

DO LAWYERS PAY TOO MUCH TAX?

By

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- Being a paper presented on 13th March 2007 to The Nigerian Bar Association Section on Business Law (SBL) at Transcorp Hilton Hotel, Abuja.

DO LAWYERS PAY TOO MUCH TAX?

In order to put the discussion of the topic as given in proper perspective, I have chosen to examine it under the following headings:

1. Definition of key terms
2. Legal basis for imposing taxes on lawyers - the constitution and tax laws
3. Taxes payable by lawyers to Federal, State and Local Governments
4. Do lawyers pay too much tax?
5. The way forward
6. Conclusion

DEFINITION OF KEY TERMS

The two key terms that need to be clearly understood are "lawyer" and "tax". In other words, "who is a lawyer?" and "what is tax?". If we clearly understand these two concepts we will be in a better position to answer the question of whether lawyers pay too much tax in Nigeria or not.

Who is a lawyer?

The Alabama State Bar in the United States in answering this question says:

A lawyer is a person who because of his or her high ethical standards and knowledge gained through education and experience, meets the requirements of a State regulatory body and receives a license to practice law in that State. A lawyer serves both as an advocate and an advisor. Our courts operate under an adversary system in which the partners to any case, civil or criminal are entitled to have their positions advocated by lawyers. As officers of court, lawyers assist in the administration of justice, while advocating their clients' positions through legal pleadings, procedures and rules of evidence, and written or oral arguments, in order to assure application of the appropriate law. As advisor, the lawyer counsels clients in avoiding adverse legal consequences of contemplated actions, drafts documents to achieve desired results while complying with applicable laws and regulations, and advise clients about their rights and obligations in dealing with others. Many people think all lawyers are trial lawyers. This is the way lawyers are usually depicted in movies and on television. In reality, most lawyers spend but a small part of their time in the courtroom. They consult with clients and opponents, take depositions; research legal issues; prepare contracts; deeds, title opinions and other documents; mediate and negotiate settlements; write laws; and engage in other non-courtroom activities. Areas of practice, too numerous to list, include everything from admiralty to zoning. Some lawyers

work in governmental positions, teach or become judges. Others do not practice law at all; they use their legal skills while working as executives in business. Wide opportunities are available to anyone who desires to be a lawyer.

This apt description of who a lawyer is reveals that lawyers are engaged in virtually all fields of human endeavour and therefore earn incomes that attract tax payments. For example, the World Book Encyclopedia (2001) notes that Law can be divided into two main branches:

1. **Private Law (also called civil law):-** which deals with the rights and obligations people have in their relations with one another.
2. **Public Law:-** which concerns rights and obligations people have as members of society and as citizens.

The classificatory schemata attached as Appendix I shows 6 branches of private law and 4 of public law which lawyers handle in practice and earn incomes. Once income is earned, taxes must be paid from them to support Government.

What is Tax?

The Black's law Dictionary defines tax as "a charge by the Government on the income of an individual, corporation or trust as well as the value of an estate or gift. The objective in assessing the tax is to generate revenue to be used for the needs of the public".

The Webster Dictionary defines tax in its **Business Dictionary** as "a charge or burden, usually pecuniary, laid upon persons or property for public purposes". It also says it is "a forced contribution to wealth to meet public needs of a government".

Martinger D. C. defines it as "a pecuniary burden laid upon individuals or property to support the government as is a payment **exacted by legislative authority**".

It is clear from the above definitions that a tax has certain distinctive features:

1. It is usually imposed by Government
2. It is mandatory
3. It must have legislative authority
4. It is usually meant to support Government

It can safely be said that any charge not having all of these features cannot really be called a tax. A tax usually differs from a user's fee or charge because it does not entitle the payer to a specific service or good in return. In other words there is no "*quid pro quo*". Taxes payable by lawyers can therefore be listed as follows: Personal Income Tax, Value Added Tax, Stamp duties, Capital Gains Tax, Company Income Tax, Customs duties, Tenement rates as all these meet the criteria aforementioned.

Having discussed who the lawyer is and what tax is, we can now examine the instruments compelling lawyers and other citizens to pay taxes.

LEGAL BASIS FOR IMPOSING TAXES ON LAWYERS – The Constitution and Tax Laws

Various laws constitute the legal basis for taxation of lawyers amongst other citizens. Usually, lawyers work as either employees or self-employed persons. They usually practice as sole proprietorships or partners or limited firms. Whichever category a lawyer falls into, he must pay taxes for as long as he earns income except where the law provides otherwise. Lawyers in different fields will pay different taxes. This means that all lawyers do not and will not pay the same taxes. For example, lawyers who are employees will pay taxes under the Pay As You Earn (PAYE) Scheme monthly deduction from salaries at graduated rates after enjoying reliefs. However, lawyers with practicing firms will pay as self-employed persons based on their incomes either as individuals, partners or limited liability firms. The rates of taxes differ among these categories. This should be noted from the onset as horizontal and vertical equity demand that lawyers on the same income level pay same taxes while those on different income levels pay different taxes. While the lawyers who are employees pay taxes on their salaries (incomes) on graduated rates up to a maximum of 25%, those in partnerships and limited firms will pay taxes based on ratios of sharing and 30% of adjusted profit respectively. The various laws that impose taxes on individuals, partnerships, corporate bodies or property under which lawyers pay taxes are as follows:

- A. **The 1999 Nigerian Constitution**
- B. **The tax Laws:**
 - 1. The Personal Income Tax Act, Cap P8, LFN, 2004
 - 2. Value Added Tax Act, Cap 41VI, LFN, 2004
 - 3. Stamp Duties Act Cap S8, LFN, 2004
 - 4. Capital Gains Tax Act, Cap C1, LFN, 2004
 - 5. The Companies Income Tax Act Cap C21, LFN, 2004
 - 6. Customs & Excise Management Act Cap C45, LFN, 2004
 - 7. Taxes and levies (Approved list for collection) Act, Cap T2, LFN, 2004.
 - 8. Local Government bye-laws

The above laws will be examined seriatim. A panoramic view of what they prescribe on the taxation of lawyers will be very illuminating.

The 1999 Constitution

The 1999 constitution prescribes in section 24(f) that it shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly. This means that lawyers who are Nigerian citizens have constitutional duty to pay taxes. It presented that taxes be paid to all three

tiers of Government by citizens (lawyers inclusive) who earn incomes from such sources as spelt out hereunder:

- Federal Taxes as spelt out in the Part 1 of the exclusive legislative list in items 16, 25, 58, 59 which are customs and excise duties, export duties, stamp duties, taxes on corporate profits and gains respectively.
- State Taxes as spelt out in item D, paragraph 7 of Part II of the Second Schedule in the concurrent legislative list to wit: Personal Income Tax and Stamp duties on documents and transactions by individual lawyers.
- Local Government taxes in the form of tenement rates as stipulated in paragraph 1(5) of the Fourth Schedule.

The Tax Laws:

Distinctive or common features of tax laws

The common features that run through the various tax laws are enumerated hereunder:

1. Imposition of tax on income, gains or profits
2. Ascertainment of income, gains or profits
3. Deduction of outgoings and expenses (also reliefs where necessary)
4. Determination of tax payable
5. Right of objection and appeal by tax payers
6. Penalty for offences
7. Enforcement provisions

The Personal Income Tax Act

The Personal Income tax Act imposes tax on all incomes of persons, lawyers inclusive, in section 3(1) as enumerated below:

- a. gains or profits from any trade, business, profession or vocation.
- b. remuneration (salary, wage, fee, allowance, gain or profit, benefit, etc.) of an employment excluding sums paid to the employee:
 - i. in reimbursement of expenses incurred by him in the performance of his duties and from which it is not intended that the employee should make any profit or gain.
 - ii. in respect of medical or dental expenses incurred by the employee.
 - iii. in respect of any passage to or from Nigeria incurred by the employee.
 - iv. in respect of the maintenance or education of a child, if any provision of this Act provides that any such sums received by the employee during a year of assessment shall be granted to him for the next following year;
 - v. so much of any amount of rent the employee is treated as being in receipt equal to the annual amount deemed to be incurred by the employer under section 4 of the Act.

- vi. so much of any amount of rent the employee is treated as having received under the provisions of section 5 of the Act.
 - vii. so much of the amount of rent subsidy or rent allowance paid by the employer, to or on account, for the employee met exceeding ₦100,000 per annum.
 - viii. the amount not exceeding ₦15,000 per annum paid to an employee as transport allowance.
 - ix. meal subsidy or meal allowance, subject to a maximum of ₦5,000 per annum.
 - x. utility allowance of ₦10,000 per annum.
 - xi. entertainment allowance of ₦6,000 per annum.
 - xii. leave grant, subject to a maximum of ten percent of annual basic salary.
- c. gain or profit including any premium arising from a right granted to any other person for the use or occupation of any property.
 - d. dividend, interest or discount.
 - e. any pension, charge or annuity.
 - f. any profit, gain or other payment not falling within the preceding paragraphs (i.e. a – e above).

From the foregoing, it is clear that virtually every income, gain or profit for services rendered or goods sold by a lawyer are supposed to be subjected to tax except by as exempted by law. Even benefits in kind such as living accommodation and company cars for lawyers who are employees are meant to be subjected to tax at 5% of the amount expended by the employer in acquiring the asset or at 5% of market value at time of acquisition if that amount cannot be so ascertained.

Modus Operandi

In applying the provisions of the Personal Income Tax Act to income of lawyers for taxation purposes, tax authorities adopt ways or methods that emphasize the canons of taxation to wit: convenience, economy, equity and certainty.

Each State of the Federation has a “relevant tax authority” in charge that collects taxes from lawyers either through:

- § Monthly deductions of taxes from lawyers who are employees
- § With-holding tax deductions from lawyers who render consultancy and other management services or those who earn rents, interests, dividends or directors fees.
- § Direct assessment of incomes of self-employed lawyers practicing.

Usually, lawyers like other taxpayers are expected or required to complete and file tax returns stating their income in a year of assessment and making claims for expenses and reliefs for tax assessment purposes. In computing tax due for payment by a lawyer in practice, the tax authority usually taxes the self employed on Preceding Year Basis (PYB) and ensures that expenses claimed by a lawyer in the production (earning) of income must be wholly, exclusively, necessarily and reasonably incurred to be allowed. The tax authority normally disallows any outgoing and expenses that are for private use, but would always allow any expense that has the aforementioned elements. For example, in *F. R. A. Williams (appellant) V*

Regional Tax Board 1963, (former Western State Internal Revenue, respondent), Chief F. R. A. Williams who was a legal practitioner carrying on his profession in an apartment in his own house was claiming from the respondent, a sum of ₦600 which he argued should be allowed him as rent for the apartment because he used it exclusively for earning his chargeable income.

The respondent contended that the deduction allowed under the law were outgoings and expenses and must be construed strictly. Since the ₦600 claimed by the appellant did not from any item of money paid out by him, it could not be called outgoing or expense and therefore should not be allowed to him. However, it was held that in computing the chargeable income of the appellant, the annual rent of his apartment used exclusively for his business should be deducted from his income as it came within the spirit and intent of the words 'outgoing expenses' used in section 13 of the Income Tax Law, and should be allowed to him as being necessary for the carrying on of his profession. Also tax authorities usually grant personal and other reliefs before the tax due from a lawyer is arrived at.

Value Added Tax

The Value Added Tax Act Cap VI, LFN 2004 says that Value Added Tax (VAT) is payable by lawyers amongst other citizens or persons. The Act stipulates in section 2 that tax shall be charged and payable on the supply of goods and services other than those listed in the First Schedule to the Act (see Appendix II). The current rate of Value Added Tax (VAT) is 5% and it fetches a lot of revenue for Government. The sharing ratio is as follows:

- 15% to the Federal Government
- 50% to the State Governments and the Federal Capital Territory
- 35% to the Local Governments

Failure to register for VAT payments; failure to keep proper records of accounts; failure to collect tax; and failure to submit returns amongst others attract various stiff penalties.

All lawyers like other citizens are required to pay VAT when they supply VATable services and goods. In order to pay VAT without offending the law, lawyers as taxable persons should register with the relevant tax authority for the purpose of paying the tax. Failure to register attracts a fine of ₦10,000 for the first month in which the failure occurs and ₦5,000 for each subsequent month in which failure occurs. The law requires that all taxable persons keep such records and books of transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due under the Act.

Stamp Duties Act

The Stamp Duties Act, CAP. S8, LFN, 2004 stipulates in section 3 that duties may be charged upon the several instruments specified In the schedule to the Act. In simple words, "stamp duties are taxes paid in

perfecting documents. For example, section 19 states that “Every instrument bearing a certificate of a commissioner that it is not chargeable with duty or that it is duly stamped or being stamped with the amount of the duty assessed and certified by him shall be admissible in evidence and available for all purposes, notwithstanding any objection relating to duty”.

Section 22 (4) stipulates that “an instrument executed in Nigeria, or relating wheresoever executed, to any property situate or to any matter or thing done or to be done in Nigeria, shall not except in criminal proceedings, be given in evidence, or be available for any purpose whatever, unless it is duty stamped in accordance with the Law in force in Nigeria at the time when it was first executed”.

Lawyers and other citizens pay or are required to pay stamp duties to perfect thire documents in accordance with the aforementioned provisions of the Stamp Duties Act.

The Act stipulates in Section 4 (1) that “the Federal Government shall be the only competent authority to impose, charge and collect stamp duties upon instruments specified in the schedule to the Act if such instruments relate to matters executed between a company and an individual, group or body of individuals’.

Section 4 (2) stipulates that State Governments shall collect duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the Federal Government. In practice, the Federal Government stamps documents of corporate bodies while State Governments stamp documents of individuals.

The law envisages that certificates of occupancy, appointments, bank guarantees, warrants of attorney, receipts, deeds, stock and share certificates, legacy, promissory notes, tenancy agreements, mortgage charges and releases there from, oaths, affidavits, tenancy agreements etc. should be appropriately perfected by stamping them. Unfortunately, there is a lot of ignorance about the existence of this law even by many professionals.

The current rates of Stamp Duties are attached as Appendix III.

Capital Gains Tax Act

The Capital Gains Tax Act, Cap C1, LFN 2004 stipulates that any capital gain, that is to say, gains accruing to any person (including lawyers) on or after 1st April 1967 on disposal of assets should be taxed at a rate of 10%.

It lists chargeable assets as:

- 1) Options, debts and incorporeal property generally;
- 2) any currency other than Nigerian currency; and

- 3) any form of property created by the person disposing of it, or otherwise to be owned without being acquired.

The Act exempts from payment of capital gains tax

- 1) ecclesiastical, charitable or educational institutions of a public character
- 2) any statutory or registered friendly society
- 3) any trade union registered under the Cooperative Societies Act or any trade union registered under the Trade Unions Act provided that:
 - a) the gain or profit is not derived from any disposal of any assets acquired in connection with any trade or business carried on by the institution
 - b) the gain or profit is applied solely for the purpose of the institution or society
 - c) if any property held on trust ceases to be subject to that trust, the trustees will be regarded as having disposed of and immediately re-acquired the property for a consideration equal to its market value and any gain will not be treated as accruing to the institution or society.

The law exempts the following from capital gains tax:

- 1) the main or only private residence of an individual
- 2) motor cars suitable for private use
- 3) life insurance policies
- 4) chattels disposed of for not more than N1,000 in any year of assessment
- 5) stocks, shares and Nigerian Government securities
- 6) compensation for wrong or injury suffered by an individual
- 7) gifts
- 8) benefits from superannuation funds approved by the Joint Tax Board
- 9) land disposed of to an authority having compulsory powers
- 10) Nigerian currency

Lawyers therefore pay or are required by law to pay capital gains tax whenever they dispose of assets (land and buildings in practice) and receive any capital sum where gain accrues.

The Companies Income Tax Act

The Companies Income Tax Act (CITA) provides limited companies to pay their taxes on preceding year basis, not on actual basis. There are two stages of payment of tax for companies.

- a. Income tax at 30% of adjusted profit from whatever source is payable as tax irrespective of whether such profits are distributed to shareholders or not.
- b. When dividends are payable, tax has to be deducted (presently at the rate of 10% of the amount of the dividends) from the gross amount before the net is paid over to shareholders.

This is called with-holding tax on dividends and is usually paid by the company to the relevant tax authority.

This Act provides that Companies Income Tax is chargeable on the income of all companies operating in Nigeria except those specifically exempted under the Act. Section 9 of CITA imposes tax (currently at 30%) upon the profit of any company accruing in, derived from, brought into, or received in Nigeria in respect of

- a. any trade or business
- b. rent or any premium arising from a right granted to any other person for use or occupation of any property.
- c. dividends, interests, royalties, discounts, charges or annuities.
- d. any source of annual profits not falling within the preceding categories.
- e. any amount deemed to be income or profit under a provision of this Act or with respect to any other benefit arising from a pension or provident fund of the Personal Income Act.
- f. fees, dues and allowances (wherever paid) for services rendered.
- g. any amount of profits or gains arising from acquisition and disposal of short-term money instruments like Federal Government securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bonds.

For both PITA and CITA, capital allowances are deducted before arriving, at tax payable. There is the rural investment allowance to encourage investment in rural areas. The rate of rural investment allowance is as follows:

a. No facilities at all	100%
b. No Electricity	50%
c. No Water	30%
d. No tarred road	15%
e. No Telephone	5%

This is additional to any initial allowance due to such expenditure.

Capital allowances are "amounts deducted from a company's profits before tax is calculated, to take into account depreciation of capital assets such as vehicles, plant and machinery, and industrial buildings."

Lawyers who are self-employed should always remember to claim capital allowances for their capital assets used in earning income. Company income tax is currently 30% of profits as adjusted by revenue authorities.

The Customs and Excise Management Act

The Customs and Excise Management Act, Cap C45, LFW, 2004 prescribes that Import and Export Duties be imposed on goods being imported and exported in sections 37 and 59. A **custom duty** is a tariff or tax on the import of or export of goods. Usually, there is a tariff which serves as the basis for imposing duties. These tariffs are listed in the Customs, Excise Tariff, etc Consolidation Act Cap C49, LFN, 2004 which is too bulky for reproduction here. Any lawyer who imports or exports items in the said list is to pay duties accordingly.

Local Government Bye-Laws

Local Governments in the country are expected to enact bye-laws for the collection of tenement rates and other rates. Lawyers are expected to pay tenement rates and other rates to the Local Governments where they reside. Tenement rate is a locally assessed property tax. This must however, be assessed in the manner prescribed in paragraphs 9 and 10 of part 2 of the second schedule of the 1999 constitution in order to avoid multiplicity and abuse. Local Government Councils must pass bye-laws in a manner consistent with the spirit and provisions of the 1999 constitution and the Taxes and Levies (Approved list for Collection) Act in order to stem multiplicity of taxes. Paragraphs 9 and 10 stipulate that:

A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a local government council.

Where a Law of a House of Assembly provides for the collection of tax fee or rate or for the administration of such Law by a local government council in accordance with the provisions hereof it shall regulate the liability of persons to the tax, fee or rate in such manner as to ensure that such tax , fee or rate is not levied on the same person in respect of the same liability by more than one local government council.

It is the attempt of government to streamline and lessen the burden of multiple taxes that led to the enactment of the Taxes and Levies (Approved list for Collection) Act 21 in 1998. It is now necessary to know which taxes are legally and validly payable by lawyers in Nigeria.

TAXES PAYABLE BY LAWYERS TO FEDERAL, STATE AND LOCAL GOVERNMENTS

Lawyers, like other citizens are required by law to pay taxes to the Federal, State and Local Governments. The taxes that are legally and validly payable by lawyers are clearly stated in the Taxes and Levies (Approved list for Collection) Act, Cap T2, LFN, 2004. To these, we now turn.

Taxes and levies (Approved list for Collection) Act

The Taxes and Levies (Approved list for Collection) Act clearly spells out taxes and levies payable as follows:

FEDERAL TAXES	STATE TAXES	LOCAL GOVT. TAXES & LEVIES
Companies Income Tax	Personal Income Tax in respect of a. Pay-As-You-Earn (PAYE); and b. Direct taxation (Self Assessment)	Shop and Kiosks rates
With-holding tax on companies residents of the Federal Capital Territory, Abuja and non-resident individuals.	With-holding tax (individuals only)	Tenement rates
Petroleum Profit Tax	Capital Gain Tax (individuals only)	Tenement rates
Value Added Tax	Stamp duties on instruments executed by individual	Slaughter slab fees
Education Tax	Pool betting and lotteries gaming and casino taxes	Marriage, birth and death registration fees
Capital gains tax on residents of the Federal Capital Territory, Abuja, bodies corporate and non-resident individuals.	Road taxes	Naming of street registration fee, excluding any street in the State capital
Stamp duties on bodies corporate and residents of the Federal Capital Territory, Abuja.	Business premises registration fee in respect of a. Urban areas as defined by each state, maximum of i. ₦10,000 for registration, and ii. ₦5,000 per annum for renewal of registration, and b. Rural areas: i. ₦2,000 for registration, and ii. ₦1,000 per annum for renewal of registration	Right of Occupancy fees on lands in rural areas, excluding those collected by the Federal and State Government
Personal Income Tax in respect of a. Members of the Armed Forces of the Federation; b. Members of the Nigeria Police Force; c. Residents of the Federal Capital Territory, Abuja; and d. Staff of the Ministry of Foreign	Development levy (individuals only) not more than ₦100 per annum on all taxable individual.	Market taxes and levies excluding any market where state finance is involved.

Affairs and non-resident individuals		
	Naming of street registration fees in the State Capital	Motor park levies
	Right of occupancy fees on land owned by the State Government in Urban areas of the State.	Domestic animal license fees
	Market taxes and levies where State finance is involved	Bicycle, truck, canoe, wheelbarrow and cart fees, other than mechanically propelled truck.
		Cattle tax payable by cattle farmers only
		Merriment and road closure levy
		Radio and television license fees (other than radio and television transmitter)
		Vehicle radio license fees (to be imposed by the Local Government of the State in which the car is registered).
		Wrong parking charges
		Public convenience, sewage and refuse disposal fees.
		Customary burial ground permit fees
		Religious places establishment permit fees
		Signboard and Advertisement permit fees.

Local Government Bye-laws:

The various Local Governments in the country and the six area councils in the Federal Capital Territory ought to have their own bye-laws for the collection of tenement rates and other rates. Having examined the above, the key question of this discourse comes to the fore.

DO LAWYERS PAY TOO MUCH TAX?

From the discussion so far, it becomes clear that lawyers pay direct and indirect taxes. Direct taxes are amounts levied directly on the incomes of individuals and on transfers of income and wealth. Indirect taxes are taxes on expenditure, the value added in the production process or on imports. License fees are often included as a sub-group of indirect taxes. The report of the Study Group on Nigerian Tax Reforms (2003) lists the direct and indirect taxes payable in Nigeria as follows:

Direct Taxes		Indirect Taxes	
1.	Personal Income Tax	1.	Import Duties
2.	Companies Income Tax	2.	Export Duties
3.	Petroleum Profits Tax	3.	Excise Duties
4.	Capital Gains Tax	4.	Value Added Tax
5.	Property Taxes	5.	Sales Tax
	- Tenement rate	6.	Stamp Duties
	- Grand rent	7.	Road Taxes (i.e. Motor vehicle and Drivers license fees)
	- Estate Duties		
	- Hand use charge		

Apart from Petroleum profit tax which is paid by only petroleum companies, I am convinced that lawyers are subjected to payment of all the aforementioned direct and indirect taxes including many countless levies collected by Local Governments.

In my view, the question of whether lawyers pay too much tax has more to do with the quantum or proportion of money paid out as taxes in relation to net income earned than with the total number of taxes payable. In other words, a high percentage of net income earned being paid out as tax translates to paying too much tax and the converse is also true.

I am of the considered opinion after going through the Report of the Study Group on Nigerian Tax reforms that lawyers, nay all Nigerian citizens are not paying too much taxes. The tax types could be said to be many but the quantum or proportion of taxes being paid vis-à-vis the income being earned showcases gross underpayment of taxes as exemplified by the low tax revenue being generated in comparison with overall revenue.

Tax and Non-Tax Revenue Collected by the Federal Government in 2001

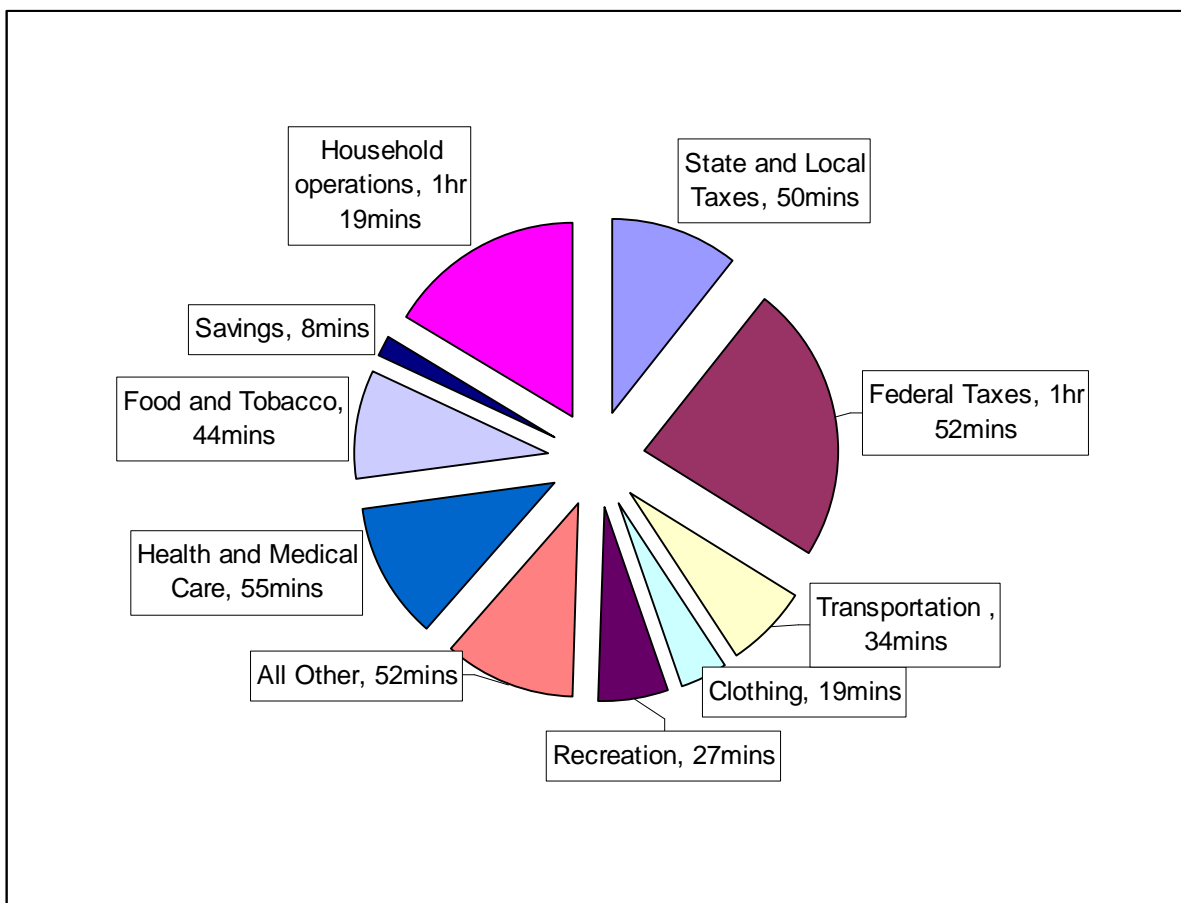
Serial No.	Type of Revenue	₦ Billion	%
Tax Revenues			
1.	Tax Profit, Tax Royalties etc.	639.2	28.6
2.	Tax on Petroleum Products	30.2	1.3
3.	Companies Income Tax	68.7	3.1
4.	Value Added Tax	91.7	4.1
5.	Education Tax	16.2	0.7
6.	Personal Income Tax (PIT)	2.2	0.1
7.	Customs and Excise Duties	170.6	7.7
	Sub-Total of Tax Revenue	1, 018.8	45.6

Non-tax Revenue			
8.	Crude Oil Exports (Equity)	934.3	41.9
9.	Domestic Crude Oils Sales	121.5	5.4
10.	Other Oil Revenues	12.5	0.6
11.	Other Non-Oil Revenues	24.2	1.1
12.	Mineralization proceeds	78.0	3.5
13.	Federal Independent Revenue (Less PIT)	42.2	1.9
	Sub-Total of Non-Tax Revenue	1,212.7	54.4
	Gross Total	2,321.5	100.0

Source: Derived from CBN Annual Report 2001 in Report of Study Group on Nigerian Tax Reforms (2003).

When compared with the collection pattern in the developed world, Nigeria's performance in payment of taxes by citizens is a dismal performance. For example, in the United States, taxes are the single largest household expenditure. The pie chart below shows that a person working for eight hours a day spends almost three hours working to pay local, state and federal taxes:

Taxes Bite in the Eight-Hour day



Source: Tax Foundation in "Principles of Taxation (2004) by Sally M. Jones.

A careful study of the above pie chart shows that if you work for 8 hours you spend approximately 3 hours paying tax. The relevant question now is “which lawyer in Nigeria can spend 3 hours of his work paying taxes?”. Little wonder the Vice President, Alhaji Atiku Abubakar, was reported by some newspapers to have said that Nigeria is the only country in the world where people do not pay taxes. With so much taxes being collected by States and Local Governments from citizens (including lawyers), the startling revelation by the Study Group report stating that in 2001 (much like in the previous 20 years), Federal Government alone collected 97% of overall government revenue in Nigeria, while State and Local Governments combined collected only 3% as shown in the table below leaves much to be desired on the attitude of citizens towards payment of personal income tax.

Expenditure and Revenue Collection by the Tiers of Government in Nigeria in 2003

S/No	Tier of Government	% of Revenue Collected	% of Expenditure
1.	Federal	97.0	68.8
2.	State	2.6	24.2
3.	Local	0.4	7.0
4.	Total(%)	100.0	100.0
5.	Total (N billion)	2,3000.7	2,448.6

Source: Central Bank of Nigeria in Report of Study Group, 2003

When we visited the Canada Revenue Agency as the study group on Nigerian tax reforms in March 2003, we were told that of the 600 billion Canadian dollars paid as taxes during the 2002 year, 95% of it was voluntarily paid to the agency. Tax payments have become an acceptable way of life in the developed world, moreso as they see the good use into which tax payers money is put in the form of infrastructure. Lawyers and other citizens will voluntarily pay their taxes in Nigeria if there is commendable evidence of the good utilization of taxpayers money. When lawyers and other citizens see that taxes paid are not well utilized, the tendency is for them to avoid and evade tax payments.

THE WAY FORWARD

The twin problems of the avoidance and tax evasion that have blighted the Nigerian tax system and provoked low tax revenue collections could be surmounted with lawyers taking the lead. For example, recent newspaper reports show that the Joint Tax Board (JTB) and Federal Inland Revenue Service have taken the Independent National Electoral Commission (INEC) to court for failing to present the clearance certificates of political aspirants to the Joint Tax Board for screening. The JTB argument is that since section 85(4)(s) of the Personal Income Tax Act stipulates that a tax clearance certificate must be produced for appointment or election into public office, this must be done by all political aspirants, Besides the constitution stipulates in section 24(f) that **every citizen has a duty** to declare his income honestly and pay his tax promptly to the appropriate and lawful agencies. The Joint Tax Board maintains that any political aspirant who has not paid his taxes or paid correct taxes as and

when due lacks the moral capital to occupy a political office to preside over the spending of taxes paid by law abiding citizens

I humbly suggest that lawyers under the auspices of the Nigerian Bar Association take up this matter with the seriousness it deserves to ensure that INEC makes political aspirants currently flaunting their ill-gotten wealth pay adequate taxes by submitting their tax clearance certificates to the Joint Tax Board for screening. The sense of spending taxpayers money prudently can only be derived when the spender himself pays his due taxes as against when he does not.

The federation needs many more lawyers to specialize in tax law as there are very few lawyers in this area of specialty. Tax law needs to be fully developed as in the developed world and only lawyers can blaze the trail in this direction. With too many illegal taxes being collected all around the country, we expect lawyers to take any tier of Government (especially Local Governments) collecting illegal and multiple taxes to court. Since the Taxes and Levies (Approved list for Collection) Act prescribes ₦50,000:00 fine or 3 years imprisonment or both for any person blocking roads to collect any tax or levy on conviction, lawyers should be proactive in getting such persons arrested and prosecuted.

I recommend that lawyers should use the provisions of item 62 in the exclusive list to ensure that the National Assembly enacts a law prohibiting the collection of taxes and levies on Nigerian roads as inter-state commerce and trade is being impeded by numerous revenue collectors blocking highways to collect revenue from vehicles moving goods from one state to another.

Lawyers should read and fully understand tax law and pay their own taxes as and when due. A lawyer can engage in tax planning and always claim his allowable expenses if he is knowledgeable in tax law. Sally M. Jones says "if you understand how taxes relate to your life, you can take an active role. You can take positive steps to minimize your personal tax to the fullest extent allowed by law. You can make informed financial decisions to take advantage of tax-saving opportunities. You can draw rational conclusions about the efficiency and fairness of existing tax law and can assess the merit of competing tax reform proposals. Finally you can change the tax system by participating as a voter in the democratic process."

Tax education and enlightenment should be encouraged amongst lawyers to engender a culture of voluntary tax compliance. Lawyers who pay their taxes should interrogate political office holders who do not use taxes paid well. Good governance is a catalyst for voluntary tax payments. When funds appropriated by the National Assembly and State Houses of Assembly are not utilized for projects specified in the budget estimates, lawyers should interrogate this in court to make political office holders sit up. There is nowhere else in the world where people talk of 40% - 60% budget implementation as budgets are meant to be implemented 100% with marginal variations if at all,

especially when funds are available. It is our firm belief that lawyers can and should stop, through law suits, the attitude of political office holders who treat budgets as mere proposals and divert taxpayers' money to projects not in the estimates.

CONCLUSION

Having examined the 1999 constitution and the various tax laws, we sum up our position here by concluding that if lawyers pay their taxes as and when due, serve as role models in attaining a culture of voluntary tax compliance. Such a culture is now desirable if Nigeria is to henceforth garner sufficient tax revenue to achieve a paradigm shift from over dependence on oil revenue to tax revenue.

REFERENCES

1. Ariwodola, J. A. Personal Income Taxation in Nigeria (JAA Nigeria Ltd), Lagos, 1998.
2. Clark John Dictionary of Banking and Finance Terms (The Chartered Institute of Bankers, Kent), 1999.
3. Jones M. Sally, Principles of Taxation for Business and Investment Planning (McGraw Hill Irwin, new York), 2004.
4. Main Report of Study Group on Nigerian Tax Reform in 2003 and Beyond.
5. Maine Roger, Economics (Mike Mom's Productions Ltd, London), 1983.
6. Ola C. S., Income Tax Law and Practice in Nigeria (Heinemann Educational Books, Nigeria PLC), Ibadan, 1999.
7. Sulu Elios Aderemu, Nigerian Tax Cases, Vol. I (Abiola Bookshop Press Ltd, Lagos) 1992.
8. The laws of the Federation of Nigeria, 2004.
9. The 1999 Nigerian Constitution.

APPENDIX I

The Branches of Law:- This table below list the major branches of private and public law and some of the legal matters they cover. A matter governed by one branch may also involve one or more branches. For example, many cases of property law also concern contract law.

PRIVATE LAW			PUBLIC LAW		
<p><u>Contract and Commercial Law</u> Credit purchases Employment contracts Guarantees Insurance Policies Patents Promissory Notes Sales contracts Subscriptions</p>	<p><u>Property Law</u> Landlord & tenant relations Mortgages Transfers of ownership Unclaimed property Intellectual property</p>	<p><u>Family Law</u> Adoption Annulment Divorce Marriage Child Support</p>	<p><u>Criminal Law</u> Arson Bribery Burglary Extortion Forgery Kidnapping Larceny Manslaughter Murder Perjury Rape Robbery</p>	<p><u>Constitutional Law</u> Civil rights and Liberties Federal & State powers Relations between state Separation of executive, judicial & legislative powers.</p>	<p><u>International Law</u> Arms control extradition Hijacking & privacy Human rights Territorial waters Users of outer space Uses of Ocean War crimes</p>
<p><u>Tort law</u> Invasion of Piracy Personal injury Product liability Professional malpractice Slander & libel Traffic accidents Trespass Unfair competition</p>	<p><u>Inheritance law</u> Estates Probate Trusts Wills</p>	<p><u>Corporation Law</u> Corporate finance Documents of Incorporation Mergers & Acquisition</p>		<p><u>Administrative Law</u> Communication & Telecommunications Consumer Protection Currency Environmental protection Interstate commerce Public Safety Social Welfare Taxation Workers wages & hours</p>	

APPENDIX II

VALUE ADDED TAX ACT First Schedule Goods and Services exempt

PART I

Goods Exempt

1. All medical and pharmaceutical products
2. Basic food items
3. Books and educational materials
4. Baby products
5. Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment
6. All exports
7. Plant and machinery imported for use in the Export Processing Zone
8. Plant, machinery and equipment purchased for utilization of gas in down-stream petroleum operations
9. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes

PART II

Services Exempt

1. Medical Services
2. Services rendered by Community Banks, Peoples Banks and mortgage institutions
3. Plays and performances conducted by educational institutions as part of learning
4. All exported services

APPENDIX III



Joint Tax Board **Harmonisation of Stamp Duty Rates and items**

1st day of July 2002

The Joint Tax Board at its meeting in Birnin Kebbi, Kebbi State between 7th and 8th May 2002, reviewed some Stamp Duties Rates in line with section 4(1) and (2) of the Stamp Duties Act Chapter 411 LFN 1990.

The Board reviewed the Stamp Duty Rates to reflect the current economic realities in the country and to ensure harmonisation and uniformity in the application of the rates. The revised rates are as follows

Instruments chargeable by the State Internal Revenue Service

A. Flat Rate Charges

	Type of Instrument	Old Rate	New Rate
1.	Affidavit-Affirmation, Statutory declaration. Declaration of age, Declaration of loss of items; Declaration of Ownership of property etc.	15.00 for original Copy and 10.00	10.00 original Copy and 5.00 extra copy.
2.	Ordinary Tenancy Agreement (not involving corporate bodies, Government or Agencies)	25.00	250.00
3.	Ordinary receipts		5.00
4.	Certificate of Occupancy.	100.00	50.00 original copy and 20.00 Counterpart copy.
5.	Agreement (Under Seal)	20.00 original and 10.00 for each extra copy.	50.00 original and 20.00 extra copy
6.	Agreement (Memo of any agreement)	15.00 original and 10.00 extra copy.	50.00 original and 20.00 extra copy.
7.	Oath and other affiliate bodies relating to above	15.00	50.00 original and 20.00 extra copy.
8.	Bond (ordinary)	15.00 original and 10.00 extra copy.	50.00 original and 20.00 extra copy.
9.	Gift (Land) Gift (Other than Land)	15.00 25.00	50.00 original and 20.00 extra copy
10.	Collateral Security	20.00	50.00 original and 20.00 extra copy.
11.	Certificate	15.00	50.00 original and 50.00 original and 20.00 extra copy.
12.	Legacy (Movable Property)	1.00 on every 100.00	50.00 original and 20.00 extra copy.
13.	Proxy forms or cards	50.00	50.00 original and 20.00 extra copy.
14.	Partnership	100.00	50.00 original and 20.00 extra copy.
15.	Bank Guarantee	15.00 original and 20.00 extra copy.	50.00 original and 20.00 extra copy.
16.	Appointment of Trustee or of Attorney	50.00	50.00 original and 20.00 extra copy.
17.	Appointment of Commissioner for Affidavit	50.00	50.00 original and 40.00 extra copy.
18.	Warrants of Attorney of any Kind	50.00	50.00 original and 20.00 extra copy.
19.	Notaries Act	2.50	50.00 original and 20.00 extra copy.

B. Ad-Valorem Charges

	Type of Instrument	Old Rate	New Rate
1.	Contract Agreement	1.00 on every 200.00	1.00 on every 200.00
2.	Land Agreement	1.00 on every 50.00	1.00 on every 50.00
3.	Lease Agreement, Sublease agreement	1.00 on every 50.00	3.00 on every 100.00
4.	Lease Hold Agreement or Rent Agreement		
	(i) If the term is less than 1 year	1.00 on every 50.00	
	(ii) 1-7 years	40.00 On every	3.00 on every (100.00 (multiplied by the number of years))
	(iii) 7-12 years	40.00 on every 50.00	
	(iv) 21 years and above	5.00 on every 50.00	
	(v) Indefinite period	6.00 on every 50.00	
5.	Deed of Assignment Deed of Ratification, Deed of Confirmation	1.00 on every 50.00	1.00 on every 50.00
6.	Deed of Release, Hire Purchase or Surrender	1.50 on every 200.00	1.00 on every 200.00
7.	Legacy (Immovable)	50.00	1.00 on every 100.00
8.	Promissory Notes/IOU	1.00 on every 200.00	1.00 on every 200.00

Instruments Chargeable by the Federal Inland Revenue Service

A. Flat Rate Charges

	Type of Instrument	Old Rate	New Rate
1.	Bond forms; Guarantor's forms; Power of Attorney; Scholarship bond; Loan agreement; Sealed agreement; Partnership agreement; Guarantee of Bank Facilities; Trust Deeds; Memorandum and Article of Association; Admission form in French; Articles of Clerkship; Trustee Fidelity Bond; Sealed Declaration; Protest on Bill of Exchange; Maturity claim forms for Insurance Company; Memorandum of Report; Deed of Appointment; Ordinary receipts ; Protest of Will; Dividend Warrants; Proxy cards.	50.00 for original copy and 20.00 per counterpart	500.00 for original copy and 50.00 per counterpart
2.	Ordinary or Open Agreement under hand article;	20.00 for original copy and 20.00 for extra copy.	500.00 for original copy and 50.00 for extra copy.
3.	Legacy (Movable Property)	1.00 on every 100.00	500.00 flat
4.	Appointment of commissioner for Affidavit;	50.00	500.00 for original copy and 50.00 for extra copy
5.	Affidavit-Affirmation; Statutory Declaration; Agreement (Memo of hand written)(ordinary)	15.00 for original copy and 10.00 for extra copy	100.00 for original copy and 50.00 for extra copy
6.	Agreement (under seal)	50.00 for original copy and 20.00 for extra copy	500.00 for original copy and 50.00 for extra copy
7.	Appointment of Trustee or of Attorney	50.00	500.00 for original copy and 50.00 for extra copy
8.	Warrants of good; Bonds (under seal); Collateral Security; Guarantor form of understanding	20.00	500.00 for original copy and 50.00 for

			extra copy
9.	Oath and other affiliate bodies relating to above	15.00	500.00 for original copy and 50.00 for extra copy
10.	Certificate of Occupancy; Partnership	100.00	1000.00 for original copy and 50.00 for extra copy
11.	Gift (Land); Warrants of Attorney of any kind	50.00	500.00 for original copy and 50.00 for extra copy
11a	Will	50.00	500.00 for original copy and 50.00 for extra copy
12.	Notaries Act;	2.50	500.00 for original copy and 50.00 for extra copy
13.	Bank cheques (per Leaflet)	00.50	1.00

B. Ad-Valorem Charges

	Type of Instrument	Old Rate	New Rate
1.	Insurance Policy/Policies	2.50 on every 2000	3.00 on every 2000
2.	Share capital and share capital increase (TCC required)	2.50 on every 200.00	3.00 on every 200.00
3.	Mortgage or Insurance and or Debentures; Indenture and their up-stamping; equitable Mortgage(e.g. Deposit)	2.50 on every 200.00	3.00 on every 200.00
4.	Bill of Sale	2.50 on every 200.00	2.00 on every 200.00
5.	Assignment from Bank (Amount written on top corner); Discharge (from Insurance Company); Indemnity or lease of Mortgage.	1.50 on every 200.00	2.00 on every 200.00
6.	Contract relating to shares (usually no sheet); Loan agreement from Insurance Co.	0.75 on every 200.00	2.00 on every 200.00
7.	Surrender; Bill of Exchange	0.5 on every 200.00	1.50 on every 200.00
8.	Promissory notes of ordinary documents	0.25 on every 200.00	2.00 on every 200.00
9.	Lease agreement on plant and Machinery	50.00 for original copy and 20.00	3.00 on every 200.00
10.	Goodwill; Debenture; Settlement	2.50 on every 200.00	4.00 on every 200.00
11.	Premium	1.50 on every 200.00	3.00 on every 200.00
12.	Contract agreement	1.00 on every 200.00	2.00 on every 200.00
13.	Land agreement	1.00 on every 200.00	1.00 on every 50.00
14.	Deed of assignment; Confirmation; Ratification	1.00 on every 50.00	1.50 on every 50.00
15.	Deed of conveyance or transfer on sale of property	1.00 on every 200.00	2.00 on every 200.00
16.	Lease agreement; sub-lease agreement	1.00 on every 50.00	3.00 on every 100.00
17.	Tenancy agreement or form	25.00	3.00 on every 100.00
18.	Leasehold agreement or Rent agreement		
	(i) If the term is less than 1 year	1.00 on every 50.00	
	(ii) 1-7 year	4.00 on every 50.00	
	(iii) 7-21 year	4.00 on every 50.00	3.00 on every 100.00 (multiplied by the number of year)
	(iv) 21 years and above	5.00 on every 50.00	

	(v) Indefinite period	6.00 on every 50.00	
19.	Deed of release	1.50 on every 200.00	1.50 on every 200.00
20.	Hire purchase; Lending (money)	1.00 on every 200.00	1.00 on every 200.00
21.	Legacy (Immovable property)	50.00 on every 100.00	1.50 on every 100.00
22.	Policy Insurance Certificate	2.50 on every 200.00	3.00 on every 200.00
23.	Promissory Notes/I.O.U.	1.00 on every 200.00	2.00 on every 200.00

Non-Chargeable Instruments

	Type of Instrument	Old Rate	New Rate
1.	Transfer of shares (TCC required)	Free	Free
2.	Shipping agreement	Free	Free
3.	Documents from Ministries and parastatals (letter from the Legal Adviser of the Ministry or Parastatal required)	Free	Free

* TCC means Tax Clearance Certificate

* CGT means Capital Gains Tax.

E. N. Osemene
Secretary,
Joint Tax Board

Stamp Duty in respect of Incorporation of Companies

Stamping Memorandum and Articles of Association

1.	Original copy of Memorandum and Articles of Association	500.00	
2.	Additional copies of Memorandum and Articles of Association	500.00 per copy	

Stamping in respect of Share Capital

Share Capital	Duty Payable	Share Capital	Duty Payable
10,000	150	50,000,000	750,000
20,000	300	60,000,000	900,000
30,000	450	70,000,000	1,050,000
40,000	600	80,000,000	1,200,000
50,000	750	90,000,000	1,350,000
100,000	1,500	100,000,000	1,500,000
200,000	3,000	200,000,000	3,000,000
300,000	4,500	300,000,000	4,500,000
500,000	7,500	400,000,000	6,000,000
600,000	9,000	500,000,000	7,500,000
700,000	10,500	600,000,000	9,000,000
800,000	12,000	700,000,000	10,500,000
900,000	13,500	800,000,000	12,000,000
1,000,000	15,000	900,000,000	13,500,000
2,000,000	30,000	1,000,000,000	15,000,000
3,000,000	45,000	2,000,000,000	30,000,000
4,000,000	60,000	3,000,000,000	45,000,000

5,000,000	75,000	4,000,000,000	60,000,000
6,000,000	90,000	5,000,000,000	75,000,000
7,000,000	105,000	6,000,000,000	90,000,000
8,000,000	120,000	10,000,000,000	150,000,000
9,000,000	135,000	20,000,000,000	300,000,000
10,000,000	150,000	30,000,000,000	450,000,000
20,000,000	300,000	40,000,000,000	600,000,000
30,000,000	450,000	50,000,000,000	750,000,000
40,000,000	600,000		

Formula

	$\frac{X \times 3.0}{200}$	+ 500	Where X=Value of the Share Capital And 500 is cost of stamping original copy of Memorandum and Articles of Association
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For example

$\frac{100,000 \times 3.0}{200}$	+ 500	
	=	1,500 + 500
	=	2,000