretation of the provisions of section 95(2) PITA<sup>6</sup>. The section defines the offence on making incorrect returns

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<sup>1</sup> K Jinioh & S Obi et al, 'Devices in Tax Evasion and Avoidance, *Gauge*, January – April series, 2019, Centre-Page.

<sup>2</sup> Constitution of Federal Republic of Nigeria 1999, S. 36(1).

<sup>3</sup> Companies Income Tax (Amendment) Act 2004, S.86.

<sup>4</sup> *Haltering v Mitchell* (1971) 303 USA 1630.

<sup>5</sup> *ibid.*

<sup>6</sup> Personal Income Tax (Amendment) Act 2011.

and penalty thereto. The law, perhaps, is silent on “making no returns<sup>7</sup>” at all. Again, section 90 of the PITA had remained a bone of contention to stakeholders who were vehement in their agitation for a review of the provision to include heads of various associations in the informal sectors as the principal officers<sup>8</sup> of the Local Government Revenue Committee to allow for inclusiveness in governance at the grassroots. The foregoing, and among others seem to have enveloped the fate of the pre-Finance Act Era in Nigeria’s tax culture. The authors shall now discuss the emergence of the new Finance Act in Nigeria<sup>9</sup>.

## **2. Unveiling of Finance Act in Nigeria;**

On January 13, 2020, President Buhari signed the Finance Bill into law, thus making it an Act after<sup>10</sup> it secured legislative approval. The new document seems to have amended eighty tax provisions across the companies’ income tax, petroleum profits tax, personal income tax, value added tax, customs and excise duties, capital gains tax and stamp duties, among others. The new legislation has brought along since its commencement, the following reactions from members of the organized private sector, representing the small and medium enterprises in Nigeria. Heralding the new Act,

Ahmed asserted that, this was the first time since<sup>11</sup> the return of democracy that a federal budget was being accompanied by the passage of a finance law specially designed to support its implementation and to create an enabling environment for business and investment by the private sector. Ahmed further opined that the Finance Act was intended to raise necessary revenue required to defray public expenditure, support sustainable increase in public revenue and ensure that tax law provisions were consistent with the national tax policy objectives of the federal government of Nigeria. She added that the Finance Act would promote fiscal equity by mitigating regressive taxation, reform domestic tax laws and align with global best practices as well as introduce tax incentives for investments in infrastructure and capital markets.

A tax veteran, Okwudili<sup>12</sup> corroborated the opinion of Ahmed that the Finance Act would support micro, small and medium-sized enterprises in line with governments Ease of Doing Business Reforms. He envisaged that the new law would provide more revenue to finance government projects in health, education and infrastructure. He therefore, called for public support for the new tax legislation. Ogbonna<sup>13</sup>, in a contribution, held a contrary view of the law, he noted that the upward review of VAT from 5 percent to 7.5 percent, came at a wrong time. Ogbonna argued that although, VAT in Nigeria was below the world average, adding that what the federal government should have done was to make the economy more vibrant first before any upward review of VAT, for the current hike would lead to increase in prices of goods and services. In a position paper, CSL Stockbrokers agreed<sup>14</sup> with the government that there was indeed the need to bridge the nation’s revenue gap. They however faulted the thinking that an increase in VAT would not lead to further economic scarring. In their view, “the present upward review in VAT would further worsen the living conditions of consumers whose real

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<sup>7</sup> *ibid.*

<sup>8</sup> WA Chukwuma, *A Comparative Analysis of Business Tax Laws in Nigeria Towards a New Legal Regime* (Joebest Publications, 2020) pp. 125-139.

<sup>9</sup> S Musa, “Buhari Okays Finance Act”, *Thisday Newspaper*, 23rd January, 2020, Front-page.

<sup>10</sup> *ibid.*

<sup>11</sup> K Ahmed, ‘Finance Act: A New Dawn’, *Vanguard Newspaper*, 31<sup>st</sup> January, 2020, Centre spread.

<sup>12</sup> J Okwudili, ‘New Hope for MSMSEs’, *the Guardian Newspaper*, 7<sup>th</sup> February, 2020, p. 12.

<sup>13</sup> C Ogbonna, ‘Nigerians Are Tax Burdened’, *The Sun Newspaper*, 9<sup>th</sup> February, 2020, Front page.

<sup>14</sup> CSL Stockbrokers on New Finance Act (2020) CITN Journal, 101-110. Also available at [www.atogov.an/finance,act.2020](http://www.atogov.an/finance,act.2020). Accessed on 3rd April, 2020 at 11.09pm.

income have been stifled over recent years.” Maude<sup>15</sup>, a tax expert was of the opinion that Nigerians were in for tough times with the commencement of the Finance Act. He observed that the impact of the new tax regime may not go down well with Nigerians considering already the high inflation which has been biting hard on the citizens. Maude noted that although the new tax initiative may turn in more revenue to the government, but that the timing was however wrong. He therefore observed thus, “considering that Nigerians have to battle with high prices of commodities, shoring up tax rates by the government was not a welcome development at this time”. He, however, opined that “since government is looking for revenue to fund the budget, it is therefore unfortunate that it is we Nigerians that will pay for it.

Perhaps keying into the above expressed view, Uzor<sup>16</sup>, in a contribution on the impact of the Finance Act, said that “Nigerians already have enough on their table and bringing in a new tax regime will further impoverish citizens”. He lamented that Nigeria was already poverty capital of the world<sup>17</sup>, and yet the government still wanted to impoverish citizens the more. He remarked that charges on POS, stamp duty and other forms of financial service charges already have their impact on Nigerians, and thus wondered why the government would initiate a new tax regime that would bring along more poverty on the citizens. Agbeluyi of Chartered Institute of Taxation of Nigerian (CITN) however, was of the view that the Institute backed the new tax regime as it has clarified several grey areas in the nation’s tax system. He therefore submitted that this was the first time in 20 years that the budget is accompanied with a Finance Act. Before now he continued that politicians made black statements on capital projects without telling the people how they intended to execute the project and with what revenue. He however observed that as such today the Finance Act was now specific on what was expected<sup>18</sup>. Agbeluyi revealed that CITN has been clamouring for the new law for several years that would explain in clear terms how government would intend to generate revenue and noted that, there has now been a link between the Ease of Doing Business among the micro, small and medium enterprises and the new Act which would enable the MSMES to thrive and operate. Agbeluyi therefore restored that, “as such, the CITN is therefore thankful to God that it is the first time managers of the economy are listening to professional in Nigeria”. He, however, regretted that the Finance Act failed to outline measures to capture the informal economy<sup>19</sup>.

Egbasola<sup>20</sup>, in his own reaction regretted that, at the moment that Nigerians have been on one hand struggling with decreasing income and on the other hand, with increasing taxes. He declared, “While companies pay taxes out of their profits, common men pay out of compulsion, little wonder the land is filled with frustration, and various forms of vices and suicides”. Egbesola, who observed that an average Nigeria has apathy towards tax payments because our leaders have shown little or nothing to justify taxes collected from past decades, the authors shall now determine the extent of amendments brought in by the new Act on PIT administration.

### 3. New Face of PITA Pursuant to Finance Act

The authors assert that the new Act has been able to introduce some notable reforms in the administration of the personal tax income in Nigeria. The assertion does not however negate

<sup>15</sup> T Maude, ‘Nigerians Now for Tough Times’, *The Authority Newspaper*, 24<sup>th</sup> February, 2020, Back page.

<sup>16</sup> *ibid*, p. 21; *ITDRLI v FIRS*: TAT/LZ/VAT/031/2021.

<sup>17</sup> *ibid* Centre spread; *Citibank v FIRS*: TAT/ SSZ/017/2021.

<sup>18</sup> W Agbeluyi, *CITN News*, January – April Series, 2020, Back-page.

<sup>19</sup> *ibid*, p. 31.

<sup>20</sup> F Egbasola, ‘A New Taxation Dawn’ (2020) *Tax Law Journal*, 34-39. Also available at <[http://11www.irs.gov/pub/irs-soi/ofrescon-mckerchar\\_polf](http://11www.irs.gov/pub/irs-soi/ofrescon-mckerchar_polf). Accessed on 24<sup>th</sup> April, 2020 at 10.45am.

the fact that there are still some yawning gaps in the new<sup>21</sup> Act, otherwise technically called Fiscal and Tax law. Some commentators<sup>22</sup> have tagged the Act as “a bag of diverse components” to the taxable populace in Nigeria. The Finance Act has brought some changes on pension contributions in Nigeria through some clarifications made thereto. For instance, the new law has clarified that pension contributions would no longer require the approval of the Joint Tax Board (JTB) to be tax deductible<sup>23</sup>. The Act has also removed the tax exemption on withdrawals from pension schemes except where the prescribed conditions were met<sup>24</sup>. Child relief and dependent relief have been deleted in consonance with the new legislation<sup>25</sup>. It is the contemplation of the new Act that banks shall now be required to request for Tax Identification Number (TIN) before opening bank accounts for an individual, whilst existing account holders must provide their TIN to continue operating their accounts<sup>26</sup>.

Again, there has been an amendment to the provision on delivery of notice of objection. The Act contemplates that taxpayers can now deliver a notice of assessment via courier or electronic mail, other than the former procedure which must be in a hard ware (copy)<sup>27</sup>. The Act now envisages the new reform as constituting a formal channel of correspondence with taxpayers. Furthermore, the Finance Act has amended the provision on the penalty for failure to deduct tax. By the tenets of the new law, the penalty for failure to deduct tax shall now also apply to agents appointed for tax deduction<sup>28</sup>. The penalty is ten per cent of the tax not deducted, plus interest at the prevailing monetary policy rate of the Central Bank of Nigeria<sup>29</sup>. However, the authors are still amazed that the new Act is still silent on the fate of non-filers. This gap is very apparent, and thus an antithesis to the envisioned economic growth through taxation. Thus the authors further would wish for a legislative intervention through necessary amendments on the subject matter. It is also the thinking of the authors that perhaps the draftsmen of the new Act seem not to have been meticulous enough in couching of some of the provisions on the new PIT Act. A careful study of the provision of section 33 of PITA, under the new law, will effortlessly disclose that the alimony allowance of Three Thousand Naira which had been earlier repealed in the previous amendments to the PIT (Amendment) Act 2011, has been erroneously retained in the new Finance Act<sup>30</sup>. Again, section 36 of PITA (as amended) under the new Act has provided that “Capital Gains Tax shall apply on compensation payments above Ten (10) Million Naira for loss of employment.”<sup>31</sup>?

The authors are therefore of the further view that this provision is subjective and the type of loss has not been specified by the Act. Thus, the intendment of the Act could be subjected to different forms of interpretation. The authors are also of the further view that the provision of the law is not clear as to whether compensation for loss of employment would be subject to taxation.

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<sup>21</sup> T Muktar, ‘New Finance Act: Reality or Myth? *The Sun Newspaper*, 7<sup>th</sup> February, 2020, Front page.

<sup>22</sup> *ibid* p. 12.

<sup>23</sup> Pensions (Amendment) Act LFN 2004, section 9(1).

<sup>24</sup> *ibid* section 10 (3).

<sup>25</sup> Finance Act, *ibid*, section 9 (7).

<sup>26</sup> Finance Act, *ibid*, section 98 (2) (1).

<sup>27</sup> *ibid*, section 98 (s) (c).

<sup>28</sup> PIT (Amendment) Act, section 50 (1).

<sup>29</sup> *ibid*, sections 94-101.

<sup>30</sup> *ibid*, section 95 (2).

<sup>31</sup> PIT (Amendment) Act (n.6).

#### 4. Persistent Challenges to PIT Administration

One had expected that the new Act which came with a change mantra to mitigate regressive tax laws could have lessened over some inelegant provisions of the PIT, but surprisingly, no much impact in terms of reforms was achieved. Thus, the following challenges are still apparent in PITA, as summarized hereunder,

##### a. Apparent Absence of Fair Hearing in the Power to Distrain

PITA has made copious provisions on this subject matter, which confers on the Revenue Authority the power to distain for non-payment of tax. In the wisdom of the Act, this power is enforced when an assessment has become final and conclusive and a demand note has been served upon the company or upon the person in whose name the company is chargeable.<sup>32</sup> Then, if payment of the tax is not made within the time stipulated by the demand notice, the Board may in its prescribed form, take necessary steps to enforce these provisions. However, the current authors are still of the view that the only way to balance the interest of the parties (the taxpayer and the tax authority) with a view to incorporating as it were, the need for a fair hearing in the extant provision, is to have a recourse to section 36(1) of the Constitution<sup>33</sup>. The present authors agree that, although the right to fair hearing is not absolute, yet we are of the firm view that the right should be elastic enough to accommodate the notion of putting a taxpayer on notice in court and then be heard, or even from the opportunity to be heard before a court makes an order for enforcement of distress. Above suggestion became necessary in the light of the fact that, the sum being demanded by the tax authority may be huge and thus, may be the product of a back-duty investigation<sup>34</sup> or administrative assessment based on non-scientific appropriation or misappropriation on the part of the tax authority.

##### b. Evidence of Double Jeopardy as Created by PITA.

It is trite that payment of penalties for tax default is quite different from criminal prosecution which upon conviction may earn a term of imprisonment. The key difference is that while penalties are imposed privately and subject to general confidentiality that surrounds a person's tax affair, criminal prosecutions are done in open court. It presupposes that a criminal prosecution does not exclude penalties and does not relieve a person from liability to payment of tax for which he is or may become liable<sup>35</sup>. The question that quickly comes to mind is whether this is compatible with the constitutional preclusion of a citizen from double jeopardy? In other words, can acquittal of a taxpayer on a charge for any delinquency bar the relevant authority from imposing penalty for tax fraud regarding the same facts and intent? Thus, the authority of *Haltering v Mitchell*<sup>36</sup> is apposite. In this regard to the effect that acquittal on a criminal charge of willfully attempting to evade or defect income tax is not a bar to a remedial civil action by the government arising out of the same facts on which criminal proceeding was based. However, where the objective of subsequent action likewise is punishment, acquittal is a bar, since to entertain subsequent action would subject the defendant to double jeopardy<sup>37</sup>. It is noteworthy that the use of penalties in the Nigerian tax law connotes criminal element. This is evident from the use of words such as guilty, conviction and imprisonment in the penal section of tax statutes coupled with the similarity of the usual mode of punishment in criminal offences which is imprisonment or fine or both conjunctively<sup>38</sup>.

<sup>32</sup> (n.11) at centre spread.

<sup>33</sup> CFRN 1999.

<sup>34</sup> K Jiniroh (n.1) (Back-duty Investigation is an anti-tax evasion tool at the instance of the FIRS to review activities hitherto reflecting previous activity on which relevant fresh information has emerged) National Tax Policy, 2010 Article 7.5.

<sup>35</sup> *ibid*.

<sup>36</sup> (1971) 303 USA 1630.

<sup>37</sup> JAA Agbonika, *Problems of Personal Income Tax in Nigeria*, (Ibadan, Ababa Press Ltd, 2012) 250.

<sup>38</sup> PIT (Amendment) Act, (n.6).

**c. Apparent Uncertainty in Interpretation of Section 95(2) PITA**

The authors have evaluated critically the intendment of the law vide section 95(2) PITA<sup>39</sup> which defines the offence of making incorrect returns and penalty thereto. What the Act punishes under this section is making incorrect returns. The law, perhaps, is silent on “making no returns” at all. Thus, there is no definition for and imposition of penalty for making no returns at all. One may query – what then happens should the Revenue Authority finds that a taxpayer has made no returns in a particular year in view of section 36(12) of the Constitution<sup>40</sup>? The case of *Moschi v General Commissioner for Kensington*<sup>41</sup> tried to provide an answer to this kind of circumstance. It was the argument of the counsel in that suit that making an improper return was not the same as making no returns at all, and that it was the former that attracts a penalty and not the latter. The use of the word ‘proper’ or ‘correct’ there, in its context, is quite obviously no more than saying ‘valued’ or anything else indicating legal existence. But can this decision stand in Nigeria in view of the fact that Nigerian Constitution recognizes only statutory jurisdiction on criminal law<sup>42</sup>? If it cannot, what then could be the justification for punishing incorrect returns and leaving non-filing of returns unpunished<sup>43</sup>?

**5. Conclusion and Recommendations**

The authors are in total agreement with the majority opinion<sup>44</sup> that the new Act has been able to transform PIT administration in Nigeria principally by aligning the sector with global best practices in taxation. We are also gladdened to appreciate the fact that the new law has been able to in place some palliative measures<sup>45</sup> for PIT payers, including simplification of complexities in the then PIT law by particularly touching on some archaic laws, among others. We commend also, and in strong terms too, the novelty introduced by the new Act to the effect that, hence forth every Appropriation Act shall now come with its different Finance Act to take care of the budget; so that any laxity in the previous Act shall now be addressed by the new law<sup>46</sup>.

However, the authors have been able to perceive some grey areas<sup>47</sup> still apparent in the new PITA which we are now advocating further amendments thereto. Foremost, the fate of non-filers is still uncertain even under the new law. We are therefore still amazed at that development, to say the least. The authors would wish for a legislative intervention through further necessary amendments. Again, we are of the firm view that perhaps the drafts men of the new Act seem not to have been meticulous enough in couching of some of the provisions on the new PIT Act. We readily have in mind the provisions of sections 33 and 36 of PITA<sup>48</sup>. The former provides for re-enactment of an otherwise law on alimony allowance of Three Thousand Naira which had been earlier repealed whilst the second is on compensation payments above the sum of Ten Million Naira for loss of employment and without saying more. We here by purpose further necessary amendments to aid comprehension. Beyond these challenges, we are bold to assert that the new Act is a pace-setter in PIT development in Nigeria!

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<sup>39</sup> *ibid.*

<sup>40</sup> CFRN 1999, section 36 (12).

<sup>41</sup> (1980) STC pt.12.

<sup>42</sup> CFRN 1999, section 36 (12).

<sup>43</sup> PIT (Amendment) Act (n.6) Section 95 (2).

<sup>44</sup> I Oyedele & G Simplice, ‘Exploring Prospects of New PITA in Nigeria’, *The Nigerian Economist*, May-July Edition, 2020, pp. 53-59.

<sup>45</sup> J Okwudili, ‘New Hope for MSMSEs’, *The Guardian*, 7<sup>th</sup> February, 2020 p. 12.

<sup>46</sup> W Agbeluyi, *CITN News*, January – April Series, 2020, Back page.

<sup>47</sup> We are opposed to certain provisions in PITA considered as affront on the 1999 CFRN, Particularly section 36 (1) and (12).

<sup>48</sup>*ibid.*