An analysis of the statutory measures adopted to curb tax evasion in Nigeria after the COVID-19 pandemic*

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SUMMARY

The damage caused by the coronavirus disease (COVID-19) pandemic to the fragile Nigerian economy is incalculable. The Nigerian economy was further weakened by the corruption of government officials involving the palliative measures put in place to provide financial relief to companies and individuals affected by the COVID-19 pandemic. Since the Nigerian economy relies mostly on crude oil revenue, its focus on tax is less emphasised and tax evasion is pervasive. Consequently, the Nigerian tax on gross domestic product (GDP) is only about 6 per cent. This article examines the adequacy of the legal and/or statutory measures aimed at curbing tax evasion in Nigeria. The post-COVID-19 revenue shortfall has made the Nigerian federal and state governments raise the existing taxes, introduce new taxes, and adopt more aggressive tax collection methods. Consequently, taxpayers now use tax exemptions and incentives as devices for tax evasion. Moreover, there is rampant non-remittance of tax proceeds by government ministries, departments, and agencies to the tax authorities. Thus, despite the introduction of various laws, policies, and directives to curb tax evasion, especially after the COVID-19 pandemic, tax evasion challenges still persist. Accordingly, it is submitted that good governance, integrity, and transparency in handling public funds are required to reduce and combat tax evasion in Nigeria.

Keywords: tax evasion, good governance, transparency, corruption, COVID-19 pandemic.

1 Introductory remarks

The detrimental impact of the coronavirus disease (COVID-19) pandemic is clearly manifest on the Nigerian economy.[1] The Nigerian economy

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1 Gomment, Musa, Mohammed, Akpata, Akor and Lami "The Impact of COVID-19 Pandemic on Nigeria: A Substantial Threat to the Attainment of Sustainable Development Goals (SDGS)" 2022 *Journal of Sustainable*

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was further weakened by the corruption of government officials involving the palliative measures put in place to provide financial relief to companies and individuals affected by the COVID-19 pandemic.[2] This follows the fact that the Nigerian state and federal governments were already dealing with non-COVID-19-related insecurity, falling oil prices, public deficit issues, and long-standing economic challenges like unemployment and inflation.[3] For instance, the federal government of Nigeria was compelled to approach and obtain an emergency financial package of US$3.4 billion under the Rapid Financing Instrument from the International Monetary Fund (IMF) in order to alleviate the impact of the COVID?19 pandemic and the crash in the price of crude oil.[4] Moreover, the total projected revenue from the 2020 National budget was NG₦8.42 trillion but it was reduced to NG?5.16 trillion with a fiscal

Development in Africa 44-48; Nweze and Nnadi "Effect of COVID-19 Lockdown on the Nigerian Economy: An Empirical Assessment of Nigerian Economy" 2021 *Economics and Social Sciences Academic Journal* 25-28; UNDP "The Impact of COVID-19 on Business Enterprises in Nigeria" (2020-10-02) https://www.undp.org/sites/g/files/zskgke326/files/migration/ng/The-Impact-of-COVID19-on-BusinessEnterp rises-in-Nigeria.pdf (last accessed 2022-04-11) 23-29; Farayibi and Asongu "The Economic Consequences of the COVID-19 Pandemic in Nigeria" (2020-10-02) https://www.econstor.eu/handle/1041 9/228019 4-5 (last accessed 2022-04-11) 1-2.

2 Imanche, Ze, Tougem and Dalibi "Effect of COVID-19 Pandemic on Small and Medium Scale Businesses in Nigeria" 2020 *International Journal of Research Publications* 123-126; Ataide and Abomaye-Nimenibo "The Economic Effect of the COVID-19 Epidemic On Nigeria Economy" 2021 *Global Journal of Human-Social Science* 54; Gaspar, *Hanif*, Pazarbasioglu and Amans "Facing the Crisis: The Role of Tax in Dealing with COVID-19" (2020-06-17) https://investadvocate.com.ng/2020/06/17/facing-the-crisis-the-role-of-tax-in-dealing-with-covid-19/ (last accessed 2022-11-11) 1-20; Harman, Jensen, Naeem, Saab, Wani and Wilkinson "COVID-19 and Taxes Policies for the Post-Pandemic Recovery" *IGC Policy Brief* (2021-01-22) file:///C:/Users/user/Downloads/Jensen-et-al-2021-Tax-Policy-brief.pdf (last accessed 2022-12-25) 3-20.

3 OECD "Policy Responses to Coronavirus (COVID-19) Tax Administration Responses to COVID-19: Measures taken to Support Taxpayers" (2020-03-10) https://www.oecd.org/coronavirus/policy-responses/tax-administration-responses-to-covid-19-measures-taken-to-support-taxpayers-adc84188/ (last accessed 2022-11-1) 5-16; CIAT/IOTA/OECD "Tax Administration Responses to COVID-19: Measures Taken to Support Taxpayers" (2020-01-22) https://read.oecd-ilibrary.org/view/?ref=126_126478-29c4rprb3y&tit le=Tax_administration_responses_to_COVID-9_Measures_taken_to_supp ort_taxpayers (last accessed 2022-11-1) 2-15.

4 IMF News "Nigeria's IMF Financial Assistance to Support Health Care Sector, Protect Jobs and Businesses" (2020-04-29) https://www.imf.org/en/News/Articles/2020/04/29/na042920-nigerias-imf-financial-assistance-to-support-health-care-sector-protect (last accessed 2022-11-1) 3-7; Ojide, Agu, Ohalete and Chinanuife "Nigerian Economic Policy Response to COVID-19: An Evaluation of Policy Actors' Views" 2020 *Poverty & Public Policy* 70-72.

debt of NG₦4.98 trillion owing to the COVID-19 pandemic challenges.[5] As a result, the Gross Domestic Product (GDP) growth rate fell from 2.10 and 2.12 per cent to 1.87 and -6.1 (minus 6.1) per cent in the first and second quarters of 2019 and 2020 respectively.[6] Thus, the COVID-19 pandemic has put the Nigerian government revenue under a harsh spotlight owing to palliative measures that were adopted to provide financial relief to companies and individuals affected by the COVID-19 pandemic. For example, Nigeria's tax compliance was very low, with a tax-to-GDP ratio of just 6 per cent, in 2019 before the advent of the COVID-19 pandemic and 5.5 per cent in 2020 after the COVID-19 pandemic.[7] The tax-to-GDP ratio statistics are significantly low when compared to other African countries such as South Africa, Tunisia, Mali, and Ghana whose figures were 25.2 per cent, 32.5 per cent, 18.1 per cent, and 13.4 per cent respectively in 2020.[8] The current chairman of the Federal Internal Revenue Service (FIRS), Muhammed Nami stated, at the "Public Presentation and Breakdown of the Highlights of the 2022 Appropriation Bill", that out of a population of about 200 million people, only 41 million people pay tax.[9] The reasons for this dismal tax compliance record include a lack of robust tax infrastructure for multiple

5 Ministry of Budget and National Planning "2020 Appropriation Act" (2020-01-25) https://budgetoffice.gov.ng/index.php/2020-appropriation-act (last accessed 2022-11-1) 5-34; Ministry of Budget and National Planning "Appropriation Bill" (2019-12-23) https://placng.org/i/wp-content/uploads/2019/12/2020-Executive-Budget-Proposal-Details.pdf (last accessed 2022-11-01) page number pages?; KPMG (2020-01-30) "Highlights: 2021 Federal Government of Nigeria Budget Proposal" (2020-12-10) https://home.kpmg/ng/en/home/insights/2020/10/highlights--2021-federal-government-of-nigeria (last accessed 2022-11-1) 5-9; Agbakoba "Avoiding or Mitigating Recession in Post COVID Nigeria" (2020-07-10) https://nairametrics.com/2020/07/10/avoiding-or-mitigating-recession-in-post-covid-nigeria/ (last accessed 2022-11-1) 1-3; Vanguard "Budget 2020: FG Posts N6.6trn Deficit" (2021-07-01) https://www.vanguardngr.com/2021/07/budget-2020-fg-posts-n6-6trn-deficit/ (last accessed 2022-11-1) 4-6.

6 OECD 2020 15; CIAT/IOTA/OECD 11.

7 OECD "Revenue Statistics in Africa 2022" (2022-08-01) https://www.oecd.org/tax/tax-policy/revenue-statistics-africa-tunisia.pdf (last accessed 2022-11-28) 1-5.

8 OECD 2022 1.

9 *The Punch* "Only 41m Nigerians Pay Tax: FIRS Boss" (2021-10-09) https://punchng.com/only-41-million-nigerians-pay-tax-firs-chair/ (last accessed 2022-11-28) 9; Vanguard "FIRS Boss: Only 41m Nigerians Pay Tax" (2021-10-08) 11 https://www.vanguardngr.com/ 2021/10/firs-boss-only-41-million-people-pay-tax-in-nigeria-2/ (accessed 2022-11-28); The Sun "Only 41m out of 200m Nigerians Pay Taxes-FIRS" (2021-10-08) https: //www.sunnews online.com/only-41m-out-of-200m-nigerians-pay-taxes-firs/ (last accessed 2022-11-28) 5; Daily Post "Only 41 Million People Pay Tax in Nigeria-FIRS" (2021-10-08) https://dailypost.ng/2021/10/08/ only-41-million-people-pay-tax-in-nigeria-firs/ (last accessed 2022-11-28) 13; New Telegraph "Only 41 Million Nigerians Pay Taxes Out of 200 Million – Nami" (2021-10-09) 7 https://www. newtelegraphng.com/only-41-million-nigerians-pay-taxes-out-of-200-million-nami/ (last accessed 2022-12-26) 7; Business Traffic "Only 41 Million People Pay Tax in Nigeria, says FIRS Boss" (2021-10-09) https://businesstraffic.com.ng/firs-boss-diversification-of-nigerias-economy-on-course/ (last accessed 2022-11-28) 5.

tiers of taxation due to Nigeria's federal system, tax evasion, and the unwillingness of governments to provide basic amenities to the citizens. Most of the tax in Nigeria emanates from the oil industry which contributes about 61 per cent of the tax revenue.[10] The crash in the price of crude oil due to severe disruptions during the early period of COVID-19 had negative economic consequences for Nigeria such as borrowing from IMF to finance post-COVID-19 budgets, reducing subsequent budgets, and the inability to finance several development projects since 2019.[11]

Tax evasion refers to the deception, dishonesty, concealment, and other illegal means to escape liability to tax while tax avoidance is the open use of legitimate devices to avoid such liability.[12] For instance, tax avoidance includes selecting a means of transaction that is least costly in tax by taking advantage of every possible incentive put in place by the government or exploiting the loopholes in the tax laws to completely evade paying tax or to pay lesser tax.[13] Notwithstanding the difference in the definition and treatment of tax avoidance and evasion, the outcome is essentially the same, which is the loss of revenue to the treasury.[14]

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10 Agunbiade and Idebi "Tax Revenue and Economic Growth Nexus: Empirical Evidence from the Nigerian Economy" 2020 *European Journal of Economic and Financial Research* 19-44; Alutu "Broadening Nigeria's Revenue Base: Can Little Drops of Taxes Make a Mighty Nation?" (2019-08-15) https://www.ictd.ac/broadening-nigerias-revenue-base-little-drops-of-tax es-mighty-nation/ (last accessed 2023-03-06); Oduntan *The Role of Taxation in Nigeria's Oil and Gas Sector Reforms: Learning from the Canadian Experience* (LLM dissertation 2015 University of Saskatchewan Saskatoon) 1-2; World Bank "Taxation and State Participation in Nigeria's Oil and Gas Sector-Energy Sector Management Assistance Programme (ESMAP)" (2004-08-01) https://openknowledge.worldbank.org/handle/10986/18078 (last accessed 2023-03-06) 5-17.

11 Ministry of Budget and National Planning 12-25; KPMG 2020 5; Agbakoba (2020-07-10) 3.

12 Animashaun and Chitimira "The Reliance on Lifestyle Audits for Public Officials to Curb Corruption and Tax Evasion in Nigeria" 2021 *PELJ* 5-6; Chitimira and Animashaun "Combating Legal Uncertainty in the Nigerian Tax Avoidance Laws" 2021 *Acta Universitatis Danubius Oeconomica* 68-69; Christians "Distinguishing Tax Avoidance and Evasion: Why and How?" 2017 *JOTA* 10; Croome and Croome *Street Smart Taxpayers* (2017) 223, 272; Onyeka and Nwankwo "The Effect of Tax Evasion and Avoidance on Nigeria's Economic Growth" 2016 *European Journal of Business & Management* 158-165.

13 Animashaun and Chitimira 2021 *PELJ* 5-6; Chitimira and Animashaun 2021 *Acta Universitatis Danubius Oeconomica* 68-69; Animashaun *Legal Analysis of the Extent and Limit of the Nigerian State Powers of Taxation* (PhD dissertation 2017 Unilorin) 262-264; Allison "Avoidance, Evasion, and Taxpayer Morality" 2014 *Wash. U. J. L. & Pol'y* 39 46; Tiley and Loutzenhiser *Revenue Law* (2012) 96-98; Prebble *Should Tax Avoidance be Criminalised? Tax Avoidance and Criminal Law Theory* (BL dissertation 2011 University of Otago) 6.

14 Animashaun and Chitimira 2021 *PELJ* 5-6; Chitimira and Animashaun 2021 *Acta Universitatis Danubius Oeconomica* 68-69; Allison 2014 *Wash. U. J. L. & Pol'y* 46; Tiley and Loutzenhiser (2012) 96-98; Prebble *Should Tax Avoidance be Criminalised?* 6.

Given the background above, the article discusses pre-COVID-19 statutory regulatory measures adopted to curb tax evasion in Nigeria. It also discusses the corruption relating to tax incentives and palliatives that were introduced to curb the effects of the COVID-19 pandemic on the Nigerian economy. Moreover, the article examines post-COVID-19 statutory regulatory measures that are aimed at curbing tax evasion and collecting more tax revenue in Nigeria. Thereafter, some key recommendations are provided in a bid to address the identified gaps and flaws.

2 Pre-COVID-19 statutory regulatory measures to curb tax evasion in Nigeria

Different laws were enacted to combat tax evasion in Nigeria. These laws may be categorised into three main classes, namely laws on the scope and definition of tax crimes, laws on expanding tax information gathering process, and laws on probing unexplained wealth or unexplained revenue and the tax implications. There are some overlaps in these laws. For instance, the Constitution of the Federal Republic of Nigeria, (CFRN) 1999 (Nigerian Constitution, 1999),[15] provides that tax should be paid timeously, and it allocates taxing powers between the federating states and the federal government. The Nigerian Constitution, 1999 provides for the investigation and prosecution of persons living above their lawful income.[16] Other statutes such as the Economic and Financial Crimes Commission (Establishment) Act (EFCC Act)[17] also prescribe the scope and definition of tax crimes. The EFCC Act specifically includes tax evasion as an economic and financial crime that attracts some penalties for non-compliance in respect thereof.[18] Related offences are provided under the Miscellaneous Offence Act.[19] Other relevant tax laws include the Personal Income Tax Act (PITA),[20] the Companies Income Tax Act,[21] the Value Added Tax Act (VAT),[22] and the Petroleum Profit Tax Act (PPTA),[23] which define specific tax crimes under their respective jurisdictions and provide the processes by which tax information could be gathered and the penalties for non-compliance in respect thereof. In addition, there are some laws that probe unexplained wealth and/or unexplained revenue such as the Code of

15 Chapter C20 LFN 2004.
16 Ss 15(5); 24(f); 44(2)(a); 59(1)(b); 140(1); 162(1), 163, 165, 173, 185(1), 210(4), & 251(1)(b); Items 25, 58, & 59 of Part I of the 2nd Schedule to the CFRN, 1999; Items 7, 8, 9, & 10 of Part II of the 2nd Schedule to the CFRN, 1999; Items 6(1) &11 of the 5th Schedule to the CFRN, 1999.
17 S 46 of EFCC Act 13 of 2007.
18 Ss 18 & 46 of the EFCC Act.
19 S 2(b) of the Miscellaneous Offences Act Cap M17 LFN 2004.
20 Ss 1-106 of Chapter P8 LFN 2004.
21 Chapter C21 LFN 2004, ss 1-103.
22 Ss 1-37 of Chapter V1 LFN 2004.
23 Chapter P13 LFN 2004, ss 1-63; see also ss 1-319 of the Petroleum Industry Act 6 of 2021.

Conduct Bureau and Tribunal Act,[24] the Independent Corrupt Practices and Other Related Offences Act 5 of 2000 (Corrupt Practices Act),[25] the Money Laundering Act,[26] and the Advance Fee Fraud and Other Fraud Related Offences Act.[27] In addition, there are also general crime deterrent Acts such as the Criminal Code Act,[28] the Penal Code Act,[29] the Criminal Procedure Act,[30] and the Nigeria Police (Establishment) Act 6 of 2020 (Police Act).[31]

All the stated statutes predate the advent of the COVID-19 pandemic and are meant to generally curb the menace of tax evasion and other related offences in Nigeria. Despite this, tax evasion is still rampant in Nigeria.

3 Tax incentives and palliatives that were introduced to combat the effect of COVID-19 on the Nigerian economy

Nigeria has serious revenue challenges as the tax to GDP ratio is about 6 per cent since 2019, which is very low.[32] This poor revenue status quo is further complicated by the tax incentives granted under Nigerian laws, which yield little or no benefit to the government.[33] Tax exemptions and incentives are deliberate reductions in, or total exemption from tax burden on selected activities in order to, for instance, increase investment, production, employment, or reduce pollution.[34] Different

24 Ss 1-26 of Chapter C15 LFN 2004.
25 Ss 12, 13, 26(2), & 45 of the Corrupt Practices Act.
26 14 of 2022, see ss 1-31.
27 Ss 1-16 of Cap A6 LFN 2004.
28 Chapter C38, ss 16-500.
29 Chapter P3 LFN 2004, ss 1-55.
30 Chapter C42 LFN 2004, s 10.
31 Ss 4-112.
32 National Bureau of Statistics "2019 Poverty and Inequality in Nigeria: Executive Summary" (2020-04-15) https://nigerianstat.gov.ng/elibrary?queries[search]=poverty (last accessed 2022-11-11) 3-16.
33 Ndajiwo "Are Tax Incentives in Nigeria Attracting Investment or Giving Away Revenue" (2018-08-14) https:/www.taxjustice.net/2018/08/14/are-tax-incentives-in-nigeria-attracting-investment-or-giving-away-revenue/ (last accessed 2022-11-25) 1-3; Munongo, Akanbi and Robinson "Do Tax Incentives Matter for Investment? A Literature Review" 2017 *Business and Economic Horizons* 152-168; Daude, Gutierrez and Melguizo "Doctoring the Ball: The Political Economy of Tax Incentives for Investment in the Dominican Republic" 2017 *Journal of Economic Studies* 2-23; Forstater "The Good, the Bad, and the Ugly: How Do Tax Incentives Impact Investment?" (2017-10-02) https://www.cgdev.org/blog/good-bad-and-ugly-how-do-tax-incentives-impact-investment (last accessed 2022-11-11) 1-2.
34 Chitimira and Animashaun 2021 *Acta Universitatis Danubius Oeconomica* 68; Holland and Vann in Thuronyi *Income Tax Incentives for Investment* (1998) 3-10; Nlerum "Reflection on the Attitude of the Courts to Tax Incentive Mechanism in Nigeria" 2011 *NIALS Journal of Business Law* 138-140; Tiley and Loutzenhiser (2012) 9-10.

statutes provide for various incentives and exemptions, such as reliefs, credits, exemptions, allowances, breaks, holidays, and drawbacks.[35] Some of these incentives are stipulated in section 11 of the PITA, which provides for the relevant tax credit against tax payable on income derived from outside Nigeria. A tax exemption on the gains arising from takeovers, absorption, or merger is provided for in section 32 of the Capital Gains Tax Act (CGTA). Moreover, a tax exemption on proceeds reinvested is provided for in section 33 of the CGTA. Notably, these tax exemptions are an exception to the rule that all chargeable assets are subject to capital gain tax. Similarly, under the pioneer status incentive, companies engaged in industries or products approved as "pioneer industries or pioneer products" are granted several incentives which include, firstly, income tax relief granted for a period of three years, which can be extended for a period of one year and thereafter, extended for another one year, or for one period of two years.[36] Secondly, pioneer industries are exempted from paying tax on dividends paid by the pioneer company during the period when the exemption subsists.[37] The pioneer industry includes the processing of agricultural produce. Consequently, there is a 100 per cent tax-free period for 5 years for export oriented agricultural processing industries located in economically disadvantaged areas of Nigeria.[38]

Section 11(2) of the Company Income Tax Act (CITA)[39] provides an exemption from tax interest on any loan granted by a bank to a company engaged in agricultural trade or business; or the fabrication of any local plant and machinery; or providing working capital for cottage industries. Some profits are exempted from company income tax provided they are not derived from trade or business activities carried out by the company or cooperative society.[40] Similarly, sections 2 and 3 of the First Schedule of the VAT Act enumerate goods and services exempted from VAT. The exempted goods and services include all medical and pharmaceutical products, basic food items, educational materials, baby products, and all export and exported services. There are also sector-based incentives, tariff incentives, export incentives, and special economic zone incentives.[41] Some of these incentives such as the tax incentives granted to the pioneer industries and oil and gas companies have been criticised and described by some scholars as organised tax fraud rackets

35 Chitimira and Animashaun 2021 *Acta Universitatis Danubius Oeconomica* 68; Holland and Vann (1998) 3-10; Nlerum 2011 *NIALS Journal of Business Law* 139-140; Tiley and Loutzenhiser (2012) 9-10.
36 Ss 10(2)(a)-(b) of the Industrial Development (Income Tax Relief) Act I7 LFN 2004 (IDITRA).
37 S 17(3) of the IDITRA.
38 S 10 of the IDITRA.
39 C21 LFN 2004.
40 Ss 23(1)(a)-(b) of the CITA.
41 Ss 1-19 of the Nigerian Export Processing Zone Authority Act; ss 5-19 of the Oil and Gas Export Free Zone Act O5 LFN 2004.

supervised by the Nigerian political elites to deplete the treasury.[42] Thus, tax incentives sometimes serve no useful purpose in advancing the Nigerian economy.

The Finance Act 2020 (Finance Act 2020)[43] provides various incentives in the form of tax deductions for donations made by companies to different COVID-19 intervention funds; reduction of minimum tax payable by companies from 0.5 per cent to 0.25 per cent of the turnover for two years of assessment between 1 January 2020 and 31 December 2021; exemption of small companies from education tax.[44] There is also an exemption of compensation for loss of office up to N10 million from tax and an exemption for a low-income earner who gets a minimum wage or less from a personal income tax reduction of import duties and levy on vehicles. There is a further exemption on commercial flight tickets from VAT and duty-free importation of aircraft and aircraft components.[45] These measures were designed to cushion the impact of the economic challenges triggered by the COVID-19 pandemic in Nigeria.

Notably, section 23 of the Finance Act 2020 amends section 1 of the IDITRA by granting a tax holiday for an initial period of four years, and an additional period of two years to small and medium enterprises (SMEs) that are engaged in primary agricultural production. The aforesaid additional period is subject to satisfactory performance. Eligible companies and/or SMEs are required to apply to the President through the Minister of Trade, Industry and Investment.[46] The tax exemption was taken to a new level when the Federal Government of Nigeria approved tax exemption and rebate for 5 years and single-digit loan interest rates

42 Ndajiwo (2018-08-14) 1-2; Munongo, Akanbi and Robinson 2017 *Business and Economic Horizons* 152-168; John in Animashaun *Changing Perspective in the Law and Practice of Taxation in Nigeria* (2017) 400-417; van Dorp "How Shell, Total and Eni Benefit from Tax Breaks in Nigeria's Gas Industry: The Case of Nigeria Liquefied Natural Gas Company" (2016-01-01) https://www.somo.nl/how-shell-total-and-eni-benefit-from-tax-breaks-in-nigerias-gas-industry/ (last accessed 2023-5-11) 1-56; Daude, Gutierrez and Melguizo 2017 *Journal of Economic Studies* 2-23.

43 Act 4 of 2020; Forstater "The Good, the Bad, and the Ugly: How Do Tax Incentives Impact Investment?" (2017-10-02) https://www.cgdev.org/blog/good-bad-and-ugly-how-do-tax-incentives-impact-investment (last accessed 2022-11-11) 1-2.

44 See s 394 of the Companies and Allied Matter Act 3 of 2020, which provides that a company qualifies as small if these qualifying conditions are met in any year and if it is a private company with an annual turnover and net assets which is not more than N120 million and N60 million respectively. A company also qualifies as a small company if none of its members is an alien, or a government corporation or agency or its nominee; and in the case of a company having share capital, if the directors between themselves hold at least 51 per cent of its equity share capital.

45 Ss 4, 11, & 45 of the Finance Act 2020.

46 S 2 of the IDITRA.

for sports investors under the National Sports Industry Policy (NSIP).[47] Some of the approved incentives as outlined in the NSIP, include land provision and waiver for certain fees on lands meant for sports and the empowerment of an independent government grant through the establishment of an athletes' welfare fund from which athletes can draw funds and support.[48]

It is pertinent to state that Nigeria loses an average of N580 billion through unnecessary tax incentives annually.[49] The 2017 OXFAM Inequality Index showed that the Nigerian tax system is largely regressive, with the burden of taxation falling on poorer companies and certain individuals, while big multinationals receive questionable tax waivers and tax holidays. Such multinationals rely on loopholes in the tax laws to engage in transfer pricing.[50] Thus, the Nigerian tax incentives have questionable mid-term and long-term negative effects on the economy and they contribute to tax evasion.[51] Accordingly, tax incentives should be carefully, transparently, and properly employed to

47 FGN "National Sports Industry Policy" (2020-08-28) https://www.aluko-oyebode.com/wp-content/uploads/2020/08/Draft-2020-National-Sports-Industry-Policy.pdf (last accessed 2023-06-03) 99-102; Federal Ministry of Youth and Sports Development (FMYSD) (2022-11-02) "Federal Executive Council Approves National Sports Industry Policy" https://youthandsports.ng/federal-executive-council-approves-national-sports-industry-policy/ (last accessed 2023-06-03).

48 FMYSD (2022-11-02) 6-12; Ukpe "FG Approves Tax Exemption, Single-Digit Loan Rates for Investors to Boost Nigeria's Sports Value Chain" (2022-11-03) https://nairametrics.com/2022/11/03/fg-approves-tax-exemption-single-digit-loan-rates-for-investors-to-boost-nigerias-sports-value-chain/ (last accessed 2022-11-29) 1-4.

49 Financial Nigeria "Tax Incentives Depleting Government Revenues in West Africa" (2015-08-25) https:// www.financialnigeria.com/tax-incentives-depleting-government-revenues-in-west-africa-sustainable-photovideo-details-102.html (last accessed 2022-11-29) 15; van Dorp (2016-01-01) 1-56; The Guardian "LASG Seals 16 Firms over Tax Evasion" (2021-07-19) https://guardian.ng/news/lasg-seals-16-firms-over-tax-evasion/ (last accessed 2022-11-29) 11; Premium Times "Nigeria Loses Billions in Local, Foreign Tax Evasions – Oxfam" (2019-07-18) https://www.premiumtimesng.com/news/top-news/341537-nigeria-loses-billions-in-local-foreign-tax-evasions-oxfam.html (last accessed 2022-11-29) 5.

50 Sebele-Mpofu, Gomerab and Sibanda "Tax Incentives: A Panacea or Problem to Enhancing Economic Growth in Developing Countries" 2022 *Journal of Accounting, Finance and Auditing Studies* 90-123; Chikova "Should Zimbabweans Worry about Tax Exemptions?" (2021-10-07) https://extraproperty.com (last accessed 2022-08-21) 1-5; Cotrut, Munyandi, Choi, Ferreira and Rienstra *Tax Incentives in the BEPS Era* (2002) 1-14; Munongo *The Effectiveness of Tax Incentives in Attracting Foreign Direct Investment: The Case of the Southern African Development Community* (D Com dissertation 2015 UNISA) 28-55; Easson and Zolt *Tax Incentives* (2002) 12.

51 OXFAM, TJN-A, CISLAC and SIDA "Fair Tax Monitor: Nigeria" (2019-10-10) https://nigeria.oxfam.org/ latest/policy-paper/fair-tax-monitor-report (last accessed 2022-12-18) 2-7 & 22-25; Canuto *et al* in Canuto and Giugale *Day after Tomorrow: A Handbook on the Future of Economic Policy in the Developing World* (2010) 98-137.

curb the aforesaid negative effects.[52] The Nigerian tax incentives are undermined by "weak institutions, weak macroeconomic environment, poor infrastructural facilities, inadequate policy monitoring and evaluation, poor regulatory/supervisory framework, corruption and unfavourable political climate",[53] which eventually aids tax evasion and tax avoidance.

4 Reasons for not paying tax in Nigeria

Haruna Abdullahi, the acting executive chairman of the Federal Capital Territory-Internal Revenue Service (FCT-IRS), recently stated that "90 percent of the 1.2 million registered FCT taxpayers evade tax".[54] The figure of tax evaders could have been worse if not for the employees engaged in the formal sector whose income tax is deducted at source by their employer and remitted to the tax authorities. Ekwealor[55] submits that about 80 per cent of the SMEs do not pay taxes. Onyeka and Nwankwo,[56] Gurama, Mansor et al and other scholars[57] also argue that tax evasion is a pervasive phenomenon that is aided by a vast cash economy over which the taxman has limited control, among other factors. The Governor of the Central Bank of Nigeria claimed that 80 per

52 OXFAM et al (2019-10-10) 19; Padilla, Biyani, Jaiswal, Buenaventura, Maranga and Quantrill *Use and Abuse of Tax Breaks: How Tax Incentives Become Harmful* (2020) 5-32; IMF, OECD, UN and World Bank "Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment" Report to the G-20 Working Group (2015-05-01) https://www.oecd.org/tax/tax-global/options-for-low-income-countries-effective-and-efficient-use-of-tax-incentives-for-investment.pdf (last accessed 2022-12-18) 1-41; Klemm "Causes, Benefits, and Risks of Business Tax Incentives" Report to IMF (2009-01-13) https://www.imf.org/external/pubs/ft/wp/2009 /wp0921.pdf (last accessed 2022-12-18) 1-28.

53 OXFAM et al (2019-10-10) 19.

54 Businessday "90% of 1.2m Registered FCT Taxpayers Evade Tax, Says Revenue Service" (2022-02-10) https://businessday.ng/business-economy/article/90-of-1-2m-registered-fct-taxpayers-evade-tax-says-revenue-service/ (last accessed 2022-11-27) 6.

55 Ekwealor "Tax Compliance: Why SMES And Start-Ups in Nigeria Do Not Pay Taxes?" 2017 *Techpoint-Africa* 1-3.

56 Onyeka and Nwankwo 2016 *European Journal of Business & Management* 158-166.

57 Gurama, Mansor and Pantamee "Tax Evasion and Nigeria Tax System: An Overview" 2015 *Research Journal of Finance and Accounting* 206; Anisere-Hameed "Effects of COVID-19 Pandemic on Accounting and Financial Reporting in Nigeria" 2021 *International Journal of Account Research* 4-6; PwC "Nigeria @ 50: Top 50 Tax Issues-Research Document" (2010-02-05) https://www.file:///run/arc/sdcard/write/emulated/0/Doc uments/nigeria-top-50-tax-issues.pdf (last accessed 2022-11-29) 1-7; National Tax Policy (2012-12-08) https://www.hg.org/legal-articles/new-national-tax-policy-approved-in-late-december-08-nigeria-5944 (last accessed 2022-11-29) 1-7; National Tax Policy "New National Tax Policy Approval in late December '08" (2008-12-10) https://www.hg.org/legal-articles/new-national-tax-policy-approved-in-late-december-08-nigeria-5944 (last accessed 2022-11-12) 6; Akinyomi and Okpala "Appraisal of Factors Influencing Tax Avoidance and Evasion in Nigeria" 2013 *International Journal of Research in Commerce & Management* 108-111.

cent of the money in circulation in Nigeria is outside the banking system.[58] The ongoing redesign of the Nigerian Naira is aimed at, inter alia, bringing the cash outside the banking system into reckoning in order to curb corruption and tax evasion.[59] The Nigerian Stock Exchange provides that 85 per cent of corporate tax revenue in the country accrues from the 257 companies listed on the exchange compared to the 30,000 companies registered with the Corporate Affairs Commission.[60]

With regard to tax evasion, taxpayers may be classified into three groups namely, the taxpayers who do not evade taxes, those who always evade taxes, and taxpayers who occasionally evade their taxes.[61] The causes of tax evasion range from social, economic, and political to religious reasons, as well as unfair distribution of facilities (amenities), poor management and misuse of tax collected, and taxpayers' inaccessibility to government services.[62] The difficulty in comprehending tax laws by laymen due to the dense language and complicated computation method, as well as the problems of assessment, collection, and enforcement, are other contributing factors for tax evasion.[63] However, the Nigerian government is working hard at building a database through the introduction of the Unique Taxpayer Identification Number (U-TIN) for ease of collection and voluntary tax compliance.[64]

The Nigerian government is reportedly responsible for tax evasion.[65] The other challenge is created by the religious bigotry of some governors

58 Aljazeera "Nigeria Launches New Banknotes to Help Curb Corruption" (2022-11-24) https://www.Aljazeera.com/news/2022/11/24/nigeria-launches-new-banknotes-to-help-curb-corruption (last accessed 2022-11-27) 1-2; The Sun "Cash outside Banks now Stands at 80 percent CBN" (2022-26-12) https://www.sunnewsonline.com/cash-outside-banks-now-stands-at-80-cbn/ (last accessed 2022-12-27) 6.

59 Aljazeera (2022-11-24) 1-2; *The Sun* (2022-26-12) 6.

60 Abumere "Taxation in the COVID-19 Pandemic: To Pay or Not to Pay" 2023 *Philosophia* 6-17; Onyeka and Nwankwo 2016 *European Journal of Business & Management* 160.

61 Otekunrin, Nwanji, Eluyela, Inegbedion and Eleda "E-tax System Effectiveness in Reducing Tax Evasion in Nigeria" 2021 *Problems and Perspectives in Management* 175-179; Webley, Robben, Elffers and Hessing *Tax Evasion: An Experimental Approach* (1991) 128.

62 Vincent "Assessing SMEs Tax Non-Compliance Behavior in Sub-Saharan Africa (SSA): An Insight from Nigeria" 2021 *Cogent Business & Management* 1-24; Zakariya'u, Muzainah and Abdurrahman "Tax Evasion and Nigeria Tax System: An Overview" 2015 *Research Journal of Finance and Accounting* 203-209.

63 Kassa "Factors Influencing Taxpayers to Engage in Tax Evasion: Evidence from Woldia City Administration Micro, Small, and Large Enterprise Taxpayers" 2021 *Journal of Innovation and Entrepreneurship* 1-16; Bako "Factors Influencing Tax Avoidance and Tax Evasion in Nigeria: A Case Study of Wukari, Taraba" 2021 *Journal of Accounting Research, Organization and Economics* 114-126; Animashaun (PhD dissertation 2017 Unilorin) 78-79; Abdulrazaq *Revenue Law and Practice in Nigeria* (2015) 7-18.

64 Zakariya'u, Muzainah and Abdurrahman 2015 *Research Journal of Finance and Accounting* 202-209.

65 Abumere 2023 *Philosophia* 6-17.

such as Sanni Yarima, who legalised radical Sharia in his native Zamfara State which was followed by other northern states and eventually led to armed banditry and Boko-Haram insurgency.[66] The armed bandits and Boko-Haram are exercising control and sovereignty over certain parts of Northern Nigeria where they collect taxes for themselves.[67] Some of the current challenges are caused by tax incentives which reduce the much-needed funding for public infrastructure and public services. Consequently, companies and individuals are forced to pay bribes to the police and private security companies as well to provide their own electricity through generators and water by drilling boreholes.[68] Moreover, individual residents and companies are forced to contribute money to fix roads around their homes and businesses.[69] Owing to these and other security challenges, the federal government of Nigeria awarded a multi-billion naira surveillance contract for Nigeria's oil pipelines due to the inefficiency and lack of integrity in the Nigerian security agents.[70] This is exacerbated by uncoordinated roles and responsibilities between the different levels of government, tax incentives officials, and fiscal administrators.[71] In addition, profit-based

66 Animashaun in Falola et al *An Analysis of the Adequacy of the Law in Addressing the Rising Incidents of Armed Banditry in Central Nigeria* (2022) 67-69; Harnischfeger "Boko Haram and its Muslim Critics: Observations from Yobe State" (2022) https://books.openedition.org/ifra/1770?lang=en (last accessed 2022-11-29) 33-62; Foyou, Ngwafu, Santoyo and Ortiz "The Boko Haram Insurgency and its Impact on Border Security, Trade and Economic Collaboration between Nigeria and Cameroon: An Exploratory Study" 2018 *African Social Science Review* 66-76.

67 Kangdim, Yorgancıoğlu, Bulus, Muazu and Danladi "The Impact of the Boko Haram Insurgency in Nigeria: A Multi-Sectorial Analysis" 2022 *SİYASAL: Journal of Political Sciences* 158-172; Animashaun (PhD dissertation 2017 Unilorin) 67-69; Foyou, Ngwafu, Santoyo and Ortiz 2018 *African Social Science Review* 68-73; Jerome "Lessons from Colombia for Curtailing the Boko Haram Insurgency in Nigeria" 2015 *Prism* 96-84; Dunn "The Impact of the Boko Haram Insurgency in Northeast Nigeria on Childhood Wasting: A Double-Difference Study" 2018 *Conflict and Health* 6.

68 Abumere 2023 *Philosophia* 6-17; Gurama et al 2015 *Research Journal of Finance and Accounting* 206.

69 As above.

70 The Guardian "The N48 Billion Tompolo Contract" (2022-09-28) https://guardian.ng/opinion/the-n48-billion-tompolo-contract/ (last accessed 2022-11-29) 12; The Punch "Pipeline Surveillance Contract to Tompolo Unsettles Northern Group" (2022-09-28) https://punchng.com/pipeline-surveillance-contract-to-tompolo-unsettles-northern-group/ (last accessed 2022-11-29) 16; The Cable "Reps Panel Summons FIRS Chairman over 'Non-Remittance of Taxes' by Oil Companies" (2022-09-30) https://www.the cable.ng/reps-panel-summons-firs-chairman-over-non-remittance-of-taxes-by-oilcompa nies (last accessed 2022-11-30) 8; Vanguard "Senate Endorses NNPCL Pipeline Surveillance Contract to Tompolo" (2022-11-01) https://www.vanguardngr.com/2022/11/senate-endorses-nnpcl-pipeline-surveillance-con tract-to-tompolo/ (last accessed 2022-11-30) 15.

71 Ndajiwo (2018-08-14) 1-3; van Dorp (2016-01-01) 1-56; Daude, Gutierrez and Melguizo 2017 *Journal of Economic Studies* 2-23; Munongo, Akanbi and Robinson 2017 *Business and Economic Horizons* 152-168; Ndajiwo (2018-08-14) 1-3; van Dorp (2016-01-01) 1-56; Daude, Gutierrez and Melguizo 2017 *Journal of Economic Studies* 2-23; Munongo, Akanbi and Robinson 2017 *Business and Economic Horizons* 152-168; Forstater (2017-10-02) 1-2.

incentives such as tax holidays and preferential tax rates that are common in special economic zones contribute to poor tax and revenue collection.[72]

Tax evasion is largely caused by the lack of transparency and accountability on the part of the government. It is unfair for the government to collect taxes from people who provide their own infrastructure and services.[73] Tax evasion is a serious problem that is mainly caused by the people's lack of faith in the collection and utilisation of tax revenue by tax authorities as well as the states and federal governments of Nigeria.[74] Other factors triggering and perpetuating tax evasion include corruption, low-quality services rendered by the government in return for the tax paid, the perception of the unfairness of the tax system, and the lack of transparency and accountability of public institutions.[75] The haphazard introduction of different taxes contrary to the new National Tax Policy[76] has also contributed to tax evasion in Nigeria.[77]

5 Post-COVID-19 statutory measures, strategies to collect more taxes, and tax evasion

The outbreak of the COVID-19 pandemic led to a contraction of the Nigerian economy by -6.1 (minus 6.1) per cent in the second quarter of the year 2020 compared to 2.1 per cent in the second quarter of the year 2019.[78] Nigeria's total public debt increased by 18 per cent to over NG₦ 32.2 trillion as at the end of 2020 compared to NG₦ 27.4 trillion recorded by 31 December 2019. In the second quarter of 2020, exports posted a significant decline of 45.5 per cent due to the effects of the COVID-19 pandemic.[79] Consequently, the government introduced various monetary and fiscal policy measures to ameliorate the severity of the projected economic decline in 2020. Accordingly, the Economic Sustainability Plan, the Appropriation Act 2021, and the Finance Act 2020 were expected to facilitate economic recovery and boost economic growth in 2021.[80] The various national lockdowns imposed by the Nigerian government due to the advent of the COVID-19 pandemic

72 Smith "Nigeria's Tax Challenge" (2022-02-03) https://abmagazine.accaglobal.com/global/articles/2022/feb/ public/nigeria-s-tax-challenge.html (last accessed 2022-11-29) 1-4; Babatunde "Free Trade Zones between Theory and Practice in Nigeria" 2019 *IOSR-Journal of Humanities and Social Science* 52-68.
73 Abumere 2023 *Philosophia* 8-17; PwC (2010-02-05) 9.
74 Onyeka and Nwankwo 2016 *European Journal of Business & Management* 164; Gurama et al 2015 *Research Journal of Finance and Accounting* 206.
75 Animashaun and Chitimira 2021 *PELJ* 15-21.
76 PwC (2010-02-05) 9; Abumere 2023 *Philosophia* 5-17.
77 As above.
78 PwC "Nigeria's Finance Act 2020-Insights Series and Sector Analysis" (2021-02-01) https://pwc.to/39FZylP (last accessed 2022-11-29) 4-42.
79 PwC (2021) 4-42.
80 PwC (2021) 4-42.

caused many companies to shut down and this culminated in the loss of revenue.[81] Sadly, these companies did not receive any bailout from the government but they were still required to meet their tax obligations to the government.[82] The government only provided palliatives to a few individuals in limited instances. In many cases, the palliatives stored in warehouses by government officials were looted by the hungry masses, including security agents, such as the police.[83]

There was a dire need for the Nigerian government to raise more revenue in the following ways, namely, the introduction of new taxes, increasing the existing tax rates, reducing tax benefits or deductions, and implementing aggressive tax audits to close the net on possible defaulters. Consequently, the Nigerian government increased the tax base by improving the ease of doing business, introducing incentives for paying taxes, creating new taxes, adopting an aggressive stance in tax collection, and other measures to curb tax evasion.[84]

New and stiffer penalties were introduced for the violation of the Finance Act 2020 through, inter alia, deliberate or dishonest acts to falsify tax returns.[85] Other changes include the introduction of an excise tax on telecommunications services and the introduction of Significant Economic Presence (SEP) rules for Technical, Management, Professional, and Consultancy services provided by non-resident individuals and other unincorporated entities under the PITA.[86] This was done to assess non-resident companies (NRCs) with a digital SEP in Nigeria in order to tax them on a fair and reasonable percentage of their turnover attributable to the SEP especially, in the instance where there is no assessable profit, or the assessable profit is less than what is to be expected from that type of company. The NRCs with a SEP on digital services are obliged to file their tax returns in line with section 55 of the CITA. However, NRCs may be subject to income tax on a deemed profit basis at the discretion of the FIRS. Section 4 of the Finance Act 2021 (Finance Act 2021)[87] amends section 13(2) of the CITA and provides that the FIRS may assess the company' income tax on the income of a non-resident digital service company involved in transmitting, emitting, or receiving signals, sounds,

81 Salawu and Moloi "Disruptive Technologies and Finance Professionals Engagement: Post COVID-19 Survival Signal" 2021 *Journal of Accounting and Management* 31-34.
82 Animashaun and Chitimira 2021 *PELJ* 20; Abumere 2023 *Philosophia* 5-17.
83 Animashaun and Chitimira 2021 *PELJ* 20; BBC News "Why Nigerian Looters are Targeting COVID-19 Aid" (2020-1-26) https://www.bbc.com/news/world-africa-54695568 (last accessed 2022-29-11) 11; Abumere 2023 *Philosophia* 5-17.
84 OECD "Tax and Fiscal Policy in Response to the Coronavirus Crisis: Strengthening Confidence and Resilience" (2020-05-19) https://www.oecd.org/coronavirus/policy-responses/tax-and-fiscal-policy-in-response-to-the-coronavirus-crisis-strengthening-confidence-and-resilience-60f640a8/ (last accessed 2023-03-06) 12-13.
85 S 52 of the Finance Act 2020.
86 S 25 of the Finance Act 2020.
87 10 of 2021.

messages, images, or data of any form, including e-commerce, app stores, and online adverts, using the best of judgment (BOJ) assessment.[88] Before this amendment, only non-resident companies which have created a tax presence in Nigeria by reason of having a fixed base, an agent, or a taxable contract to which profits are derived and attributable in Nigeria may be subject to a BOJ assessment.[89] The Tax Appeal Tribunal is empowered to conduct virtual hearings.[90] This development is likely to be subjected to serious challenges since Nigeria is characterised by electricity supply problems and poor Internet service.

The Finance Act 2020 provides for the creation of dedicated accounts for tax refunds.[91] The diligent execution of the virtual network Internet access to process tax refunds is likely to improve the tax compliance of the citizens because of the quick dispensation of justice and the ability to reclaim excess tax payment. Similarly, ambiguous terms were resolved in Finance Act 2021, and it expanded the VAT obligations of foreign companies doing business in Nigeria.[92] The Finance Act 2021 seeks to strengthen the exchange of information in accordance with various international treaties and it expands the scope of taxable goods and services for VAT purposes. The Finance Act 2020 also establishes unclaimed funds trust funds to manage unclaimed dividends and dormant accounts balances,[93] and it clarifies the rules for the taxation of international shipping companies and airlines under the CITA and the CGTA.[94] This could bring more persons under the tax net and curb tax evasion. The dividends for the purpose of company income tax were defined to include "compensating payments received or paid in Regulated Securities Lending Transaction (RSLT)". This also came with a condition that the underlying transaction of the RSLT giving rise to the compensating payment should be a receipt of dividends by a borrower on any shares or securities received from its approved agent or a lender in an RSLT. This condition is removed under section 9(1)(d) of the Finance Act 2021. This implies that companies involved in compensating lending transactions should note compensating payments that are liable to taxation, or deductible under the new definition of dividends in relation to compensating payments. The Tertiary Education Tax was increased to 2.5 per cent on the assessable profit of companies registered in Nigeria, except for small companies. Companies subject to Tertiary Education Tax must pay it within 30 days of receiving a notice of assessment from the FIRS.[95] However, the increase in tax rates seems to

88 S 4(c) of the Finance Act 2021.
89 S 4 of the Finance Act 2021 provides that the FIRS may assess companies' income tax on the income of a non-resident digital service company, app stores and online adverts.
90 Rule 5 of the Tax Appeal Tribunal (Procedure) Rules 2021.
91 S 50 of the Finance Act 2020.
92 Ss 30-31 of the Finance Act 2021.
93 S 50 of the Finance Act 2020.
94 Ss 52-54 of the Finance Act 2020.
95 Ss 28-29 of the Finance Act 2021.

be increasing the tax burden of taxpayers such as publicly listed companies.

Capital gains of 10 per cent were introduced on any gains arising from the sale of shares in any Nigerian company except where the proceeds are used to acquire shares in the same entity or other Nigerian companies within the same assessment year, or the proceeds are less than N100 million in a 12-month period.[96] This is done to boost investment, block evasion tax channels, and bring in more tax revenue to the Nigerian states and federal governments. Section 17 of the Finance Act 2021 also imposes an excise duty at the rate of ₦10 per litre on non-alcoholic, carbonated, and sweetened beverages. Nonetheless, the introduction of this tax could discourage the consumption of sweetened beverages due to the negative health effects associated with them. In order to reduce tax evasion, tax officers are mandated to ensure full compliance with the law by deducting and remitting VAT and withholding tax due on supply and services contracts.[97] Similarly, paragraph 235 of the Financial Regulations provides that deducted VAT and "pay as you earn" (PAYE) shall be remitted to the FIRS when the payee who is subject to the deduction in question is paid.[98] These provisions seek to enhance the detection and combating of tax evasion in all Nigerian states.

The Petroleum Industry Act 6 of 2021 (PIA)[99] is the principal statute dealing with the regulation of the Nigerian oil and gas sector. It repealed various extant laws that were regulating the Nigerian oil and gas sector.[100] The PIA divides the extant Petroleum Profits Tax (PPT) into two categories, namely, hydrocarbon tax[101] and companies' income tax.[102] The hydrocarbon tax and companies' income tax are chargeable to companies that deal with upstream petroleum operations.[103] This means that these companies are subjected to a dual-income tax regime. However, the applicable companies' income tax rate should always be

96 S 2 of the Finance Act 2021.
97 Para 234(I) of the Financial Regulations.
98 John (2017) 400-417.
99 Ss 1-319.
100 Some of the laws which have been repealed by the PIA are the Petroleum Act 2004, the Associated Gas Reinjection Act 1979 and its amendments, the Hydrocarbon Oil Refineries Act 17 of 1965, the Nigerian National Petroleum Corporation (Projects) Act 94 of 1993, the Nigerian National Petroleum Corporation (NNPC) Act 1977 (as amended), the PPTA, and the Deep Offshore and Inland Basin Production Sharing Contract Act (DOIBPSCA) 1993 and its 2019 amendment. See s 310(1) of the PIA.
101 Hydrocarbon tax shall be chargeable on the profits of upstream petroleum companies in the onshore and shallow water. Hydrocarbon tax applies to crude oil, field condensates and natural gas liquids from associated gas, and does not apply to associated gas, non-associated gas, and frontier acreage. Hydrocarbon tax will not apply to deep offshore projects to encourage exploratory activities in Nigeria.
102 CIT shall be chargeable on the profits of downstream petroleum companies in marketing and distribution of petroleum products.
103 S 260 of the PIA.

enforced in line with the provisions of the CITA.[104] Under the new tax regime, the income tax rate applicable to holders of Petroleum Mining Licences (PMLs) is capped at 60 per cent while the income tax applicable to the holders of Petroleum Prospecting Licences (PPLs) is capped at 45 per cent. This is a reduction from the 85 per cent rate which was applicable under the PPTA regime.[105] This reduction in the tax rate is likely to enhance better compliance with the tax law and curb tax evasion in Nigeria.

Section 23(1)(c) of the CITA was amended by deleting educational institutions from the income tax exemption list. Prior to this amendment, the profits of companies engaged in educational activities were exempt from income tax if such profits were not derived from the trade or business carried on by such companies. Thus, profits of all educational institutions are now liable to companies' income tax that is imposed on them in accordance with their turnover. The tertiary education tax (TET) is now applicable to profits earned by educational institutions since all companies taxed under the CITA are also subject to TET.[106]

There are reports of increasingly vigorous tax collection methods and harassment of companies by the mass media as tax officials were pushed to meet revenue targets.[107] Nigeria has embarked on more aggressive tax collection in a bid to raise tax revenue. The FIRS has been under attack for its aggressive revenue collection methods, especially the naming and shaming of companies before allegations about tax avoidance or evasion are resolved.[108] For instance, the mobile phone company (MTN) and Multichoice have suffered this treatment in recent times, and they were eventually fined by the FIRS.[109] It appears that only big companies are targeted by the FIRS while smaller players do not receive harsh treatment for their non-tax compliance. This follows the fact that some multinationals have been avoiding corporate taxes with

104 Chapter C21 LFN 2004.
105 PwC "The Petroleum Industry Act Redefining the Nigerian Oil and Gas Landscape" (2021-8-06) www.pwc.com/ng (last accessed 2023-03-07) 4-53; ENR Advisory "The Petroleum Industry Act, 2021: What Next for Upstream Players?" (2021) https://enradvisory.com/wp-content/uploads/2021/08/PIA_Whats-Next-for-Upstream -Players_Final2.pdf (last accessed 2023-03-07) 1-9.
106 Ss 40 & 47 of the CITA; s 2 of the Tertiary Education Trust Fund (Establishment) Act 16 of 2011.
107 Ministry of Budget and National Planning 14; KPMG "Highlights: 2021 Federal Government of Nigeria Budget Proposal" (2020-10-01) https://home.kpmg/ng/en/home/insights/2020/10/highlights--2021-federal-government-of-nigeria (last accessed 2022-11-1) 1-5; Agbakoba (2020-07-10) 4-7.
108 Lex Africa "New Realities in Africa: COVID-19 and Taxes" (2021-09-01) https://lexafrica.com/2021/09/new-realities-in-africa-covid-19-and-taxes/ (last accessed 2022-11-1) 1-2.
109 Lex Africa (2021-09-01) 1.

the aid of the Nigerian tax authorities' corruption.[110] Nonetheless, although some multinational companies are deeply involved in transfer pricing and tax evasion in Nigeria, the FIRS should treat all taxpayers fairly.[111]

Section 4 of the Nigerian Police Trust Fund (Establishment) Act 2 of 2019 (NPTFA) was amended to empower the FIRS to administer, assess, collect, account, and enforce the payment of the Police Trust Fund (PTF) levy. Although the NPTFA was signed into law in June 2019, it is not clear how its provisions should be enforced in relation to the collection of the PTF levy. The PTF levy is payable by all companies operating a business in Nigeria at 0.005 per cent of their annual net profit and is to be remitted as directed by the FIRS. Similarly, 0.5 per cent of the total revenue accruable to the federation account should be paid to the PTF levy.[112] Nonetheless, the NPTFA does not define the term "net profit," and this may give rise to different levy rates to be imposed on taxpayers. Moreover, in *Attorney-General (AG) of Rivers State v Attorney-General of the Federation (AGF)*,[113] the AG of Rivers State sued the AGF on the constitutionality of removing a part of the allocation granted (the 0.5 per cent of the total revenue accruable to the federation account) by the provisions of the Nigerian Constitution, 1999. The Supreme Court of Nigeria adopted the submissions of the AG of Rivers State and maintained that the provisions of the NPTFA that relate to state governments were unconstitutional and ordered that the federal government refund the previous deductions from the federation account.

Section 20(a-b) of the National Agency for Science and Engineering Infrastructure Act (NASENI Act) was amended to provide different sources of funding for the agency. The NASENI Act empowers the FIRS to collect a levy and credit it to the account of the National Agency for Science and Engineering Infrastructure. The increase in the turnover threshold from N4 million to N100 million excludes small and medium companies from contributing to the NASENI levy.[114] The amendment did not specify the penalty for non-compliance or clarify whether the provisions of the NASENI Act will be applied retrospectively. These

110 Turner "Tax Avoiders Will Receive Coronavirus Bailouts-We Must Redress this Injustice" (2020-03-27) https://www.theguardian.com/world/comment isfree/2020/mar/27/tax-avoiders-coronavirus-bailouts (last accessed 2022-12-24) 4-5.

111 Armocida, Formenti, Ussai, Palestra and Missoni "The Italian Health System and the COVID-19 Challenge" 2020 *The Lancet Public Health* 253; Laffitte, Martin, Parenti, Souillard and Toubal *International Corporate Taxation after COVID-19: Minimum Taxation as the New Normal* (2020) *CEPII – Policy Brief No:30*, 3.

112 S 4(1)(b) of the NPTFA.

113 Suit FHC/ABJ/CS/511/2020 (Unreported judgment) delivered on 26 January 2022.

114 However, s 22 of the NASENI Act provides that all contributions to the fund of the National Agency for Science and Engineering Infrastructure shall be taxed. This enables the taxpayer to recover 32.5 per cent of the levy contributed.

ambiguities in NASENI Act and NPTFA could give rise to tax evasion and tax avoidance by taxpayers in Nigeria. Furthermore, the NASENI levy will increase the tax burden of companies in the affected sector. The affected companies could end up being double-taxed for the purpose of generating revenue through agencies performing similar activities.

Section 2 of the PITA provides that the collection of a tax imposed on an individual's income will be determined by where the person normally resides. It states that a person is considered a resident if he or she is physically present in Nigeria for at least 183 days (including leave and temporary absence) in any 12-month period or serves as a diplomat or diplomatic agent of Nigeria abroad. However, the growing shift towards remote work by companies since the advent of the COVID-19 pandemic could aggravate tax evasion and foster double taxation in Nigeria. Accordingly, the Nigerian tax authorities should develop viable strategies to effectively tax remote working (working from home) by auditors. Nonetheless, this could largely affect audit procedures, audit fees, and audit quality.[115]

Evasion of personal income tax would be disastrous because the PAYE and self-assessed personal income tax contribute the most to states governments' tax revenues.[116] The internally generated revenue data collated by the Nigerian Bureau of Statistics from the 36 states and the Federal Capital Territory (FCT) shows that the PAYE contributed N488.1 billion in the first half of 2021, followed by revenue from ministries, departments, and agencies which amounted to N173.6 billion. However, the road tax was only N16.8 billion.[117]

Moreover, the effects of COVID-19[118] are likely to cause massive unemployment as some companies were forced to adopt disruptive technologies including artificial intelligence, blockchain, robotics, 3D printing, genomics, and distributed power systems, which are very expensive.[119] In addition, the non-remittance of tax by ministries, departments, agencies, and the private sector is usually caused by tax evasion and/or tax avoidance.[120]

115 Salawu and Moloi 2021 *Journal of Accounting and Management* 34.
116 The Cable "NBS: 36 States, FCT Recorded N849bn IGR in Six Months- up by 39%" (2021-11-09) https://www.thecable.ng/nbs-36-states-fct-recorded-n849bn-igr-in-six-months-up-by-39 (last accessed 2022-11-29) 12.
117 The Cable (2021-11-09) 2-3.
118 International Finance Corporation (IFC) *How Firms are Responding and Adapting During COVID-19 and Recovery Opportunities for Accelerated Inclusion in Emerging Markets* (2021) 11.
119 IFC (2021) 13.
120 Economic Confidential "FIRS Demands N1trn Tax Remittance from MDAs" (2022-08-04) https://economicconfidential.com/2022/08/firs-tax-remittance-mdas/ (last accessed 2022-11-30) 2-3; Vanguard "Audit Report: 12 MDAs Fail to Remit N5bn Taxes" (2022-01-04) https://www.vanguard ngr.com/2022/01/audit-report-12-mdas-fail-to-remit-n5bn-taxes/ (last accessed 2022-11-30) 5; Bloomberg "Taxing the Informal Sector-Nigeria's Missing

6 Recommendations

It is submitted that tax incentives and exemptions should be moderately utilised to boost tax revenue in Nigeria. This follows the fact that Nigeria incurs a significant loss of revenue through ill-designed exemptions, such as costly tax holidays and other incentives that fail to attract sustainable investments. Moreover, discretionary granting of exemptions should be carefully enforced to curb corruption.

Nigerian tax authorities should consider adopting appropriate digital technologies to curb illicit tax flows, tax avoidance, corruption, and tax evasion.[121] These digital technologies should be accompanied by adequate funding and appropriate infrastructure to enhance tax revenue collection processes in Nigeria.[122] The Nigerian government, tax authorities, and other relevant stakeholders should employ appropriate measures to curb illicit financial flows to combat tax avoidance, corruption, and tax evasion.[123] Moreover, there is a need to diversify the non-oil revenues which have been more stable than oil revenues in recent times. The Nigerian government, tax authorities, and other relevant stakeholders should adopt adequate measures to improve the collection, compliance, and promote tax best practices among all taxpayers.

It is recommended that comprehensive tax administration reforms such as modernising tax institutions including a spectrum of legal, technical, and administrative reforms should be introduced in Nigeria. The reform should prioritise the recruitment of persons with relevant expertise and the adoption of constant training methods for such persons to develop a new culture that relies on the smart use of information management systems to enhance audit and tax verification programmes.[124]

Goldmine" (2020-10-15) https://news.bloombergtax.com/daily-tax-report-international/taxing-the-informal-sector-nigerias-missing-goldmine (last accessed 2022-11-30) 1-3.

121 Yamen, Coskun and Mersni "Digitalization and Tax Evasion: The Moderation Effect of Corruption" 2022 *Economic Research-Ekonomska Istrazivanja* 1-23; Smith (2022-02-03) 1-2; Paoki, Yusha, Kale and Mangoting "The Effect of Information Technology and Perceived Risk in Anticipating Tax Evasion" 2021 *Jurnal Reviu Akuntansi dan Keuangan* 238-249; IFC (2021) 14.

122 Yamen, Coskun and Mersni 2022 *Economic Research-Ekonomska Istrazivanja* 1-21.

123 LSE "Tracking Illicit Financial Flows Could Support Nigeria's Post-Pandemic Recovery" (2021-04-06) https://blogs.lse.ac.uk/africaatlse/2021/04/06/tracking-illicit-financial-flows-support-nigeria-post-pandemic-recovery-cor ruption/ (last accessed 2022-11-30) 1-3.

124 Otekunrin, Nwanji, Eluyela, Inegbedion and Eleda 2021 *Problems and Perspectives in Management* 174-175; Webley, Robben, Elffers and Hessing 128; Akitoby, Baum, Hackney, Harrison, Primus and Salins "Tax Revenue Mobilization Episodes in Emerging Markets and Low–Income Countries: Lessons from A New Dataset" (2018-11-2) https://www.imf.org/2018/11/02 (last accessed 2022-12-22) 1-2.

Lastly, a new and/or carefully revised tax code should be introduced in Nigeria to promote a simplified tax system and remove unnecessary tax exemptions to curb corruption, tax avoidance, and tax evasion activities.

7 Concluding remarks

As discussed above, tax evasion and tax avoidance challenges were exacerbated by various tax exemptions, corruption, and other draconian tax revenue collection methods that were employed by the tax authorities in Nigeria. These challenges were more prevalent in Nigeria during the COVID-19 pandemic. In a bid to combat the stated challenges, various changes were introduced into the Nigerian fiscal regulatory framework through the adoption of the Finance Act 2020, the Finance Act 2021, and other related measures. This was also done to boost tax revenue and develop a new tax compliance culture in Nigeria. Despite these positive steps, the introduction of new taxes and the hiking of existing tax rates deterred more people from their tax compliance obligations and negatively affected the timeous payment of taxes. This eventually increased the tax compliance burden of a few taxpayers in Nigeria. For instance, big companies are required to pay numerous taxes and levies at both state and federal levels. Nonetheless, the states and the federal governments have so far failed to provide the required minimal basic infrastructure to develop and promote a tax compliance culture among all taxpayers in Nigeria. It is submitted that an adequate tax statutory regulatory framework should be established in Nigeria to tackle the gaps and flaws stated in this article. Moreover, the states and the federal governments of Nigeria should effectively cooperate to combat tax evasion, tax avoidance, corruption, and illicit financial flows.[125] Nigeria should also pursue international tax cooperation with other like-minded countries for effective and well-coordinated multilateral actions to curb such gaps and flaws.

125 Gaspar et al (2020-06-17) 1-2.