AN INVESTIGATION OF THE INFLUENCE OF CORPORATE INCOME TAX INCENTIVES ON THE TAX COMPLIANCE BEHAVIOUR OF MICRO AND SMALL COMPANIES IN NIGERIA

By

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SUMMARY

The Companies Income Tax Act provides the architecture for corporate income taxation (CIT) in Nigeria. It specifies the rate, the tax base and contains the bulk of the incentives to which qualified corporate taxpayers are entitled. This thesis investigates the influence of incentives on the compliance behaviour of micro and small companies (MSCs) in Nigeria. By Nigeria's standard, these are companies which: (1) employ between 1 to 49 persons and/or own assets (excluding land and building) valued at less than NGN 100million; or (2) are either private limited companies or one-man businesses. In the context of the Nigerian tax system, MSCs are corporate taxpayers with turnover of less than NGN 200 million. This choice of research population is a consequence of the globally acknowledged niche occupied by MSCs *vis-à-vis* the of the socio-economic objectives of any state.

In the course of the study, the formulated research questions were resolved using a multi-stage mixed methods framework which allowed for the fusion of qualitative and quantitative epistemology as well as facilitated the introduction of pragmaticism into the research process. The thesis, *inter alia,* identified gaps in the administrative regime of CIT incentives in Nigeria and highlighted the fact that they have the potential to introduce uncertainty into the tax system. In addition, it revealed that the regulatory regime for the role and services of tax intermediaries within the tax system, in terms of current standards and reality, is sub-optimal. On the basis of a survey of a small sample of MSCs, it was concluded that the influence of tax intermediaries with regard to the compliance behaviour of MSCs was marginal. Reason for this was traced to the fact that the role and services of the latter *vis-à-vis* clients who are MSCs are actuated by variables which are within the psycho-social space of the tax intermediairies and the desires/requests of the MSC. This dismisses, in the context of Nigeria, the notion that the tax intermediary is the initator of every tax dodge.

Based on the findings, the thesis, *inter alia*, recommended a re-orientation in the conceptualisation of tax compliance as the prevailing theoretical premise for the extant tax law and policy does not contemplate that non-economic factors and referents outside the realm of taxation are capable of influencing tax compliance behaviour. In addition, recommendations with the capacity to change the law, policy and administrative regime relating to CIT incentives as well as the role and services provided by tax intermediaries were made after an examination of the situation in Kenya and South Africa.

LIST OF ABBREVIATIONS AND ACRONYMS

AC	-	Appeal Cases
All ER	-	All England Reports
All NLR	-	All Nigeria Law Reports
ANAN	-	Association of National Accountants of Nigeria
Anor.	-	Another
ATAF	-	African Tax Administration Forum
ATO	-	Australian Tax Office
BEPS	-	Base Erosion and Profit Shifting
BRITACOF	-	Belt and Road Initiative Administration Cooperation Forum
BRITACOM	-	Belt and Road Initiative Administration Cooperation Mechanism
CIR	-	Commissioner of Inland Revenue (South Africa)
	-	Commissioner of Inland Revenue (UK)
CITN	-	Chartered Institute of Taxation of Nigeria
CLR	-	Commonwealth Law Reports
CPA	-	Certified Public Accountant
DC. Cir.	-	District of Columbia Circuit
F. 3d	-	Federal Reporter, US Court of Appeal for the Third Circuit
FCA	-	Federal Court of Appeal (Canada)
FIRS	-	Federal Inland Revenue Service
FWLR	-	Federation Weekly Law Report
GDP	-	Gross Domestic Product
HMRC	-	Her Majesty’s Revenue and Customs
HNWI	-	High Net Worth Individual
IBA	-	International Bar Association
ICAEW	-	Institute of Chartered Accountants of England and Wales
ICAN	-	Institute of Chartered Accountants of Nigeria
IMF	-	International Monetary Fund
IRC	-	Internal Revenue Commissioner
IRM	-	Internal Revenue Manual
IRS	-	Internal Revenue Service
JTB	-	Joint Tax Board
KB	-	Law Reports, King’s Bench
KRA	-	Kenya Revenue Authority

LFN	-	Laws of the Federation of Nigeria
LPELR	-	Law Pavilion Electronic Law Report
MENA	-	Middle East and North Africa
NCLR	-	Nigeria Commercial Law Report
NMLR	-	Nigeria Monthly Law Report
NRLR	-	Nigeria Revenue Law Report
NSCC	-	Nigeria Supreme Court Cases
NTP	-	National Tax Policy
NWLR	-	Nigeria Weekly Law Report
NZLR	-	New Zealand Law Reports
OECD	-	Organisation for Economic Co-operation and Development
Ors.	-	Others
Pt.	-	Part
PTCIJ	-	Premium Times Centre for Investigative Journalism
QCA	-	Qualified Capital Asset
QCE	-	Qualified Capital Expenditure
SARS	-	South African Revenue Service
SATC	-	South African Tax Cases Report
SC	-	Judgments of the Supreme Court
SCNJ	-	Supreme Court of Nigeria Judgment
TADAT	-	Tax Administration Diagnostic Assessment Tool
TJN-A	-	Tax Justice Network Africa
TLRN	-	Tax Law Reports of Nigeria
TPB	-	Theory of Planned Behaviour
TRA	-	Theory of Reasoned Action
UN	-	United Nations
URA	-	Uganda Revenue Authority
WACA	-	West Africa Court of Appeal
WLR	-	Weekly Law Reports

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CHAPTER ONE: PRELIMINARY ISSUES

1.1 INTRODUCTION

Taxation is part of public finance, a discipline that focuses on the mechanics of balancing the revenue and expenditure side of the budgetary process of a state[1] as well as involves the use of taxes by government to achieve policy objectives ranging from expenditure financing to the execution of its fiscal functions.[2] The opinion of the Nigerian judiciary in *Eti-Osa Local Govovernment v Jegede*[3] that taxation is a tool of social engineering in the hands of a responsive and responsible government is in accordance with the above assertion. Taxation has micro and macro-economic consequences for the economy and all economic actors within the state as it impacts on price, disposable income, demand and supply[4] as well as the marginal propensity to consume within the economy.[5] In addition, it affects the national income and employment indices of the state, catalyses income and substitution effects[6] as well as determine trade flow.[7]

In the light of the foregoing, this research seeks to investigate the relationship between tax incentives and the tax compliance behaviour of businesses in the context of Nigeria. This, however, is the first chapter of the research and it is dedicated to setting the tone and

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1 Rosen, HS, *Public Finance* (3rd ed) (United States: Richard D. Irwin Inc., 1992) 5
2 See Musgrave, R & Musgrave, P, *Public Finance in Theory and Practice*, 5th edn, (United States: Tata McGaw-Hill, 2004) 3-14 (Musgrave & Musgrave) for a discourse on the fiscal functions of the state
3 NRLR 1 [2013] 99, 113
4 Black P, *et al* (eds), *Public Economics*, 5th edn. (South Africa: OUP, 2012) 170-181
5 Dwivedi, DN, *Managerial Economics* 7th edn. (India: Vikas Publishing, 2008) 126-127
6 Musgrave & Musgrave, supra note 2, 297-314
7 Solleder, O, 'Trade Effects of Export Taxes' (2013) *Graduate Institute of International and Development Studies Working Paper 08/2013*, 5-10

outlining the research. It begins by attempting to define taxation and taxes. It also describes the context of the research, i.e. the Nigerian tax system. Lastly, it gives an overview of the structure of the entire study.

1.2 DEFINING TAXATION AND TAXES

Taxation is all that goes into the process of levying or administration of a tax. According to Berenson, it is the most critical of all the activities the state takes up.[8] He further justifies the existence of tax in society thus:

> Without extracting revenue from society, a state cannot function and cannot do what it sets out to do. Taxation is the sine qua non of the contemporary state and the social contract. When taxpayers pay their taxes, they enter into a financial relationship with their state, a financial reconciliation, if you will, relinquishing private information about their economic activities while trusting the state to treat them and that information fairly and confidentially.[9]

Taxation is driven and shaped by policy, law and administration. Tax policy is a function of prevailing socio-political as well as economic factors in the state.[10] It heralds and shapes the tax law of the state. Tax law is the gamut of primary and secondary legislative instruments and it is the basis of taxation. Its importance stems from the fact that no tax can be imposed on an entity without words in an Act of Parliament clearly showing an intention to lay a burden on the citizenry.[11] Furthermore, tax administration or the administrative dimension of taxation can be described as a bye-product of tax law and it involves uniform application of the later to similarly situated tax payers.[12] Tax administration also gives value to tax policy and in its absence, tax policy is inconsequential and of no effect[13] and liable to being declared illegal.

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8 Berenson, MP, *Taxes and Trust: From Coercion to Compliance in Poland, Russia and Ukraine* (United Kingdom: CUP, 2018) 1

9 Berenson supra note 8

10 Bird, RM & Zolt, EM, 'Introduction to Tax Policy Design and Development', being draft prepared for World Bank course on Practical Issues of Tax Policy in Developing Countries April-May 2003, 4. Available at http://www1.worldbank.org/publicsector/LearningProgram/PracticalIssues/papers/introduction%20to%20tax%20policy/WBI%20Module%201(Bird&Zolt)April10.doc. (accessed 21 November 2014)

11 See *Coltness Iron Company v Black* (1881) 6 App. Cas. 315 (per Lord Blackburn). See also *IRC v Holmden* [1968] AC 685, 712 where Lord Wilberforce, stated that 'A man is not to be taxed by a dilemma: he must be taxed by positive provision under which the Crown can satisfactorily show that he is fairly and squarely taxed'

12 Mitchell, GW, 'Tax Administration: Objectives, Methods, and Tests of Adequacy' (1948) Vol. 41 *National Tax Association* 45, 47

13 Bird & Zolt, supra note 10, 23

That having been said, what is tax? Literature is replete with different definitions for tax.[14] What is however obvious from the definitions is that taxes are essentially:

a. levied on individuals and companies;
b. one of the means by which a government raises revenue to fund public expenditure; and
c. there is no specific *quid pro quo* for the tax paid.[15]

Of interest to this research is the criterion of the absence of *quid pro quo*. Absence of *quid pro quo* means that the imposition of taxes does impose on the state a liability to every individual taxpayer or make the state obligated to distribute tax revenue or put same to use in a manner that would guarantee that the enjoyment or utility to be derived by every entity on whom a tax burden lies is equivalent to or contemporaneous with the tax contribution of the latter to the *fiscus*. This distinction is important as it sets taxes apart from fines, penalties,[16] regulatory or user charges and fees for a service.[17] The absence of *quid pro quo* also means that the capacity to levy tax is not a function of a state's ability to offer and/or provide specific recompense to taxpayers. Rather, it is a power inherent in the sovereign and the obligation of those taxed.[18] This is at variance with some theories of taxation which

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14 See generally, Musgrave & Musgrave, supra note 2, 212; Thuronyi, V, *Comparative Tax Law* (The Hague: Kluwer Law International, 2003) 46-54; Black *et al*, supra note 4, 163; Burman, LE & Slemrod, J, *Taxes in America: What Everyone Needs to Know* (New York: Oxford University Press, 2013) 5; Nightingale, K, *Taxation Theory and Practices*, 4th ed (England: Pearson Education Ltd, 2002). Also see, Olokooba, SM, *Nigerian Taxation: Law, Practices and Procedures Simplified* (Singapore: Springer, 2019) 3-10 where the author after presenting definitions concluded that no one definition provides an encompassing meaning of tax

15 Kujinga, BT, 'A Comparative Analysis of the Efficacy of the General Anti-Avoidance Rule as a Measure Against Impermissible Income Tax Avoidance in South Africa' (2014) (Unpublished LLD thesis submitted to the University of Pretoria, South Africa) 12. Also, in *Matthews v Chicory Marketing Board (Victoria)* (1938) 60 CLR 263 the High Court of Australia defined tax as 'a compulsory exaction of money by a public authority for public purposes, enforceable at law, and … not a payment for services rendered'

16 A penalty is a sum paid and received from an individual sequel to a breach or failure to discharge an obligation. See *R v Barger* (1908) 6 CLR 41 at 99 (*per Issacs* J)

17 Thuronyi, supra note 14, 45. Bird and Tsiopoulos provided further difference between user charges and taxes when they stated that: 'The main economic rationale of user charges, therefore, is not the generation of revenue but the promotion of economic efficiency' Thus, user charges promote efficiency in two ways: (1) by providing information to public sector suppliers about how much clients are actually willing to pay for particular services and (2) by ensuring that citizens value what the public sector supplies at least at its (marginal) cost. Bird, RM & Tsiopoulos, T, 'User Charges for Public Service: Potentials and Problems' (1997) Vol. 45 (No. 1) *Canadian Tax Journal* 25, 36. In *Air Caledonie International v The Commonwealth* (1988) 165 CLR 462 it was held that for a financial imposition to be legally defined as a 'user charge or fee for a service', the person required to make the payment must either directly receive the service or requested their provision. However, the existence and consequence of this distinction is not appreciated amongst scholarship. See Odinkonigbo, JJ & Ezeuko, JJ, 'Does Nigeria follow the Contemporary Global Trend in Tax Dispute Resolution Strategy? (2014) Vol 12 *Nigerian Juridical Review* 151, 152-153 where the authors reach a conclusion which does not take into cognisance this distinction after a review of definitions proffered by authors which lack the same distinction

18 Section 24(f) of the *Constitution of the Federal Republic of Nigeria 1999* (as amended) (CFRN) makes it the constitutional obligation of every citizen

provide a foundation for the compliance direction of the taxpayer (i.e. the individuals' decision to pay or not to pay tax).

One of such is the thesis that taxation is the basis for the relationship between the state and the governed.[19] The premise for this opinion is the idea that states that desire and seek the expansion of tax revenue would most likely be faced with demands of reciprocity in the form of service provision and accountability from the source of the tax revenue (i.e. the citizens/taxpayers). Prichard opined that this perception is reflected in accounts capturing the role of tax bargaining in the emergence of representative political institutions in early modern Europe, the well-known American revolutionary slogan "no taxation without representation" and that it has the propensity to yield broad as well as diverse governance gains.[20] The difference between this perception and the lack of *quid pro quo* variant is the fact that the latter conceives taxation within the penumbra of sovereignty[21] while the former conceives taxation in terms of cost-benefit relationship for both the state and the taxpayer (i.e. the governed).

Whether taxes are perceived as resources forfeited by the taxpayer to the government in exchange for the public goods and services provided or the price paid by the governed for democratisation and its benefits,[22] Prichard's position gives taxation the hue of a contract.[23] It makes the existence of *quid pro quo* in the form of public goods and services an essential prerequisite for the state's claim to the right to levy a tax, and vice versa. From this perspective, the right to tax is not absolute and extolling this theory could be interpreted as a challenge to the power of the state as sovereign to levy tax. It also raises the question of

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19 See Mohdali, R, *et al*, 'A cross-cultural Study of Religiosity and Tax Compliance Attitudes in Malaysia and Turkey' (2017) Vol. 15 (No. 3) *eJournal of Tax Research* 490, 491 where it was described as a 'mechanism that determines the level of social solidarity and social participation of the country'

20 Prichard, W, *Taxation, Responsiveness and Accountability in Sub-Saharan Africa: The Dynamics of Tax Bargaining* (United Kingdom: CUP, 2015) 1-8. See also Prichard, W, 'What Have We Learned About Taxation, State building and Accountability?' (2016 May) *ICTD Summary Brief 4*, 1-8

21 At the core of this argument is the proposition that taxation is an inherent or essential component of sovereign status. Christians highlights the relationship and copiously review relevant literature. See Christians, A, 'Sovereignty, Taxation and Social Contract' (2008) Paper No. 1063 *University of Wisconsin Law School Legal Studies Research Paper Series* 1, 6-16. Available at https://ssrn.com/abstract=1259975 (accessed 19 March 2018)

22 Ross, M, 'Does Taxation Lead to Representation' (2004) Vol. 34 *British Journal of Political Science* 229, 34

23 See Bird, RM & Zolt, EM, 'Fiscal Contracting in Latin America' (2015) Vol. 67 *World Development* 323-335; Timmons, JF, 'The Fiscal Contract: States, Taxes and Public Services' (2005) Vol. 57 (No.4) *World Politics* 530–567 where the authors suggest that optimum taxation would be achieved where the state approaches taxation like a contract; negotiating, agreeing and actually keeping terms to so as to ensure greater compliance Also see, Fjeldstad, O, *et al*, 'Peoples' Views of Taxation in Africa: A Review of Research on Determinants of Tax Compliance' (2012) *Chr. Michelsen Institute Working Paper 7*, 4 where it was argued that the presence of government expenditures has the potential to motivate tax compliance; especially where the former is directed at or focused on the provision of goods and services that are priority to the citizenry

what should be the fate of the state when social goods and services that ought to be provided using paid taxes are absent or are provided by non-state actors or the citizens themselves.

The foregoing highlights the fact that taxes and taxation amounts to more than the state putting the largest possible shovel into the stores of the citizens.[24] Beside the foregoing and the fact that it is an important development policy instrument used for the transformation of economies as well as the correction of market imperfections, there are other conceptualisations of taxation and taxes. This Bird and Zolt confirmed thus:

> The dominant tax policy ideas in different countries (such as equity, efficiency, and growth), along with the dominant economic and social interests (such as capital, labor, regional, ethnic group, rich, and poor) and the key political institutions (democracy, decentralization, budgetary), and economic institutions (free trade, protectionism, macroeconomic policy, and market structure) all interact in tax policy formulation and implementation. Taxation - its level, structure, and administration - is one of the major battlegrounds on which these complex forces meet.[25]

Although von Haldenwang and von Schiller chose a path that focuses on the political economy of taxation, they affirmed the foregoing when they stated that:

> There are probably few issues in everyday politics as contested and conflictive as taxation. Citizens and companies tend to have strong opinions on how much they pay (usually too much) and how much they get in return (usually too little).[26]

Berenson's description of tax is also within the same paradigm as the foregoing. He avers that:

> Tax collection is a great policy arena to investigate the role and function of the state. Taxation is such a wonderful and increasingly popular topic for study in the social sciences precisely because it lies at the centre of state–society interactions, at the heart of the fiscal state and at the foundation of a successful market economy. Getting citizens to pay taxes, in particular, presents a major, if not the central, problem for states pursuing greater economic development and growth.[27]

The above notwithstanding, taxation catalyses developments and reactions at the firm or house level with the potential to countervail macro or state objectives. For example, taxes affect entrepreneurial (business) activities. Cullen and Gordon argued that this is possible because of the privileges associated with incorporation as well as the universal trend of applying different rate(s) to business and wage (personal) income.[28] This means that

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24 Lord Clyde in *Ayrshire Pullman Motor Services & Ritchie v CIR* (1929) 14 TC 754

25 Bird & Zolt 2015, supra note 23, 325

26 von Haldenwang, C & von Schiller, A, 'The Politics of Taxation: Introduction to the Special Section' (2016) Vol. 52 (No. 12) *The Journal of Development Studies* 1685

27 Berenson supra note 8, 8-9

28 Cullen, JB & Gordon, RH, 'Taxes and Entrepreneurial Risk-taking: Theory and Evidence for the U.S.' (2007) Vol. 91 *Journal of Public Economics* 1479

taxation has both negative and positive impacts on the economy and economic actors therein. This relationship would be explored subsequently.[29] At this point, attention shifts to a dsecription of the research context.

1.3 RESEARCH CONTEXT – THE NIGERIAN TAX SYSTEM

Although this study seeks to determine *inter alia* the relationship between taxation and trade/business behaviour, noteworthy is the fact that it is not embarked upon for the purpose of presenting a deterministic model. A deterministic model is one where the combination of the same set of variables would yield the same result notwithstanding time and space. A deterministic model is the product of a philosophical view (referred to as determinism) that human behaviour is caused by biological and psychological factors specific to individuals (i.e. biological determinism) and/or the structural factors that comprise one's environment (i.e. environmental determinism).[30] It argues that the nature of a person and his/her actions are the product of or actuated by a chain of causation over which they mostly have no rational control and for which they may not be responsible.[31] In the context of this research it would mean that a taxpayer's behaviour is the product of biological and psychological factors specific to the 'directing mind and will' of the taxpayer and/or the prevailing realities of the environment in which the 'directing mind and will' operates. That is, output (i.e. tax compliance behaviour) for which the taxpayer should be held responsible for is fully determined by initial conditions specific to and independent of the taxpayer.

A flaw of the foregoing view is that the individuals behind the corporate taxpayer are conceived as machines whose behaviour is the product of biology, psychology as well as environmental reinforcers. It also fails to take into cognisance the fact that in life and nature there is no constancy of outcome.[32] If human behaviour is deterministic, why is there in

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29 See chapters two and four

30 See Grunthaler, AJ, *The Challenge of Determinism* (2005) 1. Available at http://www.sophia-project.org/uploads/1/3/9/5/13955288/grunthaler_determinism.pdf (accessed 11 April 2018) where it was argued that determinism takes different forms depending on the specific antecedent cause assumed by the proponent

31 Morse, SJ, 'Determinism and the Death of Folk Psychology: Two Challenges to Responsibility from Neuroscience' (2007) Vol. 9 (Issue 1) *Minnesota Journal of Law, Science & Technology* 1, 14

32 For research which challenges determinism, see Vaidman, L, 'Quantum Theory and Determinism' (2014) Vol. 1 (Issue 1-2) *Quantum Studies: Mathematics and Foundations* 5, Grunthaler, supra note 30; Maslow, AH, 'A Theory of Human Motivation' (1943) Vol. 50 (4) *Psychological Review* 370-396. A ground of challenge would be that with regard to business, the attainment of sustained generation of income and/or profit maximisation from the optimum use of finite resources is not an output that is independent of the behaviour of the directing will and mind of the business. Hence the tax compliance behaviour of the business is not determined by initial conditions specific to and independent of the taxpayer. See chapter 3 (paragraph 3.3: Conceptual Framework) where it is argued that taxpayer compliance behaviour is the product of a calculus involving the consideration and interaction of a plethora of variables as well as the risk generated by the prevailing micro and macro-economic issues associated with the location of the company

existence the puzzle of compliance.[33] A seeming opposite view to determinism is that human behaviour (inclusive of taxpayer compliance behaviour) is at best stochastic or probabilistic. Thus, if a model emerges at the end of this research, it is bound to be stochastic as the research is situated in the real world characterised by uncertainty of outcomes as a result of the constantly interacting variables.

To situate the research in time and space, the context is the Nigerian tax system. The Nigerian tax system is part of Nigeria, a country characterised by lacklustre growth, high inflation, high fiscal deficit as well as a fragile subnational balance sheet, the existence of multiple foreign exchange rates, a persistently high consumer price index, bourgeoning nationwide insecurity, etc.[34] These socio-economic conditions and variables, influence tax compliance behaviour within the tax system[35] as they interact with and shape the three pillars (i.e. law, policy and administration) on which it stands. Hence, it is surmised that chapter two of the National Tax Policy (NTP) which provides policy guidelines targeted at ensuring reliable sources of revenue to drive economic growth[36] is an outcome of the recognition of the prevailing socio-economic conditions and variables by the government.

Nigerian tax laws manifest their interaction with the socio-economic conditions and variables of the state in a variety of ways. Of relevance is the division of the Nigerian tax space into three tiers and their further balkanisation into tax systems equivalent in number to the number of constitutionally recognised political units existing in Nigeria.[37] Thus, based on the delineation of the Nigerian tax system by law, there ought to be 818 tax authorities administering the 818 tax systems that constitutes the Nigerian tax system. By virtue of the ELL, the FG has sole legislative preserve over 67 items amongst which are customs and excise duties, stamp duties, the taxation of incomes, profits and capital gains.[38]

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33 See chapter 2 (paragraph 2.4.1: Perspectives) for discussion centred on the puzzle of compliance

34 See IMF, 'Staff Report for the 2018 Article IV Consultation' (7 March 2018) *Country Report No.18/63*. Available at http://www.imf.org/en/Publications/CR/Issues/2018/03/07/Nigeria-2018-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-45699 (accessed 19 March 2018)

35 See Fjeldstad, supra note 23, 8 where it was suggested that the prevailing socio-political conditions and variables in a state influences tax compliance behaviour therein

36 Federal Ministry of Finance, *National Tax Policy* (Abuja: FMF, 2017) 6-11

37 The CFRN defines the Nigerian state which is a federal system dating back to 1954, when the United Kingdom introduced a quasi-federal constitution into the then colony of Nigeria. See Wali, WO, 'The Development of Federalism in Nigeria: A Historical Perspective' in AT Gana & SG Egwu (eds.) *Federalism in Africa: Framing the National Question*, Volume 1 (Trenton: Africa Research & Publications, 2003) 74-75 Presently, Nigeria consists of three tiers of government: the federal government (FG) at the top, the 36 subnational state governments (plus the Federal Capital Territory(FCT)) at the centre and 774 local government councils (plus the 6 Area Councils of the FCT) at the bottom. See section 3 and First Schedule, CFRN. The CFRN further delineates the legislative powers of government into exclusive legislative list (ELL) and the concurrent legislative list (CLL). See Part I and II of the Second Schedule, CFRN

38 Items 16, 58 and 59, Part I, Second Schedule CFRN

This power is exercised by the National Assembly for the FG[39] and FCT.[40] On the part of the states, their law-making powers are limited to the items in CLL[41] and the residual legislative list (RLL).[42] With regard to taxation, the powers of the states[43] is limited to the collection of taxes on capital gains, income or profit and stamp duties[44] subject to any Act of the FG on the subject of interest.[45] Items 9 and 10 of the CLL also empowers the government of a state to legislate for its local government councils with regard to the collection of any tax not reserved for the FG. They provide that:

> 9. 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.

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39 Section 4 (2) and (3), CFRN

40 Pursuant to section 299, CFRN, the FCT has the status of a state of the federation. Hence the legislative, judicial and executive powers vested respectively in the House of Assembly, the courts of a state and the governors of state rests on the National Assembly, the courts established for the FCT and the President of the Federation of Nigeria respectively. In exercise of the power conferred on it by section 299 CFRN, the National Assembly enacted the Federal Capital Territory Internal Revenue Service Act 2015 (FCTIRSA) pursuant to which the Federal Capital Territory Internal Revenue Service (FCTIRS) was established. Note that with the establishment of the FCTIRS, the jurisdiction of FIRS has been reduced. This is because sections 22 (3), 24, 26, 28, 31, FCTIRSA has stripped FIRS of jurisdiction over the personal income tax of FCT residents. However, this does not extend to the other persons under section 2(1) (b), PITA (i.e. officers of the Nigerian foreign service, members of the armed forces, the Nigerian police and non-residents) as FIRS jurisdiction over their personal income tax is intact

41 Section 4 (7) (a) CFRN

42 The RLL is not a list *per se.* Unlike the ELL and CLL, it encompasses what is left after matters which the CFRN empowers both the FG and the governments of the federating units to legislate upon have been subtracted from the totality of the legislative powers of the sovereign. The FG has no power to legislate on any matter within the RLL. See the Supreme Court decisions in *Hon Minister for Justice and Attorney-General of Federation v Honourable Attorney-General of Lagos State* (2013) 12 TLRN 55; *Attorney General of Abia State v Attorney General of the Federation* (2006) 16 NWLR (Pt. 1005) 265; *Attorney General of Ondo State v Attorney General of Federation* (2002) 9 NWLR (Pt. 772) 440.

43 The legislative powers of the states of the federation are vested in the House of Assemblies of the respective states. See section 4 (7) CFRN

44 See Items 7-10, Part II, Second Schedule CFRN by virtue of which states only collect (and not legislate on) the taxes listed therein. In *Lagos State Internal Revenue Board v Motorola Nigeria Ltd and Anor* [2013] 12 TLRN 181, 196-198 it was held that the collection of personal income tax and matters ancillary to it is the sole preserve of the states of the federation by virtue of the provisions of item 7 of the CLL

45 This limitation of the legislative powers of state governments is as a result of the application of the doctrine of covering the field. The doctrine espouses that the law enacted by the FG is supreme if the FG has concurrent law-making powers with the states on a subject. The doctrine is a constitutional principle by virtue of section 4(5) CFRN. In *Attorney General Ogun State v Attorney General Federation* (1982) 13 NSCC 1 the foregoing was affirmed by the Supreme Court when it held that legislation made by the National Assembly on matters within the CLL have supremacy over that of States on the same matter. It further held that a law enacted by a state is void either on the ground of inconsistency as per section 4(5) or on the ground of covering the field where the FG in a clear, exhaustive and exclusive manner enacts legislation on a subject within the CLL. See also *INEC v Alhaji Abdulkadir Balarabe Musa* (2003) 2 NWLR (Pt 806) 72 (SC) and *Hon. Minister for Justice and Attorney General of Federation v Honourable Attorney General of Lagos State* (2013) 12 TLRN 55. However, where an Act of the National Assembly is complementary and impliedly or expressly does not project an intention to provide a complete statement of the law governing the matter, inconsistency cannot exist and the Act cannot be held to have covered the field in a situation where there is in existence an enactment by a state government. See generally Oluyede, PAO, *Constitutional Law in Nigeria*, (Nigeria: Evans Bros. (Nig.) Ltd, 1992), 77; Nwabueze, B, *Federalism in Nigeria under the Presidential Constitution*, 2nd edition (Ibadan: Spectrum Books, 1990) 43

10. 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.

The import of the foregoing is that the CFRN does not vest any legislative power in the third tier of government in Nigeria (i.e. the local government councils). Consequently, they cannot purport to impose or collect any tax (including levies, rates, charges, etc.) except to the extent provided for by the legislation of a House of Assembly. In affirming the foregoing, the Court of Appeal in *Shell Petroleum Development Company v Burutu Local Government Council*[46] held that it was *ultra vires* for a local government council to levy rates on oil storage tanks or tank farms and oil pipelines as it did not have the legislative capacity to so do. In addition, the decisions in *Eti-Osa Local Government v Jegede*[47] and *Thompson & Grace v Government of Akwa Ibom & Others*[48] put the fact that the tiers of government cannot enact legislation or impose taxes that are outside their jurisdiction beyond conjecture. In *Eti-Osa Local Government,* the appellant - a local government in Lagos State - had imposed a tax which was outside the jurisdictional limit of local governments as delineated by the *Taxes and Levies (Approved List for Collection) Act* (TLA).[49] In its decision, the trial court held that the powers of the tiers of government to enact revenue legislation and collect taxes must be exercised in accordance with the provisions of the enabling law and that anything outside of those provisions will be futile.[50]

A similar decision was handed down in the case of *Thompson & Grace* where the first and second respondents sought to impose a business registration levy that was higher than that provided for in the TLA which delineated their respective jurisdictions with regard to collection of taxes. On this premise, the applicant sought an order of prohibition against the imposition of any levy beyond that contained in the TLA. While affirming that the TLA delineates the respective sphere of authority of each tier of government in Nigeria, the court emphatically stated that the first and second respondents could not depart from the provisions of the enabling law as it relates to the exercise of their power to collect taxes.[51]

46 [1989] 9 NWLR (Pt. 165) 318
47 NRLR 1 [2013] 99
48 [2010] 3 TLRN 94
49 Cap. T2 LFN 2004 (TLA)
50 *Eti-Osa Local Government v Jegede*, supra note 47, 112
51 *Ibid*, 110

Hence the conclusion is that the CFRN effectively created a multi-tiered tax system with the different tiers of government having clearly demarcated jurisdictions.[52] To facilitate the exercise of their powers, the tiers of government are empowered by law to establish agencies to administer their respective stratum of the tax system.[53] In addition, the TLA delineates the jurisdiction of the tiers of government with regard to tax administration (and collection) within the Nigerian tax system. Section 1 of the TLA provides that, notwithstanding anything contained in the CFRN or any other enactment or law, the Federal, State and Local Governments shall respectively be responsible for collecting the taxes and levies listed in Parts I, II and III of its Schedule. Table 1.1 below is a synopsis of the Nigerian tax system. It summarises the provisions of various pieces of legislation, what is obtainable within the tax system with regard to the jurisdiction of the three tiers of government and the obligations of taxpayers within the respective jurisdictions.

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52 See Richards, NU, 'An Examination of the Powers to Impose and Collect Consumption Taxes in Nigeria' (2017) Vol. 8 (No. 2) *Ebonyi State University Law Journal* 1-13 and Salau, S & Atitola, B, 'Reflections on the Constitutionality of the Hotel Occupancy and Restaurant Consumption Law of Lagos State 2009' (2010) 1 (No. 2) *NJBL* 7 for discussions which highlights the constitutional challenges associated with the administration of consumption taxes by state governments in Nigeria. Also see the decision in *Nigeria Soft Drinks Company v Attorney General of Lagos State* [1987] 2 NWLR (Pt. 57) 444; *Attorney General of Ogun State v Aberuagba* (2009) 1 TLRN 82 for conflicting decisions with regard to the constitutionality of state consumption taxes

53 See footnotes 54, 55 and 56 below

Table 1.1: Summary of the Nigerian Tax System, the administrative jurisdiction of the tiers of government and burden points

S/N	Tax Type	The Nigerian Tax System			Burden Point
		Federal[54]	State[55]	Local[56]	
1	Personal Income Tax[57]	●	●		● [58]
2	Companies Income Tax[59]	●			●
3	Petroleum Profits Tax[60]	●			
4	Value Added Tax[61]	●			●
5	Capital Gains Tax[62]	●	●		●

54 The federal stratum is administered by FIRS which was established and vested with jurisdiction by section 1 and 2 FIRSEA. The FIRS is a semi-autonomous revenue authority (SARA) under the supervision of the Federal Ministry of Finance headed by the Minister of Finance. Note that the latter, pursuant to section 60 FIRSEA can only give to FIRS or its chief executive officer directives which are of a general nature or relating generally to matters of policy. See Moore, M, *et al*, *Taxing Africa: Coercion, Reform and Development* (London: ZED Books Ltd, 2018) 121-123 for an analysis of the SARA-model of revenue administration in Africa and its impact on the revenue-raising efficiency of African states

55 Pursuant to section 87 (1) PITA, each state of the federation ought to establish a State Board of Internal Revenue (SBIR) to administer their tax space. Note that the constitutional premise for the capacity of State Government to collect taxes on capital gains, income or profit as well as stamp duties is the CLL (specifically items 7-10, Part II, Second Schedule CFRN). See also *Lagos State Internal Revenue Board v Motorola Nigeria Ltd and Anor* [2013] 12 TLRN 55, 196-197 where the Nigerian Court of Appeal confirmed this submission. Similarly, the tax authorities at the state level ought to be SARAs. In 2018, a survey carried out by the Joint Tax Board (JTB) revealed that of the 24 responding SBIRs, only 6 enjoy full administrative and financial autonomy. See JTB, 'Survey Analysis: VAIDS, Autonomy & Automation' (December 2018) Vol. 1 (Issue 1) *Quarterly Digest* 43, 44 and 46

56 Pursuant to section 90 PITA each of the 774 local governments and 6 area councils of the FCT is supposed to establish a Local Government Revenue Committee (LGRC) vested with the responsibility of assessing and collecting all taxes, fines and rates within its jurisdiction as well as account for them in the manner to be prescribed by the chairman of the local government. See section 43 and 44 FCTIRSA for a similarly oriented provision with regard to the FCT Area Councils

57 Levied pursuant to section 3 PITA on the annual income of individuals (other than corporations) using a progressive scale thus: first NGN300,000 at 7 percent, next NGN300,000 at 11 percent, next NGN500,000 at 15 percent, next NGN500,000 at 19 percent, next NGN1,600,000 at 21 percent and above NGN3,200,000 at 24 percent. Note that, because of the interaction of the FCTIRSA and Part I TLA the jurisdiction of the FG is limited to members of the armed forces of the Federation, the Nigeria Police and staff of the Ministry of Foreign Affairs and non-resident individuals. The Part II TLA also limits the jurisdiction of states to persons who are part of a *pay-as-you-earn* (PAYE) scheme and those in self-employment (and subject to self-assessment) within their territory

58 See section74 PITA (penalty for failure to deduct or remit PAYE deduction) and section 81 PITA (obligation of employer who operates a PAYE system). These arises where an employer has a minimum of five employees

59 Levied pursuant to the *Companies Income Tax Act* Cap. C21 LFN 2004 (CITA). Pursuant to sections 9 and 13 CITA, the tax is charged at 30 percent for each year of assessment on the taxable profit of any Nigerian or non-resident company accruing in, derived from, brought into, received in or attributable to Nigeria. See chapter 4 for a review of the legal framework for CITA administration in Nigeria

60 Levied pursuant to the *Petroleum Profits Tax Act* Cap. P13 LFN 2004 (PPTA)

61 Levied pursuant to the *Value Added Tax Act* Cap V1 LFN 2004 (as amended) (VATA). Pursuant to the Act, 5 percent of the price of the goods or services is charged the consumer as value added tax. See section 7(1) VATA (tax administered by FIRS - the tax administrating agency of the FG); section 8, (registration mandatory for all taxable persons - LTD inclusive); section 11 and 15(obligations of taxable person). Noteworthy is the decision in *CNOOC Exploration and Production Nigeria Limited v Attorney-General of the Federation & 2 Others* (2011) 4 TLRN 185 (where it was held that sales of intangibles/ incorporeal are VAT exempt in Nigeria). Also see Aniyie, IA & Igbinosa, BO, 'CNOOC Exploration and Production Nigeria Limited v Attorney-General of the Federation & 2 Others: A Note' (2016) Vol. 14 *Nigerian Juridical Review* 67-78 where the decision in CNOOC was reviewed and its implication for VAT administration in Nigeria highlighted

62 Levied pursuant to the *Capital Gains Tax Act* Cap. C1 LFN 2004 (CGTA) which creates a regime that makes chargeable to tax, at 10 percent the gains accruing from the disposal of qualified capital assets. Part I TLA limits the jurisdiction of the FG to capital gains tax on residents of the FCT, body corporate and non-resident individual; while Part II TLA limits the jurisdiction of states to individuals only

S/N	Tax Type	The Nigerian Tax System			Burden Point
		Federal[54]	State[55]	Local[56]	
6	Stamp Duties[63]	●	●		●
7	Education Tax[64]	●			●
8	Information Technology Levy[65]	●			
9	Tenement Rate[66]			●	
10.	Pool, Betting, lottery, Gaming and Casino		●		
11.	Business Premises Registration		●		●
12.	Development levy		●		●
13	Naming of street[67]		●	●	
14	Market taxes[68]		●	●	
15.	Slaughter slabs[69]		●	●	
16.	Marriages, Birth and Death registration fees			●	
17	Illegal/wrong parking fee			●	
18.	Radio and Television licence			●	
19.	Right of occupancy[70]		●	●	●
20.	Road taxes		●		●
21	Customary burial ground fees			●	
22.	Sign boards and advertisement permits			●	●
23.	Merriment and road closure levy			●	
24.	Public convenience, sewage and refuse disposal fees			●	●
25.	Domestic animal licence fees			●	
26.	Cattle tax payable by cattle farmers only			●	
27.	Religious Places Establishment Permit Fees			●	
28.	Shop and kiosk rates			●	●
29.	On and off liquor licence fees			●	
30.	Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck			●	●
31.	Radio and television licence fees (other than radio and television transmitter)			●	●
32.	Vehicle radio licence fees (to be imposed by the local government of that in which the car is registered)			●	●

Source: Adapted from Aniyie, IA, *Taxpayers' Rights in Nigeria.*[71]

63 Levied pursuant to the *Stamp Duties Act* Cap. S8 LFN 2004 (SDA). Part I limits the jurisdiction of the FG to bodies corporate (LTD inclusive) and residents of the FCT; while Part II limits the jurisdiction of states to instruments executed by individuals

64 Levied pursuant to the *Tertiary Education Trust Fund (Establishment) Act 2011* (TETFUND Act). It is a 2 percent charge on the assessable profit of all companies incorporated in Nigeria

65 Levied pursuant to section 12 of the National Information Technology Development Levy Act Cap N156, LFN 2004 (as amended in 2007) (NITDLA) at the rate of 1 percent on the assessable profit of banks and other financial institutions, including capital markets operators, pension fund administrators, pensions managers and pension related companies, internet service providers, insurance companies, telecommunications services providers with a minimum annual turnover of NGN100 million

66 This is a tax that has land or improvement upon land or both as its base. The provisions of the TLA are premised on paragraph 1(j) of the Fourth Schedule of the CFRN which vests LGs with the power to administer rates on private houses and tenements

67 The TLA limits the jurisdiction of the state government to the state capital

68 The right of the state government arises where its finance is utilised in the development of the market

69 The right of the state government arises where its finance is utilised in the development of the slaughter slab

70 Part I limits the jurisdiction of states to impose right of occupancy fees on lands owned by the state government in urban areas of the state, while Part II limits the jurisdiction of local governments to lands in rural areas, excluding those belonging to the FG and state government in the jurisdiction of the local government

71 (2014) unpublished MPhil dissertation, University of Pretoria, South Africa, 27-28

However, on the premise that taxes are payments to the state made by economic actors for which there is no *quid pro quo,* it could be argued that not all items captured in the above table are taxes as some are actually payments made for which there is *quid pro quo.*[72] For example, the fees paid for right of occupancy is not a tax as pursuant to it the taxpayer is by law[73] entitled to recognition of its exclusive right to use and hold the land to which the fee relates by the relevant tier of government.[74] This puts the fee for right of occupancy and others which vests payers with *quid pro quo* outside the realm of tax. Note also that the NTP definition of tax as 'any compulsory payment to government imposed by law without direct benefit or return of value or a service whether it is called a tax or not'[75] underscores the foregoing. This notwithstanding, it should be noted that the thought which underpins the table is in line with Thuronyi's opinion of tax as a continuum with the granting of *quid pro quo* or otherwise at opposite ends.[76] It also takes cognisance of the fact that the imposition of taxes is the consequence of legislation[77] and that they bring about a loss or reduction in utility or disposable income.[78]

The burden points in the table are for illustrative purposes and relates to the compliance burden borne by an average corporate taxpayer of the category sampled in this research amidst the multi-tiered Nigerian tax system. Evident from the table is the multiplicity of jurisdictions and taxes to which taxpayers are subject. In addition to its CIT and EDT obligation, the taxpayer is subject to other collection owing to the state or local government

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72 See Black *et al,* supra note 4, 163 and Burman & Slemrod, supra note 14, 5 where premium is placed on the absence of *quid pro quo* in the definition of tax. See also Nightingale, supra note 14 where similar opinion was espoused

73 The relevant law is the *Land Use Act* Cap. L5 LFN 2004 (LUA) which provides that all land in the territory of each state (except that vested in the FG or its agencies) is vested solely in the Governor of the state to have control of the land and manage same

74 This recognition is conveyed by a certificate of occupancy issued pursuant to the LUA. See *Ogunleye v Oni* (1990) 2 NWLR (Pt. 135) 745 the Supreme Court of Nigeria held that certificate of occupancy issued pursuant to the LUA gives right to use land

75 NTP 2017, 1. See section 69 FIRSEA for a more complex definition with the same purport

76 Thuronyi, supra note 14, 46-54

77 The existence of a legislation is a condition precedent for the legal and existential validity of a tax. Where there are no clear words in a legislation imposing the tax on a base, the tax authority lacks capacity to impose and collect such tax. This is known as the 'no tax without law rule'. See *Coltness v Iron Company v Black* (1881) 6 App. Cas. 315; *Ayrshire Employers Mutual Insurance Association Ltd. v IRC* (1944) 27 TC 344; *SA Authority v Regional Tax Board* (1960-2000) 2 NTLR 686; *Woolwich Building Society v IRC* [1993] AC 70 and *Halliburton Energy Services Nig. Ltd. v Federal Inland Revenue Service* (2012) 8 TLRN 15, 29 where this principle was affirmed. See also the *Casino Taxation Act* Cap C3 LFN 2004 (CTA) pursuant to which a 12.5 percent tax is levied on the net gaming revenue of every licenced casino. The 'no tax without law' can be used as a shield from tax liability under the CTA by casino owners outside Lagos (a state in Nigeria) as section 1 CTA limits the application of the tax to the territory of Lagos

78 The World Bank Doing Business Report conceives tax in a similarly broad sense. It conglomerates taxes and mandatory contributions - a total of 59 for Nigeria - for the indicator on 'paying taxes.' See World Bank Group, *Doing Business 2018: Nigeria,* 79 *et seq.* Available at http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Profiles/Country/NGA.pdf (accessed 6 May 2018)

within whose tax jurisdiction it is operating. For example, pursuant to section 81 of PITA, the taxpayer would have to put in place a system for *inter alia*, the deduction of the personal income tax of its employees and remit the same to the state of residence of the employees at its own cost. In addition, failure with regard to compliance by the taxpayer is at its peril as most of the legislation pursuant to which the aforementioned taxes are imposed provides penalties for non-compliance.[79] It is beyond conjecture that the burden points increase the compliance cost as well as has potential to influence the compliance behaviour of the taxpayer.

Furthermore, the facts of *Shell Petroleum Development Company v Burutu Local Government Council, Eti-Osa Local Government v Jegede* and *Thompson & Grace v Government of Akwa Ibom & Others* are basis for the conclusion that the multi-jurisdictional/tiered structure of the Nigerian tax system could become the source of hardship ranging from the loss of disposable income to tax uncertainty.[80] For example, what is expected of a taxpayer when a state and local government are laying claim to a market tax. Should the taxpayers pay each or any of the tier? Or, is the taxpayer expected first to ask both tiers of government to prove their claim by showing evidence of contribution to the development of the market? In view of the array of coercive power at the disposal of the tax authorities in Nigeria,[81] one is inclined to conclude that the taxpayer in the above scenario would have little or no opportunity to seek clarification. Hence, we

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79 For example, pursuant section 81(3) PITA an employer who contravenes the provisions of section 81 PITA is liable to a penalty of NGN 500,000 in the case of a body corporate and NGN 50,000 in the case of an individual. See also section 82 PITA

80 Tax uncertainty is the lack of capacity to make an accurate assessment of the tax and compliance costs associated with investment and/or continuation of an investment in a country during the lifespan of the investment in the taxpayer. It poses risks to the *fiscus* and its sources includes: (1) poorly drafted and unclear tax laws, (2) tax administration and policy as well as judicial inconsistency and/or unpredictability, (3) the frequency of changes in the international tax system, etc. See 'The Role of Tax Certainty in Promoting Growth-Friendly Environment Along the Belt and Road', Technical Note, BRITACOF Wuzhen/China, 18-20 April 2019. Also see May, RR, 'Update on Tax Certainty' (2019) (BRITACOM Special Edition) *Journal of International Taxation in China* 138, 138-140

81 For example, see sections 31 FIRSEA and 34 FCTIRSA (pursuant to which FIRS and FCTIRS can order banks to freeze accounts of defaulting taxpayers and deprive them of access to their funds), sections 33 FIRSEA and 35 FCTIRSA (vests FIRS and FCTIRS with power of distrain), paragraph 15(7), Fifth Schedule, FIRSEA (on the basis which a taxpayer is obligated to pay a portion of the tax (or assessment) in dispute before the hearing of the related appeal by the Tax Appeal Tribunal). See Aniyie, IA, Recognition of the Rights of Taxpayers and its Implications' (2017) *ATRN Working Paper 02* for an examination the powers as exercised by FIRS within the precinct of the CFRN. Note that the possession (and exercise) of the aforementioned coercive powers is not limited to the tax authorities of Nigeria. It seems that these powers characterise tax authorities globally. For a comparative analysis of the exercise of these powers within the context constitutional jurisprudence of Australia, Canada, New Zealand, Nigeria and South Africa, see Fritz, C, 'An Appraisal of Selected Tax-Enforcement Powers of the South African Revenue Service in the South African Constitutional Context' (2017), unpublished LLD thesis, University of Pretoria, South Africa

see the hardship wrought by the multi-jurisdictional/tiered structure of the Nigerian tax system.

That having been said, it should be noted that in addition to describing the environment wherein a corporate taxpayer operates in Nigeria, *Table 1.1* further serves the purpose of providing a locale to which subsequent discussion will be tied. Thus, from here, the focus is to provide an overview of the research.

1.4 OVERVIEW AND STRUCTURE OF THE RESEARCH

1.4.1 Research Objective

Table 1.1 provides a snippet of the potential compliance cost associated with the items on the table and it is indicative of the burden borne by taxpayers in the Nigeria tax system. What is important is that the cost associated with each of those burden points has the propensity to impact on the profit and/or disposable income of taxpayers and consequentially on their compliance behaviour. This knowledge fuels this study which has two objectives. The first of these in an investigation into the relationship between incentives contained in CITA (hereafter referred to as CITA incentives) and the tax compliance behaviour of micro and small enterprises (MSEs)[82] in Nigeria. Secondly, within the context of the extant CITA incentives, the study examines the relationship between the role of tax intermediaries and taxpayer compliance behaviour.

1.4.2 Research Assumptions

The assumptions on which this research is premised are:

a. Irrespective of the nature of a taxpayer (i.e. natural or juristic), its compliance status is the product of human cognition and behaviour.

b. Amidst tax systems and tax administration, taxpayers who make trade/business decisions as well as their tax intermediaries are in constant confrontation.

c. A variety of factors influence trade/business decision and taxpayer behaviour.

d. The existence of CITA incentives and tax intermediaries are examples of these factors.

e. An understanding of the tax-trade interface would foster tax compliance and revenue sufficiency.

f. The normative approach to tax administration is not fostering tax compliance and revenue sufficiency in Nigeria.

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82 Otherwise referred to in this research as micro and small companies (MSCs)

1.4.3 Research Questions

The research problem or question is the pivot around which a research process revolves.[83] Its role in a research process is indispensable as it provides a point of orientation for the researcher.[84] This is because it links the literature review and the data that will be collected and it influences decisions relating to research design.[85] With this in mind, two primary research questions (PRQs) were formulated and subsequently broken down into six secondary research questions (SRQs). The breakdown of the PRQs into corresponding SQRs was for the purpose of directing the focus of the research towards identifying the nuances and subtleties associated with the former and resolving them as well as the SRQs.[86] Table 1.2 below presents the PRQs and their corresponding SRQs.

Table 1.2: Primary and Secondary Research Questions

Primary Research Question	**Secondary Research Question**
1. What is the relationship between the CITA incentives and taxpayer compliance behaviour in Nigeria?	1. What are the forms, types and expressions/manifestations of CITA incentives within the tax system?
	2. What influences the adoption and/or utilisation of the CITA incentives by MSCs in Nigeria?
2. What is the relationship between the role of tax intermediaries and taxpayer compliance behaviour within the context of the extant CITA incentives?	1. Who are the tax intermediaries in the tax system?
	2. What is the role of the tax intermediaries in relation to taxpayer compliance?
	3. What is the nature of the relation between the role of tax intermediaries and taxpayer compliance behaviour?
	4. How does the management *cum* regulation of tax intermediaries in Nigeria compare with the global standard and that in comparable jurisdictions?

1.4.4 Theoretical Framework

History provides sufficient premise for the assertion that taxes have either directly or indirectly catalysed changes and events in the course of the history of mankind. The

83 Leedy, PD & Ormrod, JE, *Practical Research: Planning and Design* (10th Ed) (New Jersey: Pearson, 2013) 27

84 Bryman, A, 'The Research Question in Social Research: What is its Role?' (2007) Vol. 10 (No.1) *International Journal of Social Research Methodology* 5

85 *Ibid*, 5-6

86 Leedy and Ormrod argued that division of research questions into main questions (i.e. PRQs) and sub questions (i.e. SRQs) provides the research with a better idea of how to approach the entire research. See Leedy & Ormrod, supra note 83, 36

imposition of taxes and taxpayer reaction can be directly linked to the Boston tea party,[87] Britain's window tax (1696-1851),[88] and in Nigeria, the 1918 war in Egba land in the Western region, the 1927 Igbudu civil unrest in the Warri Province of the Western region and the 1929 Aba women riot in the Eastern region.[89] It is surmised that taxpayer reaction (more specifically compliance behaviour) is the precursor to a plethora of changes in the fabric of society generally and more specifically as it relates to taxation. With regard to the latter, this change manifests as legislative amendments,[90] the proliferation of the use of qualifiers (e.g. abusive, aggressive, acceptable or unacceptable, permissible or impermissible, moral or immoral)[91] and anti-avoidance rules to regiment and direct taxpayer compliance behaviour.[92] The rationale behind the changes cannot be separated from the burden on the state to protect the principal mechanism with which it sources revenue to pay for the services and facilities that it provides for its citizens.[93] It is against this background that this research sought to *inter alia* understand and determine whether and if it does, how the CITA incentives within the Nigerian tax system impact on the compliance behaviour of MSEs in Nigeria. To achieve this, a framework that has the theory of planned behaviour (TPB)[94] at its core was utilised.[95]

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87 For an exposé on events leading to the Boston tea party and its connection to the American Revolution, see US Department of State, *Parliamentary Taxation of Colonies, International Trade, and the American Revolution, 1763–1775.* Available at http://history.state.gov/milestones/1750-1775/parliamentary-taxation (accessed 27 December 2015). See also Prichard, supra note 20, where the author refers to the dialectics associated with taxation as tax bargaining and posits that they contribute to state building

88 Glantz, AE, 'A Tax on Light and Air: Impact of the Window Duty on Tax Administration and Architecture, 1696-1851' Vol 15 (2) (Spring 2008) *Penn History Review* 18-40 for an exposé on the origin of the window tax and manoeuvres implemented by house owners (i.e. taxpayers) to dodge the tax

89 Omoigui Okauru, I, *A Comprehensive Tax History of Nigeria* (Nigeria: FIRS, 2012) 86-88

90 See section 9(2) and 65(1) CITA which respectively changed the rules governing interest deductibility and the appropriate time for the raising of government assessment. See also *Aluminium Industries AG v FBIR* (1971) NMLR 339 and *Federal Board of Inland Revenue v Joseph Rezcallah & Sons Limited* [2010] 2 TLRN 59 which were decided under the old versions of the rules

91 These words have found their way into legislation (e.g. section 80A-80L of the Income Tax 58 of 1962 (as amended) (South Africa), judgments (e.g. *Ben Nevis Forestry Ventures Limited v CIR* [2009] 2 NZLR 106); tax administration guidelines/manuals (e.g. US IRS, Internal Revenue Manual 5:20: Abusive Tax Avoidance Transactions (ATAT). Available at https://www.irs.gov/irm/part5/irm_05-020-001.html#d0e55 (accessed 13 May 2016)

92 See *HM Revenue and Customs (HMRC) General Anti Abuse Rule (GAAR) Guidance*. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399270/2__HMRC_GAAR_Guidance_Parts_A-C_with_effect_from_30_January_2015_AD_V6.pdf (accessed 12 May 2015)

93 *Ibid*, 4

94 For research on the origin and application of the TPB, see Ajzen, I, *Attitudes, Personality and Behavior (2nd ed.)* (England: OUP, 2005), 99-140; Ajzen, I, 'Perceived Behavioral Control, Self-Efficacy, Locus of Control, and the Theory of Planned Behavior' 32 (2) (2002) *Journal of Applied Social Psychology,* 665-683; Ajzen, I, 'The Theory of Planned Behavior' (1991) Vol. 50 (2) *Behavior and Human Decision Processes* 179-211

95 An in-depth exposé on the adopted theoretical framework for this research is presented in chapter three *infra*

1.4.3 Conceptual Framework

The main objective of trade or business-oriented entities is the sustained generation of income from the optimum use of resources. The attainment of this objective is a consequence of decision-making which can be hampered by the uncertainty and risk generated by the prevailing micro and macro-economic issues associated with the location of the entity.[96] For the purpose of this investigation, finiteness of resources and taxation are the micro and macro-economic variables of interest. Thus, they are conceived as intersecting to form a background against which taxpayers make trade/business decisions and their interaction form the conceptual framework of this research.[97]

1.4.5 Rationale of the study

The volumes and innovations within the global and municipal tax spaces are testament to this fact that the issue of compliance is at the core tax (and revenue) administration is beyond conjecture. However, the impact and/or effectiveness of CIT incentives on the tax compliance behaviour of MSCs, the relationship of MSCs with their intermediaries and the role of the latter vis-à-vis the tax compliance behaviour of the MSCs are enquiries that have not received similar attention globally. In Nigeria, the situation is worse as there is no known literature that analyses (whether from an academic or institutional perspective) the aforementioned issues and/or relationships. But for the tax amnesty granted to members of the National Association of Small and Medium Enterprises in Nigeria between 25 November and 31 December 2016, the conclusion would have been that what exists in Nigeria is an orientation that seems underpinned by the 80-20 or pareto rule[98] and an almost total disregard for the MSCs amidst the Nigerian tax system.

With this as background, this study seeks to initiate a reorientation as it focuses on the aforementioned issues and/or relationships in the context of Nigeria. It examines the Nigerian CIT regime, the management regime of tax intermediaries, compares the latter against that of Kenya and South Africa as well as investigates the relationship between MSCs in Nigeria (using a sample) and tax intermediaries. This study is aimed at determining whether CIT incentives in Nigeria actuate or influence the tax compliance behaviour of MSCs. Furthermore, in the context of the CIT incentive and from the

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96 Dwivedi, supra note 5, 4-11

97 An in-depth exposé on the conceptual framework of this research is presented in Chapter three *infra*

98 This is also known as the law of the vital few or the principle of factor sparsity and it holds that for many events, roughly 80 percent of the effects come from 20 percent of the causes. In the context of tax administration, it means that to get or attain 80 percent of the tax revenue target, the focus of revenue administration should be 20 percent of the taxpaying populace

perspective of enhancing the compliance behaviour of Nigerian MSCs, the study seeks to understand the tax intermediary-taxpayer relationship.

1.4.6 Methodology[99]

a. *Strategy*

The research was designed essentially as a case study. This option was chosen as the intention was to answer pertinent questions in the context of a given locale (i.e. Nigeria). Mills *et al* has argued that case studies are best suited for such tasks[100] and they also provide the opportunity for natural experiments to test the assumption on which a research is premised.[101] In addition, the use of the case study strategy facilitated an understanding of the uniqueness of the Nigerian tax system. This is because it allowed for a focus of attention on specifics within the jurisdiction, thereby leading to analysis and interpretation without the need for comparison to accommodate the differences associated with a multi-jurisdictional study.[102]

Although the research is a case study, a comparison of the situation with regard to the regulation and management of tax intermediary services in some other jurisdictions was undertaken to the extent necessary to provide a basis for an assessment and evaluation of the Nigerian situation. To this end, the Kenya and South Africa were chosen. The reasons for this selection are:

i. *Similarity of legal system*. Kenya and Nigeria are common law jurisdictions; a system which is based on the English common law. Though slightly different because of the Dutch influence on its legal system, South Africa also share a common law ancestry with Nigeria

ii. *Region, GDP size and interconnectedness of the economies*. Kenya, Nigeria and South Africa are on the African continent. They are the biggest economies by GDP in the eastern, western and southern sub-regions of the continent; while the latter two are the first and second largest economies in Africa in terms of GDP. In addition, Nigeria's double taxation agreements with South Africa

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99 An in-depth exposé on the methodology utilised in this research is presented in Chapter three *infra*

100 See Mills, AJ, *et al* (eds), *Encyclopaedia of Case Study Research (Vol. 1)* (2010), 200. Available at https://ia801704.us.archive.org/33/items/2.encyclopediaOfCaseStudyResearch/2.encyclopediaOfCaseStudyResearch.pdf (accessed 28 December 2015)

101 For confirmation of the functionality of a case study, see Saxon, N, *et al*, 'State and Local Sales Taxes and Business Activity in the United States' (2015) *IZA Discussion Paper 9413* 1, 4

102 Ibid

(already in force) and Kenya (not yet in force) further connects these economies.[103]

iii. *Tax system advancement.* Premised on indices like ease of paying taxes, etc., it is without doubt that the South African tax systems are more advanced when compared to the Nigerian tax system. It is also believed that there are lessons to be learnt from the Kenyan tax system.

b. *Method*

For this study, a mixed methodology involving both quantitative and qualitative research methodologies was adopted. This approach allowed for the collection and validation of data from varied sources, the provision of an objective measure of reality and the exploration including a better understanding of the behavioural pattern of taxpayers with regard to income tax incentives in Nigeria, as well as the employment of the theoretical framework presented in chapter three for the evaluation of the tax-trade interface.

c. *Tools*

The research made use of a variety of tools. Examples of such tools include questionnaires and key informant interviews (KIIs).[104] The decision of which tool to use was determined by the willingness or otherwise of the participants to provide the researcher with information in a one-to-one situation.[105] The mix of tools made possible triangulation to validate and verify the collected data, increased its reliability, provided assurance of authenticity and infused control into the data gathering process.[106]

d. *Population*

Owing to the fact that tax compliance is the product of the (in)actions of different players within the Nigerian tax system, it was important that a broad range of views about the issues and means/methods of resolution be obtained. Thus, responses were

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103 Aniyie, IA, 'Nigeria' in Evans, C, *et al*, *Improving Tax Compliance in a Globalised World* (Netherlands: IBFD, 2018) 622

104 On the utility of this method of research, see Kumar, K, 'Conducting Key Informant Interviews in Developing Countries' (1989) *AID Program Design and Evaluation Methodology Report No. 13*. Available at http://pdf.usaid.gov/pdf_docs/PNAAX226.PDF (accessed 31 December 2015)

105 For further comparison of both, see Given, LM, (ed), *The SAGE Encyclopaedia of Qualitative Research Methods Vols. (1 & 2)* (2008) 352-353. Available at http://www.stiba-malang.com/uploadbank/pustaka/RM/QUALITATIVE%20METHOD%20SAGE%20ENCY.pdf (accessed 31 December 2015)

106 Mills, *et al*, supra note 100, 200

sought from three distinct groups of respondents and pooled to achieve a holistic view of the issues. The groups are:

i. *The businesses/investors.* This group comprised of micro and small companies that fall into the micro and small taxpayer segment within the Nigerian tax system.

ii. *Advisors to businesses/investors.* This group comprised of lawyers, chartered accountants and tax practitioners who provide advisory services and/or act as tax intermediaries to the first

iii. *Government functionaries.* This group comprised of government personnel from the FIRS, the Federal Ministry of Finance and the Nigerian Investment Promotion Commission (NIPC).[107]

1.4.7 Scope

With regard to the objectives stated above, the scope of this research was limited primarily to CITA incentives.[108] The reason for this choice includes the fact that the administration of CIT solely by the federal government across the federation prevents the manifestation of the fiscal federalism issues associated with the administration of the taxes to where the federal and subnational governments have shared jurisdictions (e.g. capital gains tax, stamp duties and value added tax). Neither does it take cognisance of those within the PPTA.

The study does not target the entire spectrum of taxpayers that are subject to CITA. Its focus is the MSCs. By the standard of Nigeria's *Draft National Policy on Micro, Small and Medium Enterprises* (2015),[109] MSCs ordinarily are companies which employ between 1 to 49 persons and/or own assets (excluding land and building) valued at less than NGN 100million.[110] Limiting the scope of the study to MSCs is a consequence of the niche they occupy in the global economy. For example, it was reported in 2014 that 67 percent of the

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[107] The NIPC is empowered by the IDA to administer the pioneer status incentive which provides income tax relief for companies involved in specific industries for a maximum of five years commencing from the first day of production

[108] In addition to the CITA incentives, the research also considers the pioneer status incentives and the special economic zones incentives as they impact on the profit after tax of beneficiaries

[109] Federal Republic of Nigeria, *Draft National Policy on Micro, Small and Medium Enterprises* (2015). Available at http://www.msme-asi.org/images/menu4_od_msme/national_policy_on_msmes_new.pdf (accessed 5 March 2018). Note that where there is a conflict in classification between employment and asset criteria, the former takes precedence

[110] *Ibid*, 15. However see section 315 (1) of the *Companies and Allied Matters Act* Cap. C10 LFN 2004 which provides that a company qualifies to be regarded as a small company in a year if for that year: (a) it is a private company having a share capital; (b) the amount of its turnover for that year is not more than NGN2 million or such amount as may be fixed by the Commission; (c) its net assets value is not more than 1 million or such amount as may be fixed by the Commission; (d) none of its members is an alien; (e) none of its members is a Government or a Government corporation or agency or its nominee, and (f) the directors between them hold not less than 51 per cent of its equity share capital

labour force in Australia is employed by entities classed as MSCs, while in the case of UK and Turkey, the quantum is 60 and 73 percent respectively.[111] In 2014, it was reported that 80 percent of the firms exporting from the European Union were entities of MSC status.[112] For South Africa, it has been recognised that MSCs would have to create 90 percent of the new jobs needed to bring about a reduction of the national unemployment rate to 6 percent by 2030.[113] With regard to Nigeria, as at December 2013, MSCs contributed 48.47 percent of the nominal GDP of Nigeria and employed 84.02 percent of the labour force.[114] The foregoing, the fact that they have the potential to catalyse development and accelerate the attainment of the broad socio-economic objectives[115] supports the decision to focus on MSCs.

In Nigeria, MSCs are either private limited companies or one-man businesses.[116] They are characterised by a lack of structures that would ensure good corporate governance and regulatory compliance. Noteworthy is the fact that these companies are life-style' firms (i.e. firms that were established primarily as a vehicle for the creation of revenue to support the basic costs of living of its owner(s)). Hence, they often exhibit Peter Pan syndrome.[117] In the context of the Nigerian tax system, MSCs are corporate taxpayers with turnover of less than NGN 200 million. They are situated within the administrative space of FIRS (i.e. the federal tax system) and form part of the entirety of taxpayers on the FIRS taxpayer database. Taxpayers within the administrative jurisdiction of FIRS are segmented as summarised in figure 1.1 below.

111 Yucedogru, R & Hasseldine, J, 'Understanding Tax Morale if SMEs: A Qualitative Study' (2016) Vol. 14 (No. 3) *eJournal of Tax Research* 531, 532

112 Pemberton, JL, 'Improving Tax Compliance in a Globalized World: An Issue Relevant to Small Businesses?' in Evans, C, *et al*, (Eds.), *Improving Tax Compliance in a Globalized World* (Amsterdam: IBFD, 2018) 40-41

113 Zulu, L, 'Small Business is Big Business' (2018) *Ubuntu – BRICS Special* 59

114 See *SMEDAN and National Bureau of Statistics Collaborative Survey: Selected Findings* (2013). Available at http://nigerianstat.gov.ng/pdfuploads/SMEDAN%202013_Selected%20Tables.pdf (accessed 5 March 2018)

115 See ATAF, *The Impact of Taxation and Support Services on Medium-Sized Enterprises (MES) in Africa* (South Africa: ATAF, 2015); Hansson, A, 'Tax Policy and Entrepreneurship: Empirical Evidence from Sweden' (2012) Vol. 38 (No.4) *Small Business Economics* 495

116 Ekpenyong, DB & Nyong, MO, 'Small and Medium-Scale Enterprises in Nigeria: Their Characteristics, Problems and Sources of Finance' (1992) *AERC Research Paper 16*, 5

117 'Peter Pan' syndrome' refers to a situation where businesses deliberately choose to remain small even though from an economics points of view, it would be more productive and profitable to be larger. The decision is often made so as to perpetually avoid tax, regulatory scrutiny or so as to perpetually qualify for a benefit, incentive, etc. See 'Peter Pan Syndrome: Why the Country's Firms do not want to Group up', *the Economist* (May 17, 2014). Available at https://www.economist.com/news/business/21602242-why-countrys-firms-do-not-want-grow-up-peter-pan-syndrome (accessed 11 March 2018)

Figure 1.1: Summary of taxpayer segmentation in Nigeria's federal tax system

S/N	Segment	Constituent	Point of interface with FIRS
1	Large taxpayers	Companies in the oil and non-oil sector of the economy with annual turnover of NGN1 billion for each of three consecutive years	Large Tax Office
2	Government business taxpayers	Ministries, departments and agencies of both the federal and state governments who act as agent for the collection of value added tax and withholding tax	Government Business Tax Office
3	Medium taxpayers	Companies with turnover of between NGN 200 million as well as all pioneer companies	Medium Tax Office
4	Micro and small taxpayers	Companies with turnover of less than NGN 200 million	Micro and Small Tax Office
5	Individual and enterprise taxpayers	Individuals not paid employment and those trading or doing business via forms other than a limited liability company	Individual and Enterprise Tax Office

Source: Author

Ordinarily, companies are non-natural persons and devoid of behaviour or tax compliance behaviour. To facilitate the attainment of the research objectives, the study utilised the alter ego principle as the basis of the determination of the compliance behaviour of the taxpayer. Premised on it, the thought processes and behaviour of the chief executive officer of the company, director(s) and any other person who by virtue of the foundational documents of the company is vested with authority to manage and control the company[118] or the 'directing mind and will' of the company[119] are attributed to the company. By this, the behaviour of these individual(s) *vis-à-vis* the tax obligation of the company are deemed proxies of that of the company (i.e. the taxpayer). Furthermore, the utilisation of the alter ego principle also facilitated the recruitment of research participants, the selection of a theoretical framework and the design of a methodology for the investigation.

Worthy of note at this point are some limitations in relation to the scope of the study. First is the issue of population (*N*), sample size (*n*) and their relationship to the study. *N* (population of MSCs in Nigeria subject to FIRS administrative jurisdiction) is not known and because of this, the determination of the sample size or research participants was not

118 See Leigh, LH, 'The Alter Ego of a Company' (1965) *The Modern Law Review* 584-587 for exposition on the alter ego principle

119 See *Lennard's Carrying Co. Ltd v Asiatic Petroleum Co. Ltd* (1915) AC 705, 713 where Viscount Haldane espoused the concept of 'directing mind and will'. See also *HL Bolton (Engineering) Co. Ltd v TJ Graham & Sons Ltd.* (1957) 1 QB 159 and *Arthur Guinness, Sons & Co. v Owners of the Motor Vessel Freshfield (The Lady Gwendolen)* (1965) 2 All ER, 283 where it was espoused that the determination of the 'directing mind and will' is a function of the merits and justice of the case and not of the status (or position) of the person(s) in the company

done scientifically. This limitation catalysed the design of the study as a small sample size research and this subsequently transformed the latter into a small *n*-study.[120]

Finally, only taxpayer behaviour that relate to registration/incorporation of the company as well as the creation and keeping of financial records for tax purposes (hereafter referred to as booking keeping) and the payment of tax are of interest to this research.

1.4.8 Definition

The place for definition is underscored by the need to ensure that the effects of vagueness (i.e. the quality of not being clearly understood) and ambiguity (i.e. the quality of an expression whose meaning can be taken in two or more ways) is obviated.[121] Thus, the following definitions are provided to clear vagueness and ambiguity as well as to set the context of their use in the research.

a. *Business*

Business is considered as a synonym for trade. *See trade below.*

b. *Conceptual Framework*

While recognising that the terms conceptual framework and theoretical framework are often used interchangeably, for the purpose of this research, they have different meanings. Herein, a conceptual framework is used to represent the researcher's approach to the conceptualisation of tax compliance behaviour amidst the boundaries of CITA incentives and the theory of planned behaviour. It outlines the interaction of the theory and variables (and their ability to impact on taxpayer compliance behaviour) that are of interest to the study.

c. *Profit*

For the purpose of this study, profit is conceived from two perspectives. The first is from the view point of taxpayers who make business decisions as well as earn income from trade or business. For them, profit is the difference between the trade or business receipts (sometimes referred to as revenue) and the total cost of the trade or business (tax and other deductions included). This is also the accounting perspective.[122] The second is the context of taxation. In this context, profit is arrived at after the grant of allowable deductions as well as allowances and the addback of unallowable

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120 This issue would be further discussed in chapter 3

121 See Srinagesh, K, *The Principles of Experimental Research* (UK: Elsevier, 2006) 15-28 for a discourse on the importance of definitions

122 Dwivedi, supra note 5, 18-32 for an analysis of the concept of profit from the accounting and economic perspectives, theories of profits, problems of profit measurements, etc

deductions. This is referred to as assessable (taxable) profit and the CIT rate is applied to tax profit to arrive at the profit after tax of the taxpayer.

d. *Research Design*

This relates to the framework within which the issues subsumed in this research is conceived, the applicable theoretical premises for their resolution and utilised for data collection/analysis (and synthesis where necessary) as well as their interpretation to arrive at answer(s) for the research questions.[123]

e. *Trade*

This study holds trade and business to be the same (and both words will be used interchangeably). This approach is adopted because, firstly, the CITA defines trade and business in one breath. It states that 'trade or business means a trade or business or that part of a trade or business the profits of which are assessable under this Act'.[124] Although this is not a critique of the definition, suffice it to say that the definition is convoluted and does not answer the question: 'what is trade?' This is not peculiar to Nigeria. In *Ransom v Higgs*[125] where the court had to determine whether an arrangement amounted to trade to justify the imposition of related taxes, it was held that:

> The Income Tax Acts have never defined trade or trading farther than to provide that trade includes every trade, manufacture, adventure or concern in the nature of trade. As an ordinary word in English language 'trade' has or has had a variety of meanings or shades of meaning. Leaving aside obsolete or rare usage it is sometimes used to denote any mercantile operations but is commonly used to denote operations of a commercial character by which the trader provides to customers for reward some kind of goods or services

In view of this, recourse is had to the unassailable view that a definition or determination of what constitutes trade or business is a question of fact. This approach is informed by the seminal treatise of the *Royal Commission on Taxation of Profits and Income.*[126] Consequently, trade and/or business are/is perceived as operations of a commercial nature or character primarily undertaken for the purpose

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123 See Chapter 3 for details of the research design

124 See Paragraph 1, Second Schedule, CITA

125 (1974) 1 WLR 1594, 1600-1601955 (per Lord Reid)

126 See *Royal Commission on the Taxation of Profits and Income: Final Report* (*Cmd. 9474)* (London: HMSO, 1955) wherein (1) nature of the asset/property (2) length of period of ownership (3) number/frequency of similar transaction (4) changes/improvement to asset/property (5) circumstances responsible for the realisation/sale of asset/property (6) motive were enunciated as the six 'badges of trade' or indicators of trade

of profit making. From this standpoint, the determining facts are the nature (or character) and objective (or purpose) of the operations.

f. *Tax Incentives*

An extensive discussion on tax incentives is the focus of chapter four. However, suffice it to state here that tax incentives are economic advantages or provisions accorded specific taxpayers by the law or legal instrument of a state. They are not general provisions.[127]

g. *Tax Intermediaries*

Tax intermediaries are members of the Nigeria Bar Association (NBA), the Institute of Chartered Accountants of Nigeria (ICAN), or the Chartered Institute of Taxation of Nigeria (CITN) who provides services in relation to registration/incorporation of companies, the creation and keeping of financial records for tax purposes and tax advisory to taxpayers for or in expectation of a reward other than a salary or wage.

h. *Taxpayer*

A taxpayer, for the purpose of this study is an entity that is subject to the CITA and possesses the requisite tax base (which in this case is profit). Thus, a taxpayer is deemed to mean anyone who pursuant to section 9 of CITA is obligated to pay companies income tax in Nigeria.

i. *The Nigerian tax system*

Notwithstanding the exposition in paragraph 1.2 above, future reference to the Nigerian tax system should be interpreted as referring to the federal tax system or the tax space administered by FIRS.

j. *Value maximisation*

This is the primary purpose of a firm (i.e. company) as well as a decision criterion which along with others is taken into cognisance in the increase of the market value of the financial claims (including equity, debt, preferred stock and warrants) of the company.[128] Where this is attained by a company, social welfare (i.e. a situation where consumers price the company's outputs higher than the value of the inputs for

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127 Zee,HH, *et al*, 'Tax Incentives for Business Investment: A Primer for Policy Makers in Developing Countries' (2002) Vol. 30 (No. 9) *World Development* 1497, 1498. See also Barbour, P, 'An Assessment of South Africa's Investment Incentive Regime with a focus on the Manufacturing Sector' (2005) *ESAU Working Paper 14*, 2

128 Jensen, MC, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2002) Vol. 12 (No. 2) *Business Ethics Quarterly* 235, 236. Also see Dolenc, P, *et al*, 'What is the Objective of a Firm? Overview of Theoretical Perspectives' in Bojnec, S, *et al*, *Overcoming the Crisis: Economic and Financial Developments in Asia and Europe* (Koper: University of Primorska Press, 2012) 51, 56

the production-distribution process) is created.[129] Value maximisation is adopted for this research instead of profit maximisation (which is a micro-economic decision criterion) because of the nexus between tax and the finance of the taxpayer.[130]

1.4.9 Structure

Other than this chapter which amongst other things, provides background and allied information relating to the study, the research context (i.e. the Nigerian tax system) and an overview on the structure of research, there are six other chapters. Chapter two reviews relevant literature, probes the dimensions and the indicators of the variables of interest to the study. It also introduces the concept of tax intermediation.

Chapters three enlarges on the discussion in chapter one as it focuses on the research design. To this end it is an exposé on the conceptual, theoretical and methodological frameworks of the research as well as the utility of the design.

Chapter four has two focus: (1) a review of the legal framework for CIT administration in Nigeria; and (2) the identification and review of CIT incentives within the tax system.

Chapter five builds on chapter two by presenting a multi-country assessment of tax intermediary management. To this end, it adopts Kenya and South Africa as comparators for Nigeria.

Chapter six presents and analyses the data acquired from the field work which sought to assess within the construct derived from the research frameworks the compliance behaviour of MSCs.

Chapter seven concludes the research with an exposition of limitations, a summary of findings, recommendation and suggestions of likely areas for future research.

1.4.10 Ethical Issues

A risk-based approach was adopted with regard to the issue of ethics in the context of this study. Thus, the research process had as guides, the following questions set out by Berry and Otley:[131]

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129 Dolenc, supra note 128, 56

130 For discourse on the technicality associated with their use as well as their disciplinary premise vis-à-vis their role as indicators of the function of the firm, see Coffman, RB, 'Is Profit Maximization Vs. Value Maximization Also Economics Vs Finance?' (1983) No. 12 *Journal of Financial Education* 37-40

131 See Berry, AJ, & Otley, DT, 'Case-Based Research in Accounting' in Christopher, H & Bill, L (eds.), *The Real Life Guide to Accounting Research: A Behind the Scenes View of Using Qualitative Research Methods* (Amsterdam: Elsevier, 2004) 231-255

a. Will this study harm any person or group of persons directly or indirectly?
b. Who benefits and who does not benefit from this study?
c. Does this study serve as a basis for empowering people and, if so, who benefits and who does not?[132]

Hence, the presence of ethical issues was acknowledged and strategies implemented to cater for them. These strategies include the anonymisation of the data collection instrument and processes; the application for and receipt of informed consent of 'gatekeepers' to the recruitment of research participants from within their fold;[133] and research ethics approval/clearance in terms of the Nigerian National Code of Health Research Ethics (NNCHRE)[134] and the Research Protocol of the Research Ethics Committee, Faculty of Law, University of Pretoria.[135]

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132 Berry & Otley, supra note 131, 247
133 See *Appendix 1.1: Summary of Gatekeepers Consent Application*
134 See Federal Ministry of Health, *National Code of Health Research Ethics* (Abuja: FMH. 2007). Available at http://ihvnigeria.org/ihvnweb/webnew/index.php/download/modern-research-ethic-training/80-national-code-for-health-research-ethics-v10.html (accessed 6 June 2016). This was secured from the Research and Ethics Committee of the College of Medical Sciences, University of Benin, Nigeria which is a recognised research ethics committee (REC) in terms of the NNCHRE. See *Appendix 1:2(a)* for the REC approval
135 See *Appendix 1:2(b)* for the Faculty of Law, University of Pretoria Research Ethics Clearance

CHAPTER TWO: LITERATURE REVIEW AND CONCEPT FORMATION

2.1 INTRODUCTION

The objective of this chapter is two-fold: to serve as literature review and provide an opportunity for concept formation. With regard to the latter the intention is to review concepts and themes that are of relevance to the study. Thus, taxation, tax incentives, compliance and tax intermediaries are reviewed in this chapter with a view at gauging their dimensions and indicators. In the course of the foregoing, relevant literature will be examined.

The chapter has five other parts following this. Part two focuses on highlighting the perspectives that exist with regard to the impact of taxation on taxpayers and an economy. A review of tax incentives with the intention of highlighting its nature, effect, use, characteristics, typology and direction for use is the motivation behind part three. Tax compliance and the perspectives from which it can be conceived features in part four. In part five, attention shifts to tax intermediaries. Therein, an attempt is made to identify and situate them within the tax system. Part six concludes the chapter.

2.2 PERSPECTIVES OF THE IMPACT OF TAXES

Taxation and the pillars on which it stands are influenced by the economic factors of the state and have an impact on the economy of the state. This relationship has been the theme of extensive research and it has given rise to two perspectives as per the impact of taxes on any economy to wit:

2.2.1 The Negative Perspective

This posits that taxes have negative effects on economies. Ferede and Dahlby, after reviewing literature on the subject, concluded with regard to the impact of tax cuts on economic growth, that a higher statutory corporate income tax rate was associated with lower private investment and slower economic growth in the provinces of Canada.[1] Poulson and Kaplan[2] also conclude after exploring the impact of tax policy on economic growth within the framework of an endogenous growth model, that marginal tax rates have a negative effect on economic growth. Furthermore, Engen and Skinner, after examining the historical record relating to the US economy, conclude that reform by way of a 5 percent cut in marginal tax rates has the capacity of bringing about long-term growth of between 0.2 percent and 0.3 percent.[3]

With regard to the relationship between taxes and investment, Djankov, *et al* conclude, after an analysis of data on effective corporate income tax rates in 85 countries, that the nature and rate of corporate taxes has significant adverse effect on corporate investment.[4] Beck and Chaves, after an analysis of panel data for 25 OECD countries remarked that taxes matter as they influence investment decisions and flows.[5] Their analysis confirms the hypothesis that higher tax rates increase production costs, negatively affect trade competitiveness and lead to a decrease in trade volume. Furthermore, there is the view that taxation is a means by which the states expropriates private resources and property belonging to the governed.[6] Doran asserted that taxation, however legitimate, constitutes a forced extraction of wealth.[7] Epps, after acknowledging the indisputable importance of taxation policy as a core government function argued that the power to tax would constitute the indirect expropriation of the property where it is utilised to bring about a dispossession of the property of a taxpayer in a manner that is outside the normative constraints and

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1 Ferede, E & Dahlby, B, 'The Impact of Tax Cuts on Economic Growth: Evidence from the Canadian Provinces' (2012) Vol. 65 (3) *National Tax Journal,* 563-594

2 Poulson, BW & Kaplan, JG, 'State Income Taxes and Economic Growth' (Winter 2008) Vol. 28 (1) *Cato Journal* 53-71

3 Engen, E & Skinner, J, 'Taxation and Economic Growth' (1996) Vol. 49 (4) *National Tax Journal* 617-642

4 Djankov, S, *et al,* 'The Effect of Corporate Taxes on Investment and Entrepreneurship', Macroeconomics (July 2010) 2 *American Economic Journal,* 31-64

5 See generally, Beck, S & Chaves, A, 'The Impacts of Various Taxes on Foreign Direct Investment' (2011) *University of Delaware Department of Economic Working paper No. 2011-18*

6 See *Pope & Talbot Inc. v. Government of Canada,* Interim Award, June 26, 2000, para.99. Available at https://www.italaw.com/sites/default/files/case-documents/ita0674.pdf (accessed 17 March 2018); Epps, T, 'Taxation and Expropriation' (2013) 13 *Otago Law Review* 145; Stephan, PB, 'Taxation and Expropriation - The Destruction of the Yukos Oil Empire' (2012) 48 *Virginia Public Law and Legal Theory Research Paper* 1-65

7 Doran, M, 'Tax Penalties and Tax Compliance' (2009) Vol. 46 *Harvard Journal on Legislation* 111

practices of the taxing authority.[8] Such act impacts negatively on 'investor-friendliness' of the state, the level of tax certainty within the jurisdiction and its economic growth. This conclusion, it seems, is a consequence of the relationship between taxation and expropriation which Sornarajah captured thus:

> … taxation is within the sovereign power of a state. There is no rule in international law limiting the power of a state to impose taxes within its territory. But, 'excessive and repetitve tax' measures have a confiscatory effect and could amount to indirect expropriation.[9]

2.2.2 The Positive Perspective

This is the opposite of the negative perspective and it finds support in a study by Stiglitz,[10] where he concludes that, because of its nature, a turnover tax is a veritable tool for combating speculative trading within capital markets as well as improving the overall efficiency of the economy, its Pareto optimality[11] and reduce long term dead weight loss.[12] Mashkoor *et al,*[13] also provides evidence in support of a positive relationship between tax and economic growth.

Furthermore, taxes play an important part in economic and development planning.[14] For instance, to encourage and facilitate telecommunication penetration, the governments of Pakistan and Malaysia in 2006 and 2011 respectively reduced telecommunication-related taxes. In addition to the attainment of the policy objective, the approach also led to an increase in tax revenue in the long term for both nations.[15] The foregoing was achieved because the reduction of the taxes brought about a decrease in the cost of consuming ICT-related goods/services and a consequential improvement in the marginal propensity to consume the same as well as countered any substitutionary behaviour.

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8 Epps, supra note 6, 163

9 Sornnarajah, M., *The International Law on Foreign Investment* (Cambridge: CUP, 2017) 480

10 Stiglitz, JE, 'Using Tax Policy to Curb Speculative Short term Trading' (1989) 3 *Journal of Financial Services Research* 101-115

11 Pareto optimality or efficiency is achieved when resources are allocated in a manner that ensures that the improvement in the fortunes (or economic status) of one individual is achieved without making any other individual worse off. See generally, Stiglitz, JE, 'Self-Selection and Pareto Efficient Taxation' (1982) 17 (2) *Journal of Public Economics*, 213-240

12 Dead weight loss is the efficiency loss associated with tax-induced substitution in the decision function of an economic agent. In real terms it the loss suffered, whether real or intrinsic, because of choices made to reduce or avoid the impact of taxes on consumption

13 Mashkoor, M, *et al*, 'Tax Revenue and Economic Growth: An Empirical Analysis for Pakistan' (2010) 10(11) *World Applied Science Journal,* 1283-1289

14 *Ibid*

15 Exelby, B, 'The Impact of Taxation on Mobile Growth and its Associated Socio-Economic Contribution' (2011). Available from https://www.itu.int/ITU-D/finance/work-cost-tariffs/events/tariff-seminars/Gaborone-11/Documents/Session4GSMA.pdf (accessed 21 November 2014)

On the micro-level, taxation impacts on taxpayers in various ways. It impacts on business structure and location;[16] the valuation of the assets of the business,[17] profitability and profit distribution,[18] the volume of expenditure and the timing of the same. It is potentially the reason for business decisions. With specific reference to Nigeria, the proportionate reduction of the annual allowance where the basis period for any year of assessment is a period of less than one year pursuant to paragraph 7 of the Second Schedule of CITA has the potential of making businesses decide to bring forward (or shift backward) the actual purchase and/or the reporting of qualified capital expenditure to a year of assessment that would allow for the minimisation of their tax burden and the maximisation of profit.

From whatever perspective the impact of taxation is viewed, there are bound to be compliance issues. It is against this backdrop that the need arises for this study which seeks to investigate the impact of tax provisions in the form of incentives on the behaviour of entities who make trade and/or business decisions for the purpose of profit generation. In the next section, especially an attempt will be made to review the literature on tax incentives with a view to highlighting, inter alia, their nature and effect in the context of their influence and/or impact on taxpayer compliance behaviour.

2.3 TAX INCENTIVES

2.3.1 Nature

The determination of the nature of tax incentive is best introduced by a definition and an exposition of its effect. This approach, according to Zee, Stotsky and Ley, would amount to defining tax incentives in statutory and effective terms.[19] Explaining further, Zee *et al* stated that a tax incentive:

> … would be a special tax provision granted to qualified investment projects (however determined) that represents a statutorily favourable

[16] Legwaila, T, 'Tax Reasons for Establishing a Headquarter Company' (2011) *Obiter* 126-142. See also, Boskin, MJ & Gale WG, 'New Results on the Effects of Tax Policy on the International Location of Investment (1986) NBER Working Paper 1862. See also Legwaila, T, 'Tax Characteristics of an Ideal Holding Company Location' (2012) Vol. 1 *De Jure* 22, 45 where after a review of the South African tax provision relating to the corporate tax rate, dividends tax rules, capital gains tax regime, transfer pricing provisions, etc. the author concluded that the jurisdiction is suitable for the siting of a holding company

[17] The method of calculating depreciation of an asset and the applicable rate determines the tax written down value (TWDV) and consequential value of the asset. See chapter 4 (paragraph 4.5.1: Accelerated Depreciation) for further discussion

[18] This is because profit from the perspective of the business is the difference between income and the total cost associated (tax inclusive) with the generation of income as well as impacts on the return on investment (dividends and interest inclusive)

[19] Zee, HH, *et al*, 'Tax Incentives for Business Investment: A Primer for Policy Makers in Developing Countries' (2002) Vol. 30 (No. 9) *World Development* 1497 (Zee, *et al*)

> deviation from a corresponding provision applicable to investment projects in general (i.e., projects that receive no special tax provision) ...[20]

Easson and Zolt, see tax incentives as 'departures from the benchmark system that are granted only to those investors or investments that satisfy the prescribed conditions'.[21] Similarly, James conceives of tax incentives 'as any deviations from the general tax system that are applied to certain kinds of investments to reduce their tax liability'.[22] From the foregoing, the determinant of whether a provision is a tax incentive is hinged on whether it creates a regime that is materially different or deviates from the general order in the tax legislation for the benefit of a specific category of taxpayers or to encourage a particular endeavour. Sonarajah describes tax incentives as a useful way of ensuring that a foreign investor acts in the manner desired by the host government.[23] Surrey underscored the foregoing thus:

> … tax incentive *(sic)* a tax expenditure which induces certain activities or behavior in response to the monetary benefit available … such tax relief - i.e., tax treatment that is special and not required by the concept and general standards of a net income tax - is granted for an activity that is voluntary, the relief is in effect an incentive to engage in that activity ... For example, if meals and lodging furnished an employee on the premises of an employer are not taxed, the effect is to make employees more likely to choose such employment.[24]

Chen described them as special tax treatments provided only to a select group of taxpayers. He stated that:

> Tax incentives are *preferential* tax treatments that *deviate* from the general tax structure and are provided only to a *selected* group of taxpayers. When a generous tax provision, ranging from a lower tax rate to a higher tax allowance, is universally available to all taxpayers, regardless of their business lines, nationalities, investment and/or employment size, and business locations, it is not a tax incentive but an integral part of the general tax structure.[25]

Similarly, in the case of Nigeria, the extant tax policy document states that 'government may provide tax incentives to specific sectors or for such specific activities in order to stimulate or retain investment in the sector.'[26] The IMF is of the opnion that *'tax incentives'*

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20 *Ibid,* 1498

21 Easson, A & Zolt, EM, 'Tax Incentives (2002) *World Bank Institute* 15

22 James, S, 'Effectiveness of Tax and Non-Tax Incentives and Investments: Evidence and Policy Implications' (2013) *ICAS of the World Bank Group,* 2-3

23 Sonarajah, M, *The International Law on Foreign Investment* (Cambridge: CUP, 2017) 127

24 Surrey, SS, 'Tax Incentives as a Device for Implementing Government Policy: A Comparison with Direct Government Expenditures' (1970) Vol 83 (No.4) *Harvard Law Review* 705, 711 -712 (Surrey)

25 Chen, D, 'The Framework for Assessment of Tax Incentives: A Cost-Benefit Analysis Approach' being paper for workshop on *Tax Incentives and Base Protection*, New York, 23-24 April 2015, 3. Available at http://www.un.org/esa/ffd/wp-content/uploads/2015/04/2015TIBP_PaperChen.pdf (accessed 26 September 2017)

26 See FMF, National Tax Policy (2017), 4

means that there is in existence a special tax provision granted to qualified investment projects or firms providing a favourable deviation from the general tax code.'[27] Hence, the determinant of whether a provision is a tax incentive is exclusivity. Contrary opinion is that which holds that general tax provisions can also be called incentives by virtue of the following reasons:

> First, they are designed as such and function as such. Second, it makes sense for a government to broadcast that it is offering attractive tax incentives for investment even if they take the form of general rather than selective provisions of the tax code. And third, a number of countries ... have shifted from selective to general incentives, all with the intention of stimulating investments.[28]

This research does not agree with the above justification. This is because the second and third justification (i.e. government's broadcast of the provision and that a number of countries have shifted from selective to general incentives) are not sufficient to detract from the fact that exclusivity is the criterion on which incentives are based. With regard to the second, broadcast serves to communicate the existence of the policy decision underpinning the tax incentive and introduces transparency into the operationalisation of the incentive policy. This does not make it open to all and sundry. A taxpayer desirous of benefiting from an incentive provision must apply and be deemed qualified by the administrator.

Furthermore, the exclusivity of tax incentives and the consequential grant to qualified taxpayers should not be conceived as being coterminous with the breach of some of the core priniciples of international trade and investment law where the target or beneficary of the policy is foreign to the jurisdiction. This is because taxation is entrely the right of the sovereign (i.e. the state) and in the exercise of this right the state can determine to vary the regime for various purposes. Where the state grants it to attract foreign investment that would drive spatial and/or economic development, technology transfer, etc., although it would be discriminatory to others, it is not illegal in terms of international trade or investment law. Sonarajah emphasised the foregoing thus:

> The granting of incentives to desirable investors but not to other investors raises the issues of of discriminatory treatment. There can be no objection to discrimination based on factors. There may be violations of national

[27] See *Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment: A Report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank* (2015), 8. Available at https://www.imf.org/external/np/g20/pdf/101515.pdf (accessed 5 January 2017)

[28] See *Effectiveness and Economic Impact of Tax Incentives in the SADC Region: Technical Report submitted to USAID/RCSA SADC Tax Subcommittee, SADC Trade, Industry, Finance and Investment Directorate* (February 2004). Available at http://pdf.usaid.gov/pdf_docs/Pnacy929.pdf (accessed 23 January 2017) (SADC Tax Incentive Report). See also Calitz, E, *et al*, 'The Impact of Tax Incentives to Stimulate Investment in South Africa' (2013) *Stellenbosch Economic Working Papers: 19/13*, 6. Available at *www.ekon.sun.ac.za/wpapers/2013/wp192013/wp-19-2013.pdf* (accessed 30 December 2016) for the proposition that tax incentives could be general and apply across board

> treatment and most-favoured-nation treatment involved as well. But, provided an adequate basis for the differential treatment … can be shown, there will be no illegality involved in such discrimination. Discrimination can only be between like entities. There is no discrimination when an investment which brings benefits is preferred to one which does not. They are not alike.[29]

2.3.2 Effect

A tax incentive confers economic and/or financial advantages on a specific enterprise or group of enterprises within the state to the exclusion of others as it is not an across the board or general provision available to all and sundry. Zee *et al*, are of the view that tax incentives grant qualified investments and projects a lowered effective tax burden relative to what they could have borne in the absence of the special tax provision.[30] Put differently, tax incentives reduces the tax liability on investments and/or profit oriented entities,[31] improves their profit after tax and ultimately the disposable income of the beneficial owners of the return on the investment and profit. This makes tax incentives received by beneficiaries direct cash grant or transfer from the government.

Furthermore, since tax (as well as tax incentives) affect the cost of doing business and the price of business output, taxpayers are bound to manifest as *homo economicus.*[32] That is, they will adhere to rules or standard that would guarantee the attainment of pre-determined goal(s) and/or the means to them. Thus, *ceteris paribus,* the existence of tax incentives would induce the manifestation of utility maximising behaviour such as the adoption of diverse tax avoidance and/or mitigation strategies in response to the monetary benefit accruing therefrom.[33] Thus, while in the persona of a *homo economicus,* the prospect of a higher after-tax profit could induce businesses to choose debt financing. This choice would be preferred because corporate tax regimes typically permit the deductibility of interest payments on loans thereby making debt finance a more appealing financing option compared to equity.[34]

Closely related to the foregoing is the fact that tax incentives are a direct drain on government resources and cost to government[35] at the same time. Hence the perception that

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29 Sonarajah, supra note 23
30 Zee *et al*, supra note 19, 1498
31 Calitz, *et al*, supra note 28, 4
32 See chapter four for an elaborate discourse on the concept of the *homo economicus* and how taxpayers fit the description
33 Surrey, supra note 24, 711
34 See section 24 (a) CITA
35 Holland, D & Vann, RJ, 'Income Tax Incentives for Investment' in Thuronyi, V (ed.), *Tax Law Design and Drafting* (volume 2) (New York: IMF, 1998) 1-2. Available at http://www.sagiev.net/books/IMF_Drafting/ch23_Income_Tax_Incentives_Investment.pdf (accessed 3 January 2017)

they are a source of revenue loss[36] and/or an instrument for revenue drain.[37] This is because they deprive the government of the granting state revenue that ordinarily ought to have been appropriated for the provision of social goods and services. For example, a study to analyse the impact of tax exemptions on development in Uganda affirms the foregoing as it established that:

> … in the year 2009/10, tax exemptions resulted into a direct loss of 3.99 percentage points for tax to GDP ratio. Without the exemptions, the tax to GDP ratio would have reached a level of 16.15%. This revenue yield would have been sufficient to fund the national budget without recourse to donor funding.[38]

Table 2.1 below illustrates further the loss associated with the granting of incentives. It summarises from a study by TJN-A/ActionAid,[39] the quantum of revenue lost by four of the members of the East African Community (EAC) as a result of the tax incentives granted by the respective governments between 2007 and 2010 in their jurisdictions. These figures have in recent times become the punchline for civil society organisations[40] in their argument against the granting of tax incentives.

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36 US Department of Treasury, *Resource Centre: Tax Expenditures* (2017). Available at https://www.treasury.gov/resource-center/tax-policy/Pages/Tax-Expenditures.aspx (accessed 4 January 2018). See Aniyie, IA, 'Achieving Sustainable Development through Tax Harmonization: Potentials Paradoxes and Policy Imperative' (2015) Vol. 6 (No. 1) *Journal of Sustainable Development Law and Policy* 272-296, 273 where revenue lost to tax incentives was described as lost development opportunity

37 See SADC Tax Incentive Report, supra note 28, 3.7 – 3.18 for a detailed exposition of how tax incentives become a source of revenue drain, cause revenue loss and consequently amount to a cost which often outweighs benefits associated with the incentive

38 SEATINI, *Tax Exemptions Implications on Socio-Economic Development* (Uganda: 2012) 6. Available from http://www.seatiniuganda.org/publications/downloads/89-tax-exemptions-implications-on-the-socio-economic-development-3rd-dec-2012/file.html (accessed 7 April 2018)

39 TJN-A & ActionAid International, *Tax Competition in East Africa: A Race to the Bottom?* (2012) 11. Available at http://www.actionaid.org/sites/files/actionaid/eac_report.pdf (accessed 3 January 2018)

40 See TJN-A & Action Aid, *The West African Giveaway: Use and Abuse of Corporate Tax Incentives in ECOWAS* (2015). Available at http://www.actionaid.org/sites/files/actionaid/the_west_african_giveaway_2.pdf (accessed 3 January 2018); Action Aid, *Leaking Revenue: How a Big Tax Break to European Gas Companies has Cost Nigeria Billions* (2016). Available at https://www.actionaid.org.uk/sites/default/files/publications/leakingrevenue.pdf (accessed 3 January 2018); van Dorp, M, *How Shell, Total and Eni Benefit from Tax Breaks in Nigeria's Gas Industry: The Case of Nigeria Liquefied Natural Gas Company (NLNG)* (Amsterdam: SOMO, 2016). Available from https://www.somo.nl/how-shell-total-and-eni-benefit-from-tax-breaks-in-nigerias-gas-industry/ (accessed 5 January 2018). See also SEATINI, *Tax Exemptions Implications on Socio-Economic Development* (Uganda: 2012) 6

Table 2.1: Estimated Loss Due to Granted Tax Incentives in the EAC Region

Country	Estimated Loss
Tanzania	1. All tax incentives loss estimated to be US$1.44billion in 2008 - amounting to 6 percent of GDP 2. Minimum revenue loss from tax incentives granted companies estimated to be US$266 million per annum for 2008/09 and 2009/10
Kenya	1. All tax incentives loss estimated to be US$1.1 billion per year - amounting to around 3.1 percent of GDP 2. Trade-related incentives constitutes at least US$133 million and may have been as high as US$566.9 million in 2007/08
Uganda	1. Around US$272 million amounting to about 2 percent of GDP in 2009/10
Rwanda	1. US$156 million in 2008 - amounting to 3.6 percent of GDP; and US$234 million in 2009 - amounting to 4.7 percent of GDP

Source: TJN-A & ActionAid International[41]

Related to the tax liability reduction and profit after tax improvement corollary of tax incentives is its income inequality/inequity-creation potential. This is due to the fact that incentives reduce the effective marginal tax rate and effective average tax rate of beneficiaries of the incentives.[42] This effect manifests itself in diverse forms. In Nigeria, pursuant to the respective income tax legislation, dividend income is subject to tax at the rate of 10 percent notwithstanding the nature of taxpayer[43] while personal income tax is charged using a tiered (i.e. graduated) scale which has 24 percent as its top marginal rate.[44]

Thus, where two taxpayers (A and B) each receive NGN4 million per annum as dividend income and employment income[45] respectively, each taxpayer is subject to different tax regimes and burden. Figure 2:1 below espouses the foregoing. It shows that *Taxpayer A* (beneficiary of the distributed profit of a limited liability company) is left with a higher disposable income compared to *Taxpayer B*. The existence of the tiered rate for the taxation of personal income puts *Taxpayer B* in a progressive tax system. A NGN4 million per

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41 Supra note 39

42 See Nguyen-Thanh, D & Strupat, C 'Is the Burden Too Small? - Effective Tax Rates in Ghana' (2012) *Ruhr Economic Papers No. 389*, 1-30. Available at https://www.die-gdi.de/uploads/media/Is_the_Burden_Too_Small_Strupat.pdf (accessed 6 July 2017) where it was revealed that tax incentives like holidays and preferential income tax rates lower the effective tax burden of beneficiaries by 17 percent thereby effectively reducing their effective average tax rate

43 See section 71 PITA and section 80 CITA respectively

44 See Sixth Schedule, PITA pursuant to which annual income of taxable persons (other than corporations) is taxed using a graduated scale thus: first NGN300,000 at 7 percent, next NGN300,000 at 11 percent, next NGN500,000 at 15 percent, next NGN500,000 at 19 percent, next NGN1,600,000 at 21 percent and above NGN3,200,000 at 24 percent

45 For this analysis, it is assumed that the employment income is taken gross; without the tax-exempt deductions (i.e. gratuities, pension fund contributions, life assurance premiums, national health insurance scheme and the national housing fund contribution) provided by Paragraph 2, Sixth Schedule, PITA

annum income would, therefore, put *Taxpayer B* in the top marginal tax rate bracket of 24 percent and also widens the disposable income gap between both taxpayers. The disposable income gap brings about income inequality. The situation has the tendency to worsen where a high net worth individual (HNWI)[46] is involved. This is because as 'profit-income earners', they would be more inclined, compared to *Taxpayer B* who is a 'wage-income earners',[47] to utilise a limited liability company as a vehicle for the management of the incidence of tax on their income.[48]

Figure 2.1: Hypothetical determination of tax burden

Taxpayer A	Income:	NGN4million
	Tax rate:	10%
	Tax payable:	NGN400000
	Disposable income:	NGN3.6million
Taxpayer B	Income:	NGN4million
	Tax rate:	7 – 24%
	Tax payable:	NGN 518000
	Disposal income:	NGN3482000

Computation (Taxpayer B)	**NGN**	**NGN**	**NGN**
Gross income		*4000000*	
Deduct consolidated relief allowance			
(Higher of NGN200000 and 1% of NGN4million + 20% of NGN4million)	*1000000*	*(1000000)*	*1000000*
Chargeable Income		*3000000*	
Tax payable as per scale:			
1st NGN300000 @ 7%	*21000*		
Next NGN300000 @ 11%	*33000*		
Next NGN500000 @ 15%	*75000*		
Next NGN500000 @ 19%	*95000*		
Next NGN1600000 @ 21%			
(actually NGN3000000 – NGN1600000 = NGN1400000)	*294000*		
Tax payable	*518000*	*(518000)*	
		2482000	*2482000*
Disposable income			*3482000*

In addition, the same tax incentives potentially erode structures within a tax system that are geared towards the attainment and sustenance of the horizontal and vertical equity therein. Notwithstanding the fact that income is not a perfect measure of ability to pay tax,[49] it is however, a viable proxy for the determination of tax liability. Thus, against the background of the principle of horizontal equity, since *Taxpayer A* and *B* earned the same income per

46 For this study, HNWIs are perceived from the context of the *2017 World Wealth Report* available at https://www.capgeminifsinsights.com/reports. The *2017 World Wealth Report.* It defines HNWIs as those having investable assets of at least USD1million, excluding primary residence, collectibles, consumables and consumer durables

47 See Carvalho, L & Rezai, A, 'Personal Income Inequality and Aggregate Demand' (2014) *Working Paper 2014-23, Department of Economics, FEA-USP*. Available at http://www.repec.eae.fea.usp.br/documentos/Carvalho_Rezai_23WP.pdf (accessed 7 January 2018) where the authors referred to both types of income as profit and wage income respectively

48 According to the *2017 World Wealth Report*, the defining characteristic of HNWIs is that their wealth is primarily derived from investment earnings (i.e. passive income) and not from employment (i.e. active income) which is usually taxed at a lower rate compared to the latter

49 The core of this assertion lies within the realm of the jurisprudence of the theoretical foundations of justice or equity in a tax system stands and echoes the debate as to what should be the base for an income tax regime. For a discourse, see Gunn, A, 'The Case for an Income Tax' (1979) Vol. 46 (Issue 2) *University of Chicago Law Review*, 370

annum, they ought to pay the same tax. This is not the case. By virtue of the 10 percent tax rate, *Taxpayer A* enjoys an incentive not available to *Taxpayer B* and this disrupts the horizontal equity that ought to exist. Also, where the taxable income of both taxpayers increases by NGN1million, the consequential increase in the disposable income of *Taxpayer A* would be higher than that of *Taxpayer B*. The disruption of vertical equity would arise in a situation where the income of *Taxpayer A*, as a HNWI, suffers tax that is less than what is appropriate for its station because of the existence of the incentive that is the 10 percent tax rate.

Income inequality actuated by tax incentives jeopardises the income redistribution and economy stabilisation goals of taxation. Where *Taxpayer A*, as a HNWI, arranges its activities so as to restrict its income to dividend income, the reduced tax rate would effectively countervail the former goal. This is because the incentive provided by the reduced tax rate of 10 percent effectively worsens the financial standing of Taxpayer B vis-à-vis *Taxpayer A* as the latter is provided an opportunity to further accumulate financial capital. This opportunity has the propensity to destabilise the economy because of the relationship between financial capital, demand,[50] supply and economic growth. With regard to the above scenario, however, economic growth is undermined from various fronts. First is the fact that the existence of the incentive channels the funds needed to drive economic growth to the rich who, owing to their low marginal propensity to consume, lock financial capital into savings instead of spending them.[51] The second is that the non-progressivity of the dividend income tax denies the state of the economic stabilisation[52] function made possible because of the progressive income tax which the multi-tiered PITA imposes on the income of *Taxpayer B*. Thirdly, against the backdrop of the economic recession recently experienced by Nigeria and its aftermath, it is bound to catalyse a paradox of thrift, i.e. a situation where economic growth contracts as a result of a drop in aggregate demand occasioned by autonomous savings by economic agents (profit and wage earners inclusive) during an economic recession.

Furthermore, tax incentives (as with everything related to tax) has a distortionary effect on the economy. This is because their existence actuates behaviour and/or influences decisions

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50 Demand here refers to effective demand – demand by economic agents backed with the means to pay

51 See Dabla, E, *et al.*, 'Causes and Consequences of Income Inequality: A Global Perspective' (2015) *IMF Staff Discussion Note* (No.13), 8. Available at https://www.imf.org/external/pubs/ft/sdn/2015/sdn1513.pdf (accessed 4 January 2018)

52 See Weller, CE & Rao, M, 'Can Progressive Taxation Contribute to Economic Development' (2008) No. 176 *Political Economy Research Institute Working Paper Series* where the authors showed progressive taxation actually aids economic stability in a situation where inequality exists

that would not have been manifested in a free market (i.e. in a system devoid of government restrictions/intervention and where supply and demand are the sole determinant of economic decision).

Beyond the negatives, tax incentives have the potential for positive effects as they can be used to target a particular endeavour or to elicit a desired response.[53] Their deployment or presence in an economy serves as a means for the reduction of the capital burden on government, especially with regard to the developemt of new high risk industries. This also has the effect of preventing the increase in the tax rate or the introduction of new (and/or earmarked) taxes to generate the needed revenue as well as sparing the taxpayers the associated burden. In the midst of scarce resources and budget constraints plaguing the majority of the comity of nations, tax incentives provide a practical means for the provision of public goods and services without fatiguing the tax base.

It is for these reasons that James[54] recommends that governments should consider the granting of tax incentives: (a) to encourage the private sector to fund public goods that have the potential to generate social benefit; and (b) where the consequential investment would generate long-term positive externalities like technology tranfer, signalling or showing that the country is attractive for investment. Nations, like the Republic of Korea, Singapore and Hong Kong have utilised tax policies with tax incentives strategies at the centre to pull investments towards them. According to Jun:

> Hong Kong, China has maintained a market-friendly tax policy with a simple, low-rate tax structure. Singapore has been very proactive in providing foreign investors with investment-friendly environments including generous tax incentives. Unlike these two, Republic of Korea's incentive policy seems to have focused on supporting local companies with an implicit aim of protecting its tax base.[55]

Another use to which tax incentives can be put is with regard to preventing the shifting of companies into the informal sector as well as 'coercing' those already operating within it into migrating to the formal sector or declaring hitherto hidden assets (and wealth) that are subject to tax. This is usually achieved by the tax authority offering affected taxpayers a one-off time-bound opportunity to make a disclosure during the pendency of a scheme or facility which provides the taxpayer with incentives for the disclosure either in the form of

53 Surrey, supra note 24, 711 -712

54 James, S. 'Providing Incentives for Investment: Advice for Policymakers in Developing Countries' (2010) No. 7 *Investment Climate in Practice* 2

55 Jun, J, 'Tax Incentives and Tax Base protection in Developing Countries' (2017) 10. Available at https://www.unescap.org/sites/default/files/S3_Tax-Incentives-and-Tax-Protection-Base.pdf (accessed 23 January 2018)

lower fine rate or immunity from prosecution and no fine.[56] It could be broadly or narrowly targeted.[57] The latter relates to a situation where the beneficiary is specified or pre-determined; while the former relates to a situation where there is no restriction as per beneficiary. The tax amnesty programme launched by the government of Nigeria on 5 October 2016 provides an example of broadly and narrowly targeted incentive. From launch to 24 November 2016, it was broadly targeted, entitling every defaulting taxpayer to the benefit of the waiver. But from 25 November to 31 December 2016, beneficiaries were qualified. Only members of the National Association of Small and Medium Enterprises were entitled to apply for the waiver, thereby making them the targeted beneficiaries.[58]

The Voluntary Asset Income Declaration Scheme (VAIDS) is another example of a narrowly targeted incentive scheme as it provided Nigerians who have undeclared foreign assets and income the opportunity to declare and pay the consequential tax within a specified period of time to qualify for the forgiveness of the consequential penalties and interest associated with the prior noncompliance.[59] Gould and Rablen refers to such incentive schemes targeted at offshore holdings as Incentivized Offshore Voluntary Disclosure Schemes (IOVDS)[60] and it is not peculiar to Nigeria.[61]

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56 Gould, M & Rablen, M, 'Voluntary Disclosure Schemes for Offshore Tax Evasion: An Analysis' (2016) *TARC Discussion Paper 017-16*, 1

57 Appelt, S, *et al*. argue that the targeting of incentives is motivated by evidence or the belief that beneficiaries can be more responsive to support from the state or that there would be positive externalities from the grant of the target provision. See Appelt, S, *et al*., 'R&D Tax Incentives: Evidence on Design, Incidence and Impacts' (2016) No. 32 *OECD Science, Technology and Industry Policy Papers,* 11. Available at https://www.oecd-ilibrary.org/docserver/5jlr8fldqk7j-en.pdf?expires=1523271430&id=id&accname=guest&checksum=663B66C70E6CB68552C08C841D67C7DA (accessed 7 February 2018). The reduced CIT rates and/or exemptions which specific companies or industries enjoy as a result of their nature, the nature of their activities or financial configuration are also examples of targeted incentives. For examples of targeted incentives, see PwC, *Worldwide Tax Summaries: Corporate Taxes Summaries 2017/2018*. Available at https://www.pwc.com/taxsummaries#pdf (accessed 31 January 2018)

58 Aniyie, IA, 'Nigeria' in Evans, C, *et al* (eds.), *Improving Tax Compliance in a Globalised World* (Netherlands: IBFD, 2018) 605

59 VAIDS was introduced via Executive Order No. 004 of 2017 on 29 June 2017. It was initially designed to cover all taxes except the VAT and was to last for 9 months commencing from 1 July 2017. It was however extended to 30 June 2018. With its demise, the *Voluntary Offshore Assets Regularisation Scheme* (VOARS) was put in place via Executive Order No.008 of 2018 signed on 8 October 2019. As per tenure, VOARS is for one year, within which affected taxpayers can declare their offshore assets and income that relate to the preceding 30 years of assessment as well as fully comply with their tax obligation. Even though this is not a review of the aforementioned schemes, it should be noted that both provide opportunity for voluntary declaration of ownership of assets and payment of applicable taxes while VAIDS was specific to foreign income

60 Gould & Rablen supra note 56

61 See generally, Gould & Rablen supra note 56 where reference was made to similar schemes in the US, UK, Ireland, Australia. Also, the South African Voluntary Disclosure Programme (VDP) administered under the *Tax Administration Act 2011* (No. 28 of 2011) (TAA) and the Special Voluntary Disclosure Programme (SDVP) ae further examples as they provide South African taxpayers the opportunity to voluntarily disclose information relating to hitherto hidden foreign assets and income or defaults relating

2.3.3 Use

Tax incentives are utilised by governments to induce action which it considers is in the interest of the state.[62] A case in point is South Africa's energy efficiency savings incentive which was designed as a tool to encourage behavioural change towards cleaner low-carbon technologies, the reduction of the nation's greenhouse gas emission level and to encourage taxpayers to convert old technologies utilised in the generation of income to newer, more energy-efficient technologies.[63] It is surmised that the foregoing would bring about positive micro and macro economic effects if the compliance burden requirements are simplified.[64] This is because, at the micro level, such a tax incentive would provide the state with a means of achieving the redistribution function as the grant of the energy efficiency savings incentive is effectively an indirect cash transfer to recipients. Also, in the United States of America, federal tax credit has contributed to a growth in the renewable energy industry and brought about visible collateral effects such as energy security, job creation, energy price stability, etc.[65] This, on a macro level, puts tax incentives into the grouping of fiscal policy instruments utilised by government for jumpstarting economic expansion in specific sectors or in times of contraction.

Furthermore, incentivized offshore voluntary disclosure schemes are veritable means of raising relatively cheaper revenue. This stems from the fact that by design, enjoyment of

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thereto voluntarily. The latter created a platform that allowed noncompliant taxpayers to disclose offshore assets and income voluntarily, as well as regularise both their tax and exchange control affairs before the commencement of receipt by SARS of offshore 3rd party financial data from tax authorities under the new global Common Reporting Standards (CRS) for the Automatic Exchange of Information developed by the OECD. See generally, SARS, *Voluntary Disclosure Programme External Guide (GEN-VDP-02-G01).* Available at http://www.sars.gov.za/AllDocs/OpsDocs/Guides/GEN-VDP-02-G01%20-%20Voluntary%20Disclosure%20Programme%20-%20External%20Guide.pdf (accessed 9 April 2018) and SARS, *Special Voluntary Disclosure Programme External Guide (GEN-VDP-020-G02).* Available at http://www.sars.gov.za/AllDocs/OpsDocs/Guides/GEN-VDP-02-G02%20%20-%20Special%20Voluntary%20Disclosure%20Programme%20-%20External%20Guide.pdf (accessed 9 April 2018)

62 Surrey, supra note 24, 711

63 See SARS, *Interpretation Note 95 (Deductions of Energy-Efficiency Savings)* (24 February 2017). Available at http://www.sanedi.org.za/images/March%202017_SARS%20Carification%20Noted_LAPD-IntR-IN-2017-01%20-%20IN95%20Deduction%20for%20energy-efficiency%20savings.pdf (accessed 8 March 2018) (hereafter referred to SARS IN 95)

64 See Dippenaar, M, 'The Role of Tax Incentives in Encouraging Energy Efficiency in the Largest Listed South African Businesses' (2018) 21 (1) *South African Journal of Economic and Management Sciences* 1-12 where it was recommended that the South African energy efficiency incentive be expanded and/or its qualifying criteria simplified for it motivate South African businesses' decisions to invest in energy efficiency

65 See US Department of Energy, 'Leveraging Federal Renewable Energy Tax Credits' (2016) Publication No. DOE/EE-1509. Available at https://www.energy.gov/sites/prod/files/2016/12/f34/Leveraging_Federal_Renewable_Energy_Tax_Credits_Final.pdf> (accessed 9 March 2018). See also SEIA, 'ITC Fact Sheet' (27 January, 2015). Available at https://www.seia.org/sites/default/files/ITC%20101%20Fact%20Sheet%20-%201-27-15.pdf (accessed 8 March 2018)

the incentive is within a specific timeframe, hence making it time bound and during this period, the cost associated with enforcement is dispensed with.[66] The foregoing is, however, debateable when the impact of the schemes on the general tax morale in the tax system is considered. It is argued that the existence of these schemes (e.g. VAIDS) is a potential disincentive to tax compliance on two fronts. Firstly, it accentuates the difference in financial status between those who beause they hold assets and earn income offshore qualify for the IOVDS and those who because they do not hold assets and earn income offshore (e.g. the owner of a MSC or life style company) lack capacity to benefit from the IOVDS. Simply put, it borders on the encouragement of inequality in the tax system. Secondly, the existence of a IOVDS may further worsen the compliance stuation within the tax system as knowledge of its existence could actuate the decision to hold assets and earn income offshore in the first place.[67] The situation is worsened where, in the design and provision of the IOVDS, the source of the income used in the procuring the asset held or the nature of income earned offshore is not an issue.

This notwithstanding, tax incentives are of value to economic actors. The utility of tax incentives for economic actors derives from the fact that it improves their profit after tax and/or disposable income. Thus, tax incentives are a veritable tool for the achievement of the Musgravian objectives[68] (or the goals of taxation).[69] In addition to allocation of resources and the redistribution of income, their existence would bring about enhanced aggregate demand and economic growth. This is bound to follow the improved after-tax profit and/or disposable income that the tax incentives bring about at the micro level. This is indicative of the good that can be achieved with tax incentives.[70] This is however subject to the existence of a variety of factors, namely the tax incidences, the form or type of the tax incentive, the target of the incentive, the objective which underscores the state's provision of the incentive, etc. One of these factors (or a combination of them) has the capacity to hamper the use of tax incentives as a tool for the attainment of the aforementioned objectives. Thus, where a tax incentive underpinned by the desire to improve the aggregate demand (and overall economic growth) is used to subsidise the price

66 See Gould & Rablen supra note 56, 3

67 *Ibid*

68 See Musgrave, R & Musgrave, P, *Public Finance in Theory and Practice* (5th edn) (United States: Tata McGaw-Hill, 2004) 3-14 where it was proposed that the function of the state is the allocation of resources, stabilisation of the economy, redistribution of income

69 Avi-Yonah, RS, 'The Three Goals of Taxation' (2006) Vol. 60 *Tax Law Review* 1-28 where the Musgravian objectives were described as the 'three goals of taxation'

70 See IBA, *Tax Abuses, Poverty and Human Rights: A Report of the International Bar Association's Human Rights Institute Tax Force on Illicit Financial Flows, Poverty and Human Rights* (London: IBA, 2013) 39 where the IBA expressed a similar opinion

of goods with perfectly inelastic demand,[71] almost nothing vis-à-vis the policy objective will be achieved. This is because the reduced price will not actuate an increase in consumption and demand. The latter and its contribution to economic growth would remain at the pre-tax incentive point as production would also not increase. The reverse would be the case where demand is elastic as the subsidy received by the producer would reduce the price of the good and increase demand as well as production and eventually bring about economic growth.

Tax incentives are a global phenomenon.[72] The study by James (see figure 2.2 below) reveals the pervasiveness and variety of tax incentives in existence globally.[73] It further reveals that nations of the world, irrespective of their socio-economic markers (e.g. GDP or human development index) make use of tax incentives. Thus, not only developing countries are prone to having tax incentives as part of their tax system.[74]

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71 Perfect demand inelasticity arises where the quantity demanded of a good/service does not respond to a change in price. This is the case of goods/services that have no substitute. The reverse is referred to as perfect demand elasticity and it exists where quantity demanded responds to a change in price

72 See Keen, M & Mansour, M, 'Revenue Mobilisation in Sub-Saharan Africa: Challenges from Globalisation' (2009) *IMF Working Paper 09/157* 1, 19-22 where the authors catalogued the increase in the adoption and utilisation of tax incentives amongst sub-Sahara African countries over a 25 years period contrary to the conventional wisdom; Kransdorff, M, 'Tax Incentives and Foreign Direct Investment in South Africa (2010) Vol. 3 (Issue 1) *Consilience: The Journal Sustainable Development* 68-84, 76 where the author presents a comparative analysis of the incentives offered by South Africa and its FDI competitors. Further evidence of the global use of tax incentives can be gleaned from James, S, 'Tax and Non-Tax Incentives: Evidence and Policy Implications' (2013) *ICAS of the World Bank Group*

73 James, supra note 72, 4. Also see PwC, *Worldwide Tax Summaries: Corporate Taxes Summaries 2017/2018.* Available at https://www.pwc.com/taxsummaries#pdf (accessed 31 January 2018) which provides tax-related details (including tax incentives available) from over 150 countries

74 *Cf.* Tanzi, V & Zee, H, 'Tax Policy for Emerging Markets: Developing Countries' (2000) Vol. 53 (No. 2) *National Tax Journal* 299-322 where it was suggested that only developing countries favour tax incentives

Figure 2.2: Global prevalence of tax incentives

	Number of Countries Surveyed	Tax holiday/Tax Exemption	Reduce Tax rate	Investment allowance/ Tax Credit	VAT exemption/ reduction	R&D Tax Incentive	Super-deductions	SEZ/Free Zones/EPZ/ Free port	Discretionary process
East Asia and Pacific	12	92%	92%	75%	75%	83%	8%	835	25%
Eastern Europe and Central Asia	16	75%	31%	19%	94%	31%	0%	94%	38%
Latin America and the Caribbean	24	75%	29%	46%	58%	13%	4%	75%	29%
Middle-East and North Africa	15	73%	40%	13%	60%	0%	0%	80%	27%
OECD	33	21%	30%	61%	79%	76%	18%	67%	27%
South Asia	7	100%	43%	71%	100%	29%	57%	71%	14%
Sub-Saharan Africa	30	60%	63%	73%	73%	10%	23%	57%	47%

Source: James, supra note 72, 4

Notwithstanding its global presence, its use is not entirely sanctioned by tax policy experts and academics. A body of thought (otherwise referred to as conventional wisdom)[75] cautions against the use of tax incentives.[76] Justification for this orientation includes the fact that it is not in every instance that tax incentives attract investment, especially in cases where the same investments would have been undertaken in the absence of a tax incentive. According to Tanzi and Zee:[77]

> … available evidence suggests that their effectiveness in attracting incremental investments (above and beyond the level that would have taken place if no incentives were given) is often questionable ….[78]

There is the possibility of abuse and the risk of the existence of tax incentives undermining fundamental democratic principles[79] as well as the knowledge that the decision to invest in

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75 See Easson & Zolt, supra note 21, where the authors referred to this school of thought as 'conventional wisdom'

76 Ibid. Holland & Vann, supra note, 35. See also IMF, 'Cyprus: Request for Arrangement under the Extended Fund Facility' (2013) *IMF Country Report No. 13/125,* 58. Available at https://www.imf.org/external/pubs/ft/scr/2013/cr13125.pdf (accessed 6 January 2017) where it was made a loan condition

77 See Tanzi, V & Zee, H, 'Tax Policy for Emerging Markets: Developing Countries' (2000) Vol. 53 (No. 2) *National Tax Journal* 299, 315

78 For confirmation see Van Parys, S & James, S, 'The Effectiveness of Tax Incentives in Attracting Investment: Panel Data Evidence from the CFA Franc Zone' (2010) 17 *International Tax and Public Finance* 400-429 which is an empirical study of 12 West and Central African countries over the period 1994-2006. See also Klemm, A & Van Parys, S, 'Empirical Evidence on the Effects of Tax Incentives' (2012) 19 (3) *International Tax and Public Finance* 393-423 (a study of 40 Latin American, Caribbean and African countries for the period 1985-2004) where the authors found that lower CIT rates and longer tax holidays were effective in attracting FDI to Latin America and the Caribbean but not in Africa

79 IBA, supra note 70, 40

a jurisdiction is influenced by more non-tax factors.[80] Furthermore, the presence of tax incentives in a tax system has a distortive effect on the functioning of the latter. Wth regard to the foregoing, the IMF, OECD, UN and World Bank argue thus:

> A good revenue system adopts taxes that are simple, fair and efficient. Tax incentives risk compromising these principles to the extent that they complicate the tax system, create horizontal inequities, and distort production efficiency; and they may forgo revenue that could have been spent more productively or needs to be replaced in other and more damaging ways.[81]

The other side (i.e. supporters of the use of tax incentives), however, also offer an array of arguments in support of their position. The most popular is that tax incentives are easier alternatives to subsidies (and other direct expenditure) for attracting investment since they are subject to less rigorous scrutiny.[82] They also claim that since their provision does not require actual expenditure of government revenue, they are a veritable means for stimulating economic growth[83] as well as the promotion of the development of particular sectors of the economy and locations/regions of the state.[84]

The above is evidence of a variance of opinion with regard to the use of tax incentives. It seems that the existence of disadvantages associated with the use of tax incentives as a fiscal policy tool[85] and the justification for the conventional wisdom does not convince protagonists otherwise with regard to its use. The appeal of the tax incentives, inter alia, stems from the fact that they seem to be a relatively cheap means to an end for many jurisdictions.[86]

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80 See OECD, Tax Incentives for Investment – A Global Perspective: Experience in MENA and non-MENA Countries (Draft) (June 2007). Available at http://www.oecd.org/mena/competitiveness/38758855.pdf (accessed 30 January 2018) 4 where the authors listed nine non-tax factors and three tax factors that influence FDI inflow

81 *Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment: A Report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank* supra note 27, 8

82 Calitz, *et al*, supra note, 28, 8. See also Holland &Vann, supra note, 35, 4

83 UNCTAD, *Tax Incentives and Foreign Direct Investment: A Global Survey* (2000) ASIT Advisory Studies No. 16. Available at *http://unctad.org/en/Docs/iteipcmisc3_en.pdf* (accessed 5 January 2017)

84 UNCTAD, supra note 83, 12-13. In Tanzi & Zee, supra note 77, 315 the propensity of tax incentives to generate positive spatial externalities that could correct market failures associated with the target sector and benefit rest of the economy was touted as a reason for the grant in developing countries

85 See OECD, Tax Incentives for Investment – A Global Perspective: Experience in MENA and non-MENA Countries (Draft) (June 2007). Available at http://www.oecd.org/mena/competitiveness/38758855.pdf (accessed 30 January 2018) for summary of the pros and cons

86 Barbour, P, 'An Assessment of South Africa's Investment Incentive Regime with a focus on the Manufacturing Sector' (2005) *ESAU Working Paper 14*, 3; Holland & Vann, supra note 35, 4. In Klemm, A, 'Causes, Benefits and Risks of Business Tax Incentives' (2009) *IMF Working Paper 09/21* and Tanzi, V, 'The Role of the State and Public Finance in the Next Generation' (2008) Vol. 8 (No. 2) *OECD Journal in Budgeting* 1, 5 the authors argued that tax competition amongst states and the desire to capture a portion of the 'commons' that is the 'world tax base' fuels the use of tax incentives. Also see Piracha, M & Moore, M, 'Revenue-Maximising or Revenue-Sacrificing Government? Property Tax

2.3.4 Characteristics

From the preceding section, the following are evident: (a) tax incentives are legislation-based provisions; (b) they have attendant costs which are borne by the state; and (c) there is an eligibility criterion to be met before benefiting from the provision. This section provides a more focused review of the first two characteristics.[87]

a. Legislation-based provisions

Tax incentives are provisions founded and made available via the extant law of the state.[88] The IMF definition of tax incentives as a special tax provision providing deviation from the general tax code to qualified investment projects or firms[89] underscores this characteristic. Thus, as tax provisions of a special nature, their entire structure is a creation of law. As tax cannot be imposed and deviations introduced without a law to that effect,[90] it is, therefore, logical to conclude that there cannot be a tax incentive (which essentially is a deviation from the norm in the tax system) without a law providing foundation for the grant. The decision in *Thompson & Grace v Government. of Akwa Ibom*[91] is a testament to the foregoing. The crux of the matter was whether the defendant can introduce a deviation from the norm as it relates to the taxation of businesses. The defendant sought to impose a business premises registration fee on the plaintiff which exceeded that earmarked for such a purpose by the *Taxes and Levies (Approved List for Collection) Act* (TLA).[92] In deciding in the plaintiff's favour, the court reiterated that the power of a State to make laws on tax matters is always subject to the provisions of the enabling legislation (which in this case is the TLA) and that any attempt to act outside the provisions of the legislation is futile and ultra vires the power of the State.[93]

A consequence of the foregoing is that any tax incentive without foundation in law runs the risk of being termed a 'sweetheart deal'[94] and declared illegal. A lack of foundation in law creates an opportunity for corruption in the tax system and negatively impacts on the

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in Pakistan' (2016) Vol. 52 (No. 12) *The Journal of Development Studies,* 1776, 1787 and Surrey, supra note 24, 713 where it was contended that tax incentives are often put to parochial and selfish use by the ruling class

87 See paragraph 2.3.6 Directions for use *infra* for discussion focused on eligibility

88 Barbour, supra note 86, 2

89 See *Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment: A Report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank* (2015), 8. Available at https://www.imf.org/external/np/g20/pdf/101515.pdf (accessed 5 January 2017)

90 *Coltness Iron Company v Black* 6 App. Ca. 315, 330. See *SA Authority v Regional Tax Board* (1960-2000) 2 NTLR 686, 700 for judicial enunciation of this principle in Nigeria

91 (2010) 3 TLRN 94, 109-110

92 Cap. T2 LFN 2004

93 *Thompson & Grace v Govt. of Akwa Ibom,* 109-110

94 IBA, supra note 70, 40

tax transparency therein.[95] Hence, the legislation via which a tax incentive is provided should be such that would ensure that its grant is based on rules rather than discretion or some other unconscionable consideration.[96] While affirming the foregoing, Zee *et al* captured the mechanics of legislating tax incentives that would improve the transparency of the tax system thus:

> … all tax incentives should have a statutory basis in the relevant tax laws, and changes to such incentives should require amendments to these laws. This implies that incentive provisions should not be embedded in laws unrelated to taxation to avoid possible conflicts, inconsistencies, and overlaps across different laws; they should certainly not be embedded in instruments that have a lesser degree of legal standing than a law, such as regulations, decrees, or orders that could be issued by various government entities or officials on an ad hoc basis. Similar reasoning would then also indicate that statutory provisions in the relevant tax laws should not confer on any government entity or official discretionary incentive-granting powers; tax incentives should be granted, without exception, on the basis of clearly specified qualifying criteria …[97]

b. Cost

The grant of a tax incentive has accompanying or associated cost. Cost can be viewed from a number of perspectives. One of these is that which comes to the fore when tax incentives are viewed within the prism of opportunity cost. In this context, cost relates to the alternative (i.e. revenue) forgone when the state decides to grant a tax incentive. This is often huge and amounts to a loss in situations where the tax incentive is inefficiently managed. El Said *et al* highlighted the foregoing in their 2015 assessment of Nigeria's CIT collection to GDP ratio thus:

> The CIT rate of 30 percent is slightly above comparators (CIT rate is 25 percent in Indonesia and 20 percent in Turkey), but its revenue is much lower (1.5 percent of GDP compared to an average of 3 percent in Indonesia, Mexico, and Turkey), suggesting low tax efficiency. A similar conclusion is obtained from a larger sample. … The wide use of exemptions is an important factor explaining the relatively low CIT collection. Among these, the most notable are those related to the pioneer status. Exemptions seem to be provided liberally, with the CIT law providing discretion to the Federal Executive Council to override tax laws and provide exemptions. Staff estimates that curtailing these exemptions could raise CIT by more than 0.5 percent of GDP.[98]

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95 See Zee et al, supra note 19, 1502 where the existence of a basis in relevant tax legislation was described as dimension of transparency

96 See *Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment: A Report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank* (October 15, 2015), 23-25. Available at https://www.oecd.org/tax/tax-global/options-for-low-income-countries-effective-and-efficient-use-of-tax-incentives-for-investment.pdf> (accessed 25 January 2018)

97 Zee *et al,* supra note 19, 1502

98 El Said, M, *et al*, 'Nigeria: Selected Issues Paper' (March 2015) *IMF Country Report 15/85*, 29. Available at http://www.imf.org/external/pubs/ft/scr/2015/cr1585.pdf (accessed 24 January, 2018).

Another source of cost associated with the existence of tax incentives is the consequential allocative inefficiency on the part of the taxpayer. This would arise because a tax incentive (as is the case with tax generally) distorts the relative prices of goods/services and the profit of businesses. Hence, when the tax incidence is on the business, the introduction of a tax incentive would potentially increase the after-tax profit of the business. This is because, at this point, the supply curve shifts downwards from the after-tax equilibrium point (which incorporates the original price plus tax). This would bring about a reduction in the cost of production and an increase in the quantity of goods/volume of services supplied as well as after-tax profit. In such situation, the alter ego(s) of the taxpayer (i.e. the company) tend to make decisions that would maximise after-tax profit. In this case, the decision would be to change business line so as to qualify the company for the tax incentive. This change actuated by the tax incentive is typical allocative inefficiency as resources would be put to production that does not represent consumer preferences. In addition, this decision would bring about a deviation (not occasioned by market forces) from the equilibrium point. Furthermore, where the number of migrating businesses is huge, there is bound to be a decline in the quantity supplied of the output of the business line from which the taxpayers are migrating. The effect of this reduction is a further shifting of the supply curve to the left and this brings about dead weight loss.

Also, tax incentives deprive government of revenue that ordinarily ought to have been appropriated for the provision of social goods and services. This makes incentives a direct drain on government resources and a cost to government at the same time.[99] Hence the perception that they are instruments for revenue drain[100] which need to be checkmated if the objective(s) which underscores taxation are to be achieved.

2.3.5 Typology

To deal with the cost and benefit associated with use of tax incentives more effectively, there has to be an understanding of the typology of tax incentives. Zee *et al*, categorised tax incentives into two groups: direct tax incentives which relate to CIT (without any

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Also see ActionAid/Tax Justice Network-Africa, *The West African Giveaway: Use and Abuse of Corporate Tax Incentives in ECOWAS* (July 2015) 14. Available at http://www.actionaid.org/sites/files/actionaid/the_west_african_giveaway_2.pdf (accessed 24 January, 2018) where it was reported that Nigeria's estimated loss of NGN 577 billion (by May 2015 exchange rates) from CIT exemptions and import duties waivers was more than double the 2014 federal government budget allocation to health and more than the 2014 budget to education

99 Holland & Vann, supra note 35, 1-2

100 See SADC Tax Incentive Report, supra note 28, 3.7 – 3.18 where the author gave a detailed exposition of how tax incentives create opportunities for revenue drain, cause revenue loss and consequently amount to a cost which often outweighs benefits associated with the incentive

reference to PIT), and indirect tax incentives which relate to the various taxes on the inputs that go into the direct production of exports.[101] They further deconstructed direct tax incentives into two categories: CIT rate incentives (CRI) and investment cost-recovery incentives (ICRI). Although both improve taxpayers' profit after tax and/or disposable income, their difference arises from the means through which this is achieved. CRIs reduce the effective tax rate of companies, while ICRI provide an accelerated rate/attractive term for the recovery of investment costs or expenditure in a qualified capital asset (QCA).[102]

For Surrey, only one type of tax incentive exists and it is that which relieves the 'tax hardships' imposed by special tax provisions on business activities. This, he argues, does not include any provision of the tax system which reduces or relieves 'personal hardships'.[103] At the core of Surrey's thesis is the notion that the response to a tax incentive is voluntary. This differentiates it from expenditure relating to the involuntary activities of taxpayers.[104] Both the pair of Tanzi and Zee[105] and Easson and Zolt[106] exhaustively discussed the forms in which tax incentives manifest. They, however, did little about typifying it but for a brief discussion by Tanzi and Zee focusing on indirect tax incentives without reference to it as a type.[107]

Without prejudice to the variety of tax incentives that have been mentioned here before, a further contemplation of tax incentives is from the perspective of Zee *et al*. Here, the focus is on CRIs and ICRIs (i.e. direct tax incentives). Though they have the same consequence (i.e. the lowering of the effective tax burden of beneficiaries), CRIs and ICRIs manifest in various forms. CRIs manifest as:

a. CIT Holidays

   As the name implies, this is an incentive which exempts the beneficiary from the payment obligation associated with the CIT for a specific period of time.[108] A CIT

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101 Zee *et al*, supra note 19, 1503
102 *Ibid*, 1503-1505
103 Surrey, supra note 24, 711-713
104 *Ibid*
105 Tanzi & Zee, supra note 74, 315-319
106 Easson & Zolt, supra note 21, 15-25
107 Tanzi & Zee, supra note 74, 318
108 The specification of a qualifying period amounts to the incorporation of a sunset clause into the CIT holiday provision. This however births abuse in the form of 'phoenixing'. This occurs when the management or promoters of a company liquidates it solely for the purpose of utilising a new company (which is the phoenix) to buy the asset of the liquidated company and continue the business. Phoenixing is a consequence of incorporation and limited liability. On liquidation of the company, the management, shareholder or promoters can move on to other ventures which includes forming a new company to bid for, buy and carry-on the business of the liquidated company. For an understanding of phoenixing typology, see Anderson, H, et al, 'Defining and Profiling Phoenix Activity' (2014). Available at http://law.unimelb.edu.au/__data/assets/pdf_file/0003/1730703/Defining-and-Profiling-Phoenix-Activity_Melbourne-Law-School.pdf (accessed 8 March 2018). Also see Anderson, H, *et al*,

holiday could also exist in the form of an investment credit that is granted for the acquisition of QCA. This for example, could be in the form of a waiver of the first 200,000 of the unit of currency of the taxable income of a particular year of assessment in which specified QCA is acquired. However, as guideline for the improvement of the effectiveness of tax incentives, it is recommend that a CIT holiday should be accompanied by the requirement that beneficiaries mandatorily file tax returns for the relevant years.[109]

b. Preferential CIT Rate

This is a CIT rate that is less than the generally accepted rate to which qualified taxpayers are entitled. Zee *et al* considers this to be a partial CIT holiday with the same shortcoming on a smaller scale.[110]

ICRIs manifest as:

a. Investment Allowance

This is a stipulated percentage of the initial cost of a capital investment or expenditure on a QCA that is deductible from, or expensed against the assessible profit of a particular year to derive the taxable profit.

b. Investment Credit

This is a percentage of the capital investment or expenditure that is directly deductible from CIT liability. Zee, *et al*,[111] proposed a methodology for the implementation of investment credits that would foster the transparency of its administration. The methodology requires that a tax credit account be created in the tax file of each qualifying taxpayer into which will be entered the amount of tax relief due. Subsequent to the filing of the annual tax return, an entry would be made recording the deduction of the tax liability declared by the taxpayer from the tax credit account for every year of assessment until the investment tax credit is used up or closed after the effluxion of time as determined by a sunset clause. Zolt,

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'Quantifying Phoenix Activity: Incidence, Cost, Enforcement' (2015). Available at http://law.unimelb.edu.au/__data/assets/pdf_file/0004/2255350/Anderson,-Quantifying-Phoenix-Activity_Oct-2015.pdf (accessed 8 March 2018) and Anderson, H, *et al*, 'Phoenix Activity: Recommendations on Detection, Disruption and Enforcement' (2017). Available at http://law.unimelb.edu.au/__data/assets/pdf_file/0020/2274131/Phoenix-Activity-Recommendations-on-Detection-Disruption-and-Enforcement-Melbourne-Law-School-and-Monash-Business-School-February-2017-002.pdf (accessed 8 March 2018) for a discourse of the cost and recommendations for combating it

109 Zolt, EM, 'Tax Incentives: Protecting the Tax Base' (2014) *Draft Paper No. 3*, 17. Available at http://www.un.org/esa/ffd/tax/2014TBP/Paper3_Zolt.pdf (accessed 21 July 2018)

110 Zee, *et al*, supra note 19, 1504

111 *Ibid*, 1505

however, is of the opinion that the approach proposed by Zee *et al* could make investment credit a hybrid CIT holiday where the value of the incentive or CIT exemption to be enjoyed is made a function of the amount of tax assessed or due.[112]

c. Accelerated Depreciation

This involves the reduction of the tax written down value (TWDV) of a QCA at a faster rate early in the life of the QCA. It differs from the traditional straight-line method of depreciation which spreads the cost evenly over the life span of the asset. Tanzi and Zee recommend that a depreciation system should have: (1) a limited number of QCA categories (they actually recommend three or four categories); (2) one depreciation rate per QCA category set higher than the actually physical life of the QCA to compensate for the lack of an inflation-compensation mechanism; and (3) the reducing (or declining)-balance method should be adopted for the depreciation computation.[113]

While contemplating the forms of ICRIs, Zee, *et al* identified a fifth form: investment subsidies as a form tax incentive.[114] This study, however, holds a slightly different view. Although investment subsidies provide opportunity for an accelerated recovery of investment costs or expenditure on QCAs, they are outside of the tax system. As was noted by Zee, *et al* as well as Tanzi and Zee, investment subsidies are 'out-of-pocket' expenditure by the government upfront without a thought of whether the investment will be viable or profitable.[115] Hence the underlinning features of investment subsidies are that they are cash transfers and there is associated revenue foregone as is the case with the forms of tax incentives highlighted above.

Irrespective of the form of the tax incentive, beneficiaries are determined on the basis of their their activity, industry, location or size. An activity-based determination means that the qualifying criterion is that the taxpayer must be involved in a venture, activity or business endeavour that has been pre-qualified for the incentive. The following are examples of tax incentives for which qualification is determined by activity:

i. The 10-year exemption from income tax enjoyed by a Ugandan taxpayer that exports at least 80 percent of finished consumer and capital goods.[116]

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112 Zolt, supra note 109, 19
113 Tanzi & Zee, supra note 74, 312
114 *Ibid*, 317-318; Zee, *et al*, supra note 19, 1505
115 *Ibid*
116 See URA, 'A Guide to Tax Incentives/Exemptions Available to Investors in Uganda' Vol. 3 (Issue 1) (2013/14) 2. Available at

ii. The energy efficiency savings incentive granted against yearly tax assessment filed by South African taxpayers for energy generation from a combination of heat and power, as well as those involving the use of qualifying captive power plants.[117]

iii. The investment tax credit granted in the United States of America from 2006 to 2017 against the income tax of homeowners who purchase solar systems outright and install the same in their homes as well as businesses that install, develop and/or finance solar energy systems.[118]

With regard to industry-based determination, the taxpayer qualifies to enjoy the incentive if it operates within target industry(ies). The pioneer status incentive (PSI)[119] granted to companies in Nigeria for investing in qualified industries or sectors of the economy pursuant to the *Industrial Development (Income Tax Relief) Act*[120] is a typical example of an industry-based determination of qualification. For qualification determined using location, beneficiaries enjoy the associated tax incentive because the income generating venture or investment is located within a geographically delineated area such as an economic processing zone, a free trade zone or port, etc. In addition, the incorporation of a taxpayer in an international financial centre or the adopting same as the place of effective management of a business can also make the taxpayer a beneficiary of a location-based tax incentive.[121]

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https://www.ura.go.ug/Resources/webuploads/INLB/Tax%20Incentive%202013.compressed.pdf (accessed 8 March 2018)

117 See section 12L, *Income Tax Act* No. 58 of 1962 (South Africa). Also see SARS IN 95, supra note 63

118 See section 1337, *Energy Policy Act of 2005* (P.L. 109-58) (United States of America); section 103, *Emergency Economic Stabilization Act of 2008* (P.L. 110-343) (United States of America). Also see SEIA, 'ITC Fact Sheet' (27 January, 2015). Available at https://www.seia.org/sites/default/files/ITC%20101%20Fact%20Sheet%20-%201-27-15.pdf (accessed 8 March 2018)

119 See Chapter four for the treatise on the PSI

120 Cap I7 LFN 2004

121 Worthy of mention is the contending discourses relating to the existence and use international financial centres (IFCs) as vehicle for tax avoidance by businesses. Although these discourses are outside the scope of this research, it is necessary to reiterate that tax avoidance is a legal option provided to taxpayers and if the latter embraces IFCs for tax avoidance, it is legal. Morality is, however, another issue. See generally Timmis, H, 'Mapping Financial Centres' (2018) *K4D Helpdesk Report* 1-18. Available at https://assets.publishing.service.gov.uk/media/5b18efca40f0b634cb3dd78c/Mapping_financial_centres.pdf (accessed 31 July 2018) and Hines Jr., JR, 'International Financial Centers and the World Economy' (2009) *STEP Report* 1-40. Available at https://www.step.org/sites/default/files/Comms/reports/InternationalFinanceCentres.pdf (accessed 31 July 2018) for example of the contending discourse

In most jurisdictions, taxpayers are grouped into distinct customer groups[122] (i.e. segmented) using their turnover (or gross income), industry type or line of business of the taxpayer. Size-based determination is underpinned by segmentation. Thus, a taxpayer would qualify for a tax incentive if it meets any of the pre-specified criteria which could, in the context of this study, be that the taxpayer achieves a particular turnover or operates within a particular industry or is involved in a specific business line. These determination criteria are not mutually exclusive as one or a combination of the criteria is often used for the determination of qualification for tax incentives. For example, South Africa's small business corporation incentive[123] and Nigeria's reduced CIT rate incentive[124] are a combination of the size (determined by turnover) and activity criteria. Furthermore, in addition to their effect, some of which have been discussed above, the existence of tax incentives in a jurisdiction has associated advantages and disadvantages for both the taxpayer and the jurisdiction. Table 2.2 below captures the types (and their forms) of tax incentives as well as associated advantages and disadvantages.

Table 2.2: Advantages and disadvantages of the forms of tax incentives

		CRI		**ICRI**		
Forms		*CIT Holiday*	*Preferential CIT rate*	*Investment allowance*	*Investment credit*	*Accelerated depreciation*
ADVANTAGE	*Taxpayer*	a. Lowers the tax compliance cost as the issues associated with tax payment are removed b. Offers simplicity	a. Reduces the effective tax rate	a. Helps with liquidity constraints b. Facilitates investment in new equipment and machinery c. Lowers the acquisition cost of QCA		a. Allows the taxpayer to write off the acquisition cost of the QCA faster in its earlier years than if the straight-line method of determining depreciation is used b. Helps with liquidity constrains as it defers the bulk of the tax liability to the later years of the QCA

122 Dohmann, T & Pinshaw, G, *The Road to Improved Compliance: A McKinsey Benchmarking Study of Tax Administration – 2008-2009* (2009), 9. Available at https://www.mckinsey.com/~/media/mckinsey/dotcom/client_service/public%20sector/pdfs/road_improved_compliance.ashx> (accessed 10 March 2018)

123 See section 12E, Income Tax Act No. 58 of 1962 (South Africa). See also SARS, *Interpretation Note No.9 (Issue 6) (Small Business Corporation) (26 July 2016).* Available at http://www.sars.gov.za/AllDocs/LegalDoclib/Notes/LAPD-IntR-IN-2012-09%20-%20Small%20Business%20Corporations.pdf (accessed 10 March 2018)

124 See section 40(6) CITA

	Jurisdiction	a. Lowers tax administration cost b. Contributes to improved balance of trade indices where it is export-oriented c. Encourage development of a geographical area or industry where it is location or industry-oriented	a. Encourage long-term investment b. Simple to administrate	a. Revenue cost is transparent and easier to control b. Encourage development of a geographical area or industry where it is location or industry-oriented	a. Takes away the conflict that would have existed if the determination of the TWDV of an asset was left to the accounting policy of the taxpayer b. Introduces uniformity into the computation of depreciation for tax purposes
DISADVANTAGE	*Taxpayer*	a. Discriminates against old businesses where it is targeted at start-ups b. Discriminates against non-export businesses where it is export-oriented c. Since they are time-bound they could be a disincentive to long-term investments d. Could lead to loss where provision is not made for the treatment of pre-holiday capital expenditure or the carry forward of loss incurred during holiday	a. Discriminates against other businesses	a. It is discriminatory where it is location or industry-oriented b. Absence of provision of carry-forward or refund of excess credits would bring about loss of capital	a. Since depreciation relates to historic cost and is often without an inflation-compensation mechanism worked into it, the amount received is usually insufficient to replace the worn asset
	Jurisdiction	a. Prone to abuse (e.g. 'phoenixing') where there is a sunset clause b. Creates tax planning opportunities; e.g. shifting of capital to exempt business or shifting of profit to the latter through transfer pricing or thin capitalisation c. This could result in categorisation as a tax haven d. Erode tax base e. May be of little benefit if duration is short as it would not attract long-term investment	a. This could result in categorisation as a tax haven b. Create tax planning opportunities; e.g. 'phoenixing' where the incentive has a sunset clause or 'Peter Pan syndrome' or business-splitting where the incentive is targeted at businesses of a certain size	a. Tend to influence the choice and nature of assets to be bought b. Prone to abuse if asset use period is not legislated or ring-fenced to the business	a. Since depreciation relates to historic cost and is often without an inflation-compensation mechanism worked into it, the amount received is usually insufficient to replace the worn asset

Source: Zee, et al; OECD, MENA; Klemm; Holland & Vann

2.3.6 Directions for use

Thus far the review has dwelt on the nature and effect of incentives, their characteristics, types and the use as well as the arguments for and against their use. Amongst other things it has been shown that there is utility to be derived by both taxpayers and the state from tax incentives. The Bretton Woods Institutions, the UN and the OECD have produced volumes in policy guidelines that would ensure the effectiveness of tax incentives and the maximum utility that can be derived from their existence.[125] Zolt recommends that, for tax incentives to be effective, eligibility criteria, a process of qualification, scope of benefits, reporting and monitoring requirements, recapture provisions as well as review and sunset provisions have to be taken into account by policy-makers and incorporated into the design of the tax incentives.[126]

Since tax incentives are not for all and sundry, eligibility for or benefiting from the provision is based on qualification and so the exclusivity criterion which Zee *et al* described thus:

> … any tax provision that is applicable to all investment projects does not constitute a tax incentive. Hence, for example, a tax provision that allows the profits of a foreign-funded investment project to be taxed at half the regular CIT rate is a tax incentive; but a general reduction in the CIT rate by half - even if it is intended for a limited duration - is not.[127]

According to Easson and Zolt, the initial question for determination in the course of the design of a tax incentive is whether the tax incentive should be granted automatically where prescribed conditions are met or on a discretionary basis.[128] Klemm recommends that, because of the risk posed by corruption[129] and the limitation faced by the state with regard to the administration of the incentive system,[130] the grant of tax incentives should be automatic, sequel to the taxpayer (i.e. tax incentive applicant) meeting clearly pre-defined criteria. Easson and Zolt, however, declare that both options should be combined in the determination of the grant of a tax incentive and they recommend that the space for the exercise of discretion by government officials should be limited so as to prevent the abuse

125 See Zolt, supra note 109, 3-4 where some literature dedicated to improving effectiveness of tax incentives and fostering the derivation of maximum utility from them were catalogued
126 *Ibid,* 14-23
127 In Zee, *et al*, supra note 19, 1498. *Cf.* Calitz, *et al*, supra note 28, 6 for the proposition that tax incentives could be general and applying across board
128 Easson & Zolt, supra note 21, 25-26
129 See Tanzi, V & Davoodi, HR, 'Corruption, Growth and Public Finance' (2000) WP/00/182 *IMF Working Paper* 15 where the existence of a substitution relation between corruption and volume of tax collected was highlighted. See also TJN-A, *Tax Us if You Can: Why African Should Stand up for Tax Justice* (Kenya: TJN-A, 2011) 9 where it was stated that the proceeds of tax evasion are also moved across borders via the same channels as other forms of corruption
130 Klemm, supra note 86, 13

and corruption of the incentive system by the latter as well as others with rent-oriented intentions.[131]

When combining the options, most jurisdictions require that taxpayers meet some conditions before they are qualified to be considered for the grant of the incentive sought. These conditions for eligibility are usually in the form of verification by persons from within or outside the tax system. The South Africa energy efficiency savings incentive is an example of the second category. The extant regulations[132] stipulated that, to be eligible, a taxpayer must, in respect of each year of assessment for which the incentive is claimed, *inter alia*, appoint a measurement and verification professional to compile a report containing a computation of the former's energy efficiency savings and submit the report to the South African National Energy Development Institute (SANEDI). The SANEDI must thereafter satisfy itself that the report complies with extant standards and regulations as well as accurately reflect the energy-efficiency savings for which the incentive is claimed before issuing the taxpayer with an energy-efficiency performance certificate.[133] In addition to creating a means for the verification of the taxpayer's claim, certification by SANEDI constitutes the process of qualification. It also amounts to vesting a third-party with the responsibility of determining whether the taxpayer is eligible for a tax incentive.[134]

With regard to the need for the incorporation of reporting and monitoring provisions into the design of tax incentives, the argument is that it facilitates and fosters transparency and accountability within the tax system. This can be achieved by legislating: (1) mandatory tax

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131 Easson & Zolt, supra note 21, 25-26; Klemm, supra note 86, 12-13. See also, Zee, *et al*, supra note 19, 1501-1502 where rent-induced behaviour was adduced as one of the consequences of the existence of tax incentives. The Bretton Woods institutions and their associates affirms that a corruption-free tax incentive system can be achieved by making the tax incentive system transparent and accountable. They specifically recommend that tax incentives should be situated amidst the gamut of the tax legislation of the granting state and the much of the cost that is known should be published as tax expenditure. See *Options for Low Income Countries' Effective and Efficient Use of Tax Incentives for Investment: A Report to the G-20 Development Working Group by the IMF, OECD, UN and World Bank* (October 15, 2015). Available at https://www.oecd.org/tax/tax-global/options-for-low-income-countries-effective-and-efficient-use-of-tax-incentives-for-investment.pdf (accessed 25 January 2018). Also see Zolt, supra note 109, 25; OECD, *Tax and Development: Principles to Enhance the Transparency and Governance of the Incentives for Investment in Developing Countries*. Available at https://www.oecd.org/tax/tax-global/transparency-and-governance-principles.pdf (accessed 10 March 2017)

132 See Regulations 2, *Regulations in Terms of Section 12L of the Income Tax Act 1962 on Allowance for Energy Efficiency Savings (Regulation No. R. 971)* (Gazette No. 37136; South Africa). Available at http://www.energy.gov.za/files/policies/Regulations-in-terms-of-Section-12L-of-the-Income-Tax-Act-1962-on-the-Allowance-for-Energy-Efficiency-Saving.pdf (accessed 10 March 2018)

133 Regulations 3, *ibid*. Also see SARS, *Interpretation Note 95 (Deductions of Energy-Efficiency Savings)* (24 February 2017), 4-5. Available at ttps://www.sanedi.org.za/images/March%202017_SARS%20Carification%20Noted_LAPD-IntR-IN-2017-01%20-%20IN95%20Deduction%20for%20energy-efficiency%20savings.pdf (accessed 9 March 2018)

134 See Easson & Zolt, supra note 21, 26-27 for a discussion of the issues associated with the ceding of the determination of eligibility of taxpayers

returns filing for all incentives beneficiary; and (2) mandatory performance/activity reporting by beneficiaries where the incentive grant is underpinned by an objective, e.g. export promotion, employment, R&D, domestic value addition or sectorial or regional (i.e. geographical) improvement. The corollaries of this include the fact that it would provide the granting state with information that could be used for the monitoring and evaluation of the gains as well as the cost of the tax incentive. More particularly, for tax administration, it provides information that could be used for audit. In addition, review, incentive-recapture and sunset provisions are needed in the design of the incentive system. An incentive-recapture provision is that which mandates a minimum holding or use period for QCA which has attracted the grant of an incentive must be in use or the minimum period for which an incentive-beneficiary must remain in the jurisdiction. Typically, they specify penalty for breach. The need for these provisions is linked to the fact that the dynamics of economics and investments do not allow for the effect of incentives to remain constant through time as well as the fact that there is always the possibility of abuse. With review and sunset provisions in place, the granting state would be able to reduce the potential cost of an unsuccessful tax incentive,[135] while an incentive-recapture provision would ensure that the granting state derives maximum utility for the revenue foregone by the grant of the incentive, subject to the existence of an effective associated monitoring mechanism.

2.4 TAX COMPLIANCE

2.4.1 Perspectives

i. Strict Constructionist

Any definition of tax compliance is a function of the provisions of the extant law[136] as it provides parameters for its measurement. However, since tax and taxation do not exist in a socio-economic vacuum, the view is that tax compliance is a continuum[137] which has compliant and non-compliant taxpayers at opposite ends. From a strict constructionist perspective of tax, this means that a taxpayer is compliant when it: (a) registers with the tax authority; (b) correctly and truly reports on its activities, income and expenditure; (c) where there is a self-assessment regime in place,[138] correctly and truly computes its tax

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135 Zolt, supra note 109, 23

136 See James, S & Alley, C, 'Tax Compliance, Self-Assessment and Tax Administration' (2002) Vol. 2 (No.2) *Journal of Finance and Management in Public Service* 27, 29

137 *Ibid.* See also Erard, B & Ho, C, 'Mapping the US Tax Compliance Continuum' (2004) Vol. 268 *Contributions to Economic Analysis* 167-186

138 A self-assessment regime is a system of tax administration whereby taxpayers are by law vested with the responsibility of computing their tax liability before subsequent payment of the tax due and filing the tax return at the tax office. Nigeria has had a self-assessment regime since 1992. For a guide on the

liability, files its tax returns on or before the due date; and (d) pays the tax due on or before the date or time set in law for payment of tax in a year of assessment.[139] This means that there are four criteria that have to be met for there to be compliance. These are the registration, reporting, filing and payment criteria. Thus, to the right of the continuum is the compliant taxpayer who meets all the criteria of compliance and to the left is the non-compliant taxpayer who fails with regard to one or more of the criteria.

Furthermore, the same strict constructionist perspective holds that a compliant taxpayer is one who has complied with both the letter and the spirit of the law.[140] The flip side of the foregoing is that any shortcoming amounts to a shift from the extreme right and it is considered a violation of the tax law. The perspective fails to take cognisance of the fact that such movement is possible because the law contains provisions which allow it. In such a situation, does a consequential movement from the extreme right automatically amount to violation of the tax law? For example, in Nigeria every company must file a self-assessment return not later than six months after the end of its accounting year pursuant to section 55 of CITA. The same CITA states at section 77(1) that companies are to pay provisional tax[141] not later than three months from the commencement of each year of assessment (which is usually the end of March). The dilemma which fits into the above mould would arise where a taxpayer with December as accounting year end and the following June 30 as the last date for the filing of its returns (and payment of tax), in compliance with section 55 chose to pay a provisional tax before March 31 and delays returns filing until after June 30. Can it be said that by its behaviour the taxpayer is in breach and has violated the extant tax law? The answer is neither yes nor no. The resolution of the dilemma would be best achieved if the taxpayer's behaviour is reviewed vis-à-vis each criterion. With regard to the registration and payment criteria, the taxpayer is not in breach of the law and is by extension two points to the right of the compliance continuum. However, with regard to the reporting and filing criteria, the delay of returns filing until after June 30 puts the taxpayer in breach and puts the taxpayer two points to the left of the

mechanics of the Nigerian self-assessment regime, see FIRS, *Handbook on the Implementation of Self-Assessment Tax Regime in Nigeria* (Abuja: FIRS, 2011)

139 See Evans, C & Joseph, S, 'General Report' in Evans, C, *et al*, (Eds.), *Improving Tax Compliance in a Globalized World* (Amsterdam: IBFD, 2018) 3; Franzoni, LA, 'Tax Evasion and Tax Compliance' in Bouckaert, B & DeGeest, D (Eds.), *Encyclopaedia of Law and Economics* (Vol. 4) (Cheltenham, UK: Elgar, 2000) 52-94, 55. See also Roth, JA, et al, *Taxpayer Compliance: An Agenda for Research* (Philadelphia: University of Pennsylvania Press, 1989) 2

140 See James & Alley, supra note 136, 31 where compliance was defined in terms of complying with the spirit as well as letter of the law

141 Provisional tax is an amount equal to the tax paid by a company in the immediate preceding year of assessment and is paid in one lump sum. Section 77(6) CITA however, annuls the application of section 77(1) CITA to a self-assessment filer for any year of assessment

compliance continuum. Overall, the taxpayer's non-compliant behaviour does not imply a violation of CITA.[142] This is the case even where the decision to harness section 77(1) is actuated by the desire to defer the tax burden as per the financial statement for the year of assessment or to retain what ought to have been paid as tax beyond June as business capital. At best, the conclusion is that the behaviour of the taxpayer violates the spirit of section 77(1) which is meant to provide taxpayers with the opportunity for the advance payment of CIT[143] and not for the deferment of the discharge of tax burden or as a vehicle for non-compliance with section 55.

ii. Economic

In addition to the strict constructionist perspective, there also exists the economic perspective to the conceptualisation of tax compliance. This views compliance from the point of the payment of taxes as it holds that compliance is the product of a rational process in the course of which the taxpayer embarks upon a cost-benefit analysis of compliance, and depending on its risk aversion or appetite makes the decision about whether to comply or not.[144] This orientation is the traditional standpoint from which tax compliance is conceptualised.[145] It perceives compliance as a game[146] or lottery[147] whose outcome is determined by the relationship between the magnitude of potential savings from non-compliance, the probability of getting caught in the course of an audit and penalties for the decision or behaviour.[148] This means that taxpayers would cheat if the price is right.[149] Thus, where a high audit probability and penalty would result in a loss to taxpayers that is greater than the potential gain from the non-compliance, the view holds that, as rational maximising entities, taxpayers would be more compliant. In the context of the Nigerian scenario above, it means that taxpayers will be noncompliant for as long as the consequential benefit of their behaviour (i.e. the payment of provisional tax and delay of filing of tax return beyond June 30) outweighs the associated cost or loss.[150]

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142 Kirchler, E, *The Economic Psychology of Tax Behaviour* (USA: CUP, 2007) 21

143 See Paragraph 1.2.1, *FIRS Information Circular No. 93/03* (25 March 1993)

144 James & Alley, supra note 136, 34

145 Mikesell, JL & Birskyte, L, 'The Tax Compliance Puzzle: Evidence from Theory and Practice' (2007) 3 (10) *International Journal of Public Administration* 1045

146 Andreoni, J, *et al,* 'Tax Compliance' (1998) Vol. 36 (2) *Journal of Economic Literature* 818–829

147 Mikesell & Birskyte, supra note 145

148 See Allingham, MG & Sandmo, A, 'Income Tax Evasion: A Theoretical Analysis' 1 (1972) *Journal of Public Economics* 323-338; Srinivasan, TN, 'Tax Evasion: A Model' 2 (1973) *Journal of Public Economics* 339-346; Yitzhaki, S, 'A Note on Income Tax Evasion: A Theoretical Analysis' 3 (1974) *Journal of Public Economics* 201-202

149 Andreoni, J, *et al,* supra note 146

150 This is usually in the form of a late return penalty (LRP) imposed for late filing of return as well as penalty and interest where it is determined after a review of the account filed that there is outstanding tax to be paid. Pursuant to section 55(4) CITA, LRP is NGN 25, 000 for the first month in which the

The usefulness of the economic perspective is, however, limited by the existence of a myriad of flaws.[151] The most prominent is the 'puzzle of compliance'. In reality, penalties are low compared to the benefit that is to be derived from non-compliance[152] and tax administrations are faced with burgeoning costs (financial and human) and budgetary cuts, insufficient manpower as well as deficiency in expertise. These factors tend to reduce audit probability[153] which, in turn negatively impacts on tax administrations' capacity to raise revenue effectively as well as narrow the tax gap.[154] Furthermore, the audit function in most tax administration is not as efficient as the promoters of the economic perspectives demonstrate in their model. *Discussion Box 2.1* below synthesises information relating to audit effectiveness from 10 Tax Administration Diagnostic Assessment Tool (TADAT) Performance Assessment Reports (PAR).[155] The mode score for indicator 16 (scope of verification actions taken to detect and deter inaccurate reporting) and 18 (monitoring the extent of inaccurate reporting) (otherwise referred to as P6.16 and P6.18 respectively within the *TADAT Framework*[156]) from the TADAT-PARs of ten jurisductions provides a

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failure to file occurs and NGN 5000 for each subsequent month in which the failure continues. With regard to penalty and interest, pursuant to section 32 FIRSEA, the rates are usually 10 percent of the tax payable (in this case, the outstanding tax) and 5 percent plus the prevailing minimum rediscount rate of the Central Bank of Nigeria respectively

151 See Alm, J, *et al*, 'Economic and Non-Economic Factors in Tax Compliance' (1995) Vol. 8 (1) *Kyklos* 1-18; Andreoni, J, *et al,* supra note 146 for review and criticism of the flaws associated with the economic perspective of the conceptualization of tax compliance

152 See Alm, J, *et al*, 'Why Do People Pay Taxes' 4 (1992) *Journal of Public Economics* 21, 22 for a statement as per audit probability and penalty rate in the US in the early 1990s

153 See TJN-A, *Tax us if can: Why Africa Should Stand up for Tax Justice* (Kenya: TJN-A; 2011) 36; Herman, T, 'Chances of an IRS Audit are low – and Getting Lower' *The Wall Street Journal,* 26 March 2017. See also Mascagni, G, *et al*, 'Unlocking the Potential of Administrative Data in Africa: Tax Compliance and Progressivity in Rwanda' (2017) *ICTD Working Paper* 56

154 For an analysis of the impact of audit capacity of a selection of African countries, see, ATAF, *African Tax Outlook (Second Edition)* (Pretoria: ATAF, 2017) 126-130

155 The TADAT-PARs are available at <http://www.tadat.org/Field_Guide/PerformanceAssessmentReports.htmlas> (accessed 7 March 2018)

156 See *The TADAT Framework: A Pocket Reference Guide* (2016). Available at http://www.tadat.org/files/TADAT-PocketGuide(print).pdf (accessed 7 March 2018)

basis for a conclusion with regard to the effectiveness of audit mechanisms in tax administrations.

Discussion Box 2.1: TADAT-PARs of 10 jurisdictions for P6.16 and P6.18

P6.16 and P6.18 of the TADAT wheel are two of the three indicators used to assess performance outcome area (POA) 6 which relates to the question of whether there are effective audit programmes within tax administration with capacity to deter taxpayers from filing incomplete and inaccurate returns. For the tax jurisdictions listed below, the mode score for P6.16 and P6.18 is C and D respectively. According to the *TADAT Framework*, a 'C' score means that the assessed 'tax administration just meets the minimum performance standards in that dimension'; while a 'D' score is indicative of 'inadequate performance where the minimum standards set in 'C' are not met' or that the tax administration did not provide sufficient information to determine performance during the assessment.

Year of Assessment	Tax Jurisdiction	Score	
		Indicator 16	Indicator 18
2016	Liberia	D	D
	Zambia	C	C
	Jordan	C+	C
	Georgia	C	D
	Kyrgyz Republic	C	D
2017	Armenia	C	C
	Peru	C+	A
	Alagoas	D	D
	Trinidad and Tobago	D+	D
	Guatemala	D+	C
Mode Score		**C**	**D**

Noteworthy is the fact that in the TADAT-PARs for all the jurisdictions with a 'D' score for P6.18, except Kyrgyz, it was stated that the respective tax authorities did not monitor the extent of revenue loss from inaccurate reporting prior to the assessment. The TADAT-PAR for Kyrgyz stated that there was evidence of ad-hoc and limited-in-scope analysis of revenue loss from inaccurate reporting in some sectors of the economy. Thus, for these jurisdictions, their respective 'D' score for P6.18 is not as a result of failure to provide sufficient information to determine performance during the assessment but that of a lack of monitoring.

In the light of the foregoing, one expects that noncompliance ought to be rife and that there would be a drop in the payment of tax. The reverse is the case. Nations still post impressive compliance and collection figures. The development challenges the traditional view that taxpayers would typically be in a noncompliant position for as long as the benefit of the behaviour outweighs the consequential cost. Hence the puzzle of compliance and it underscores the fact there are reasons outside the boundaries of economic thought which actuate taxpayers' compliance behaviour.

iii. Psycho-Social

Another perspective from which compliance can be considered is that which sees it as the product of factors outside the realm of law or economics. This perspective differs from the strict constructionist and economic perspectives which view compliance from the narrow perspective of deviation from the law and the maximisation of resources (or the attainment of pre-determined goals) respectively. This flaw forms the basis of their criticism, heralds the quest for the understanding of the mechanics of taxpayer compliance behaviour and is also the basis for the conceptualisation of tax compliance behaviour as being actuated and/or influenced by non-economic considerations or factors.[157]

2.4.2 Miscellany of issues

With regard to tax compliance, there are two types: voluntary and involuntary. It is the former where the taxpayer acts without any form of inducement in the course of conforming with the legal regime specific to a tax. That is the criterion of compliance exists without coercion or inducement.[158] Where coercion or inducement exist or is anticipated, the compliance is enforced or involuntary. This is usually the case where taxpayers comply, i.e. register for tax, report income and expenditure, file returns and pay tax on or before the due date because of the application or the anticipation of the application of force by the tax authority.

Whatever the perspective from which tax compliance is viewed, it has consequences on revenue yield and more. According to Keen, *et al*:

> Noncompliance undermines revenue, distorts competition (putting the noncompliant at an advantage), and compromises equity (both horizontally - between taxpayers otherwise alike, but differing in their degrees of compliance - and, potentially, vertically - to the extent that the better off escape their obligations more extensively). These effects interact. Governments anxious for revenue may concentrate their efforts on more compliant taxpayers, amplifying the distortions. And a perception of unequal treatment can jeopardize wider willingness to comply.[159]

If the foregoing is the consequence of non-compliance, the reverse would be the case where compliance improves. There is also a direct relationship between a willingness to pay tax

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157 See chapter three for a discussion centred on the theoretical underpinning of taxpayer compliance behaviour. Also see, Aiko, R & Logan, C, 'Africa's Willing Taxpayers Thwarted by Opaque Tax System, Corruption' (2014) *Afrobarometer Policy Paper No. 7;* Togler, B, 'Speaking to Theorists and Searching for Facts: Tax Morale and Tax Compliance in Experiments' (2002) Vol. 16 (No.5) *Journal of Economic Surveys* 657, 662-669 for a review

158 Voluntary compliance is contemplated here as bye-product of the taxpayers having strong trust in the tax authority. In such situation, compliance is bound to exist (and increase) even in situations where the tax authority possesses low (or no) enforcement power. See Kirchler, E, *et al,* 'Enforced versus Voluntary Tax Compliance: The "Slippery Slope" Framework' (2008) Vol. 29 *Journal of Economic Psychology,* 210 for a discourse on the power-trust interaction and their individual and collective impact on compliance

159 Keen, M, *et al*, 'Current Challenges in Revenue Mobilization: Improving Tax Compliance' (Washington: IMF, 2015) 6. Available at https://www.imf.org/external/np/pp/eng/2015/020215a.pdf (accessed 10 March 2018)

and compliance.[160] Thus, a high level of willingness to pay tax puts the taxpayer farther away from the negative side of the compliance continuum. Furthermore, where there is a difference between the revenue potential and actual revenue collected per time, there is a tax or compliance gap.[161] Tax gap has over the years has been combated with a variety of solutions which includes the imposition of fines for non-compliant behaviour and improved audit probability, the grant of tax amnesty, a change in the operations model of tax administration from command and control to enhanced relationship and then to a cooperative compliance framework.

For the purpose of this research, a taxpayer is deemed compliant when it pays the right tax at the right time. This involves meeting the registration, reporting, filing and payment obligation without any form of inducement. Thus, in the context of CIT, it means that a taxpayer is compliant when it:

a. registers for CIT on or before commencement of business but after incorporation;
b. undertakes financial reporting according to the applicable accounting and tax conventions and priniciples; and
c. asssesses itself, makes payment of the self assessed tax as well as files a complete tax return on or before the due date without any form of inducement from FIRS.

2.5 TAX INTERMEDIARIES - *who (what) are they?*

A tax intermediary is a person or entity (i.e. law, accounting and other professional firms) which acts as a go-between or provides services (e.g. tax compliance, accounting, risk management, audit, dispute resolution support, etc.) to the taxpayer in the course of its interaction with the tax authority and/or the tax system.[162] Notwithstanding the name they are called,[163] their distinct characteristic is that their role is as much a corollary of the

160 Kirchler, E, supra note 142

161 According to Hamilton, the existence of a tax gap could be indicative of: (1) the clarity of and acceptance of tax policies by taxpayers; (2) the ease of interpretation of the extant tax laws; (3) tax administration effectiveness in engendering compliance with and enforcement of extant tax laws. See Hamilton, S, 'Regulatory Compliance, Case Selection and Coverage - Calculating Compliance Gaps' (2015) Vol. 13 (No. 2 *eJournal of Tax Research* 616, 617. By deeming as good practice, the existence of a system for the estimation and monitoring of compliance gaps (both for direct and indirect taxes) in tax jurisdictions; the TADAT Performance Outcome Area (POA) 6 conceptualises tax gap along the same line as Hamilton's third criterion. See TADAT Secretariat, *TADAT Field Guide* (Washington DC: TADAT, 2015). Available at http://www.tadat.org/files/IMF_TADAT-FieldGuide_web.pdf (accessed 8 March 2018)

162 For a definition of tax intermediaries, see OECD, *Study into the Role of Tax Intermediaries* (Paris: OECD: 2008) 14. Available at http://www.oecd.org/tax/administration/39882938.pdf (accessed 13 March 2018)

163 The traditional nomenclature is 'tax adviser/advisor'. Others are 'tax return preparer' (Australia/US); 'tax software companies' (US); 'tax agent' (Australia/Kenya); 'tax-boutiques'. See *Treasury Department Circular 230, Regulations Governing Practice before the Internal Revenue Service* (Title 31 Code of Federal Regulations, Subtitle A, Part 10) (United States) Soled, JA & Thomas, DK,

existence of a tax system as well as it is a creation of the latter (i.e. tax system). Although it is acknowledged that the role of the tax intermediairy includes the provision of a service or advisory which impacts on business structuring and promotion, for the purpose of this investigation, a tax intermediary is the relevant professional[164] who provides company registration (or incorporation),[165] financial accounts preparation, tax returns preparation and filing (which hereafter would collectively be referred to as bookkeeping)[166] and tax advisory[167] services.

Moore considers tax intermediaries to be one of the four main categories of actors with regard to actual money flows in any contemporary tax system.[168] As one of the three parties interfacing in a tax system (the others are the government and taxpayers) their presence and role has a significant impact on the tax system.[169] Prior to concluding that tax intermediaries are the supply side of a relationship in which the taxpayer (as clients of the tax intermediaries) forms the demand side,[170] the OECD expoused the position and role of tax intermediaries thus:

> There is a basic relationship in any country between the revenue body and the taxpayer. It is one characterised by the parties interacting solely by reference to what each is legally required to do without any urging or persuasion from the other. The principal parties to the basic relationship are taxpayers and revenue bodies. *Nevertheless, within this relationship tax intermediaries play an important role as they will often provide advice as to the legal boundaries of the basic relationship and the tax implications of moving beyond them. They will also interact directly with*

'Regulating Tax Return Preparation' (2017) Vol. 58 (Issue 1) *Boston College Law Review* 151; Walpole, M & Salter, D, 'Regulation of Tax Agents in Australia' (2014) Vol. 12 (No.2) *eJournal of Tax Research* 335; section 19-22, *Tax Procedures Act 2015* (No. 29 of 2015) and section 2, Income Tax Act (Kenya); OECD, supra note 162, 87

164 Relevant professional refers to a legal practitioner, a chartered accountant or chartered tax practitioner in Nigeria. See Chapter Five for a discussion focused on the relevant professionals

165 The decision to add incorporation as a part of the services provided by tax intermediaries is informed by the now common use of companies to avoid tax. A common one is where the CIT rate is substantially lower than the top marginal rate for personal or employment income. An individual who earns income that puts him/her at the top marginal rate can achieve tax avoidance by incorporating a private company (which in the UK could be in the form of a managed or personal service company), route the income through the former and thereafter take a small income (or one that puts the high income earner in a low income tax liability bracket) supplemented with passive income (as a shareholder of the private company) that would be taxed at a rate which is always lower than the personal or employment income tax top marginal rate. This is possible because the individual is usually treated for tax purpose as an employee of the service consumer. See Cloete, R., 'The Taxation of Image Rights: A Comparative Analysis' (2012) Vol. 45 (No. 3) *De Jure* 556-567 for a comparative analysis of the tax treatment in South Africa and the UK of such arrangements entered into by sportspersons. In the context of the foregoing, see *Figure 4.1: Determination of Tax Burden* where the Nigerian rates were used for further explanation. It is on the above premise that company incorporation is perceived as a manifestation of compliance behaviour

166 See chapter five for a clarification of what is meant by book keeping in the context of this investigation

167 See chapter five for a clarification of what is meant by tax advisory in the context of this investigation

168 Moore, 1777. The others are the taxpayers, political executives and revenue collection organisations

169 OECD, supra note 162, 13-26

170 OECD, supra note 162, 53

> *the revenue body on a regular basis in advocating taxpayer positions. Accordingly, while tax intermediaries are not direct parties to the basic relationship, they do have a significant impact upon taxpayer behaviour within (or indeed beyond) that relationship.*[171]

Tax intermediaries are a force to be reckoned with. For example, the accounting profession (spear-headed by the 'Big 4'[172]) through private sector entities,[173] with little or no public oversight issue global accounting standards which sometimes contend with as well as change municipal idiosyncrasies, principles and law that relate to accounting, auditing and taxation.[174] Furthermore, with these standards, the accounting profession has become the provider of the template for regulation of the financial sectors of economies as well as encroached into spheres which are the prerogative of the state as sovereign.[175]

The foregoing should not be taken as an assertion that tax intermediaries generally have free rein over the tax systems of the world. Their situation varies across jurisdictions. In some, their role and responsibities are regulated by legislation[176] and in others they are not subject to legislation.[177] Noteworthy is the fact that in this era of factor mobility, globalisation, base erosion and profit shifting, a state would be worse for it if it adopts any of the extremes.[178] In reality, however, tax intermediaries exist and operate amidst a point characterised by some regulations. What varies is the level or degree of regulation of the activities of tax intermediaries. In most jurisdictions, there is no code of conduct or

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171 OECD, 'Tax Intermediaries Study Working Paper 6: The Enhanced Relationship' (2007). Available at https://www.oecd.org/tax/administration/39003880.pdf (accessed 10 March 2018). The italics are mine for emphasis

172 These are the four biggest accounting firms in terms of global revenue. They are Deloitte, PricewaterhouseCoopers (PwC), Ernst & Young (EY) and KPMG. For the revenue of the Big 4 worldwide in 2017 see https://www.statista.com/statistics/250479/big-four-accounting-firms-global-revenue/ (accessed 14 March 2018)

173 E.g. the International Accounting Standards Board (IASB), the International Federation of Accountants (IFAC) and International Public Sector Accounting Standards Board (IPSASB)

174 See Ault, HJ & Arnold, BJ, *Comparative Income Taxation: A Structural Analysis* (3rd ed.) (Netherlands: Kluwer Law Intl.: 2010) for a discussion which highlights the relationship as well as conflict between tax and the principles of financial accounting in various tax jurisdictions

175 See Hail, L, *et al*, 'Global Accounting Convergence and the Potential Adoption of IFRS by the United States: An Analysis of Economic and Policy Factors' (2009), being report submitted to the Financial Accounting Foundation. Available at https://www.sec.gov/comments/s7-27-08/s72708-65.pdf (accessed 19 March 2018)

176 In 2013, the OECD listed Australia, Austria, Canada, Cyprus, Czech Republic, Denmark, Germany, Greece, India, Israel, Japan, Korea, Malaysia, Malta, Mexico, New Zealand, Poland, Portugal, Romania, Sweden, United Kingdom and the United States as being amongst countries where the responsibilities of tax intermediaries were subject to legislation. See OECD, T*ax Administration 2013: Comparative Information on OECD and Other Advanced and Emerging Economies* (Paris: OECD, 2013) 261

177 In 2013, the OECD listed Argentina, Brazil, Bulgaria, Chile, China, Colombia, Finland, France, Hungary, Iceland, Ireland, Latvia, Lithuania, Russia and Saudi Arabia as amongst countries where the responsibilities of tax intermediaries were not subject to legislation. See *ibid*

178 For analysis of the relationship between factor mobility and taxation, see McGuire, MC, 'Factor Taxes, Factor Migration and Welfare' (1982) Vol. 15 No.2 *Canadian Journal of Economic* 247-262; Yeh, Y, 'International Trade vs. Factor Mobility Under Domestic Distortions' (1987) Vol.31 (Issue 2) *The American Economist* 73-75

regulation handed down by the state to which tax intermediaries must comply. In such situations, an amalgam of market forces (i.e. demand and supply) and the extant rules of professional conduct peculiar to the profession provides the regulator of the tax intermediary's practice. The consequence of the foregoing is that the compliance level of a lawyer or accountant providing tax advisory services with the rules of professional conduct is to the extent allowed by market forces.

Some jurisdictions (e.g. the United States of America, Australia, South Africa and Kenya),[179] however, have gone further by creating a regulatory regime outside of the boundaries of the professional divisions to which tax intermediaries belong and the control of market forces. This approach, while not at the point of full regulation, is better than the previous position. This is because it provides an additional layer of regulatory criterion which is often superior to the others. In the United States of America, any person desirous of advising and representing taxpayers before the Internal Revenue Service (IRS) must, in addition to possessing the requisite qualification,[180] apply to the Treasury Department for enrolment to practise before it.[181] Once enrolled, the person becomes a tax intermediary and is subject to the regulatory authority of the Treasury Department.[182]

2.6 CONCLUDING REMARKS

This chapter has reviewed the literature relating to concepts and themes that are of relevance to this research. One of the highlights of the review is the fact that the existence of tax incentives in a jurisdiction is the product of governemnt policy which may not be in tandem with any global trend or bench marks relating to tax law and policy. The global prevalence of tax incentives, despite the vociferous arguments against their use and adoption, is a testament to the foregoing. Another is that tax incentives induce both anticipated as well as unexpected manifestation of utility maximising behaviour amongst

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179 See chapter five for a discussion focused on the regulation of tax intermediaries in South Africa and Kenya

180 See section 10.3, *Treasury Department Circular No. 230, Regulations Governing Practice before the Internal Revenue Service* (Title 31 Code of Federal Regulations, Subtitle A, Part 10) (United States of America). Circular 230 was enacted pursuant to 31 US Code s. 330 (9 Pub. L. No. 97-258, 96 Stat. 877, 877 & 884 (1982)) which authorised the Treasury Department to 'regulate the practice of representatives of persons' before it

181 See section 10.5, *Circular No. 230* (United States of America)

182 The decision in *Loving v. Internal Revenue Service* 742 F.3d 1013 (DC. Cir. 2014) has whittled down the regulatory powers of the Department of Treasury. Therein it was held that the Treasury Department has no authority under 31 US. Code S 330 to oversee tax return preparers because preparing a tax return does not amount to 'practice' or 'representation' of taxpayers before the IRS. The consequence of this decision is that about 60 percent of the returns filed would be prepared by persons unknown to IRS and lacking in professional credentials or licence. See IRS, *Internal Revenue Bulletin No. 2014-29* (Rev. July 14, 2014), 192. Available at https://www.irs.gov/pub/irs-irbs/irb14-29.pdf> (accessed 18 March 2018) for a description of a scheme put in place by IRS to combat the corollaries of the ruling

taxpayers[183] and they have the potential of being benefical to the state.[184] The latter brings to the fore the need for a 'purpose-driven' orientation to the provision of tax incentives amidst the tax jurisprudence and their being granted benefits are to be derived from their existence in a tax system.

In addition to the mutual and reciprocal trust that needs to exist in a tax system between taxpayers and the authorities for there to be compliance,[185] it is evident that the role of tax intermediaries is also pivotal. This is essentially as a result of the nature of the tax system, the expertise which the tax intermediaries possess, factors that are outside of the tax system or a combination of any of the aforementioned. Hence it is important that in any tax system, serious attention should be focused on the tax intermediaries therein.

183 See generally, Zee *et al*, supra note 19, 1498; Calitz, *et al*, supra note 28, 4. Also see IBA, supra note 70, 39

184 See Surrey, supra note 24, 711

185 Kirchler, E, *et al*, supra note 158

CHAPTER THREE: RESEARCH DESIGN

3.1 INTRODUCTION

This chapter flows from the preceding chapters. Its relationship with chapter one is that it provides a more in-depth exposition of the research design, especially as it relates to the theoretical foundation of the research, the conceptualisation of the interactions of the research variables and the adopted research methodology. With regard to chapter two, the tie-in is the fact that it takes further the discussion on the theoretical perspectives from which taxpayer compliance behaviour can be perceived. That having been said, its focus is primarily to give an exposition of the research design. As a precursor, however, an explanation about the use of frameworks in the research design is provided. Essentially frameworks are constructions which in research are used: (1) for the simplification of reality to facilitate the ease of discussion of the subject of interest to the research as well as the selection of phenomena/variables; and (2) the suggestion of relationships and the analysis of the suggested relationships between concepts, phenomena/variables of interest.[1] Another reason is the fact that frameworks are assessed not only on the basis of correctness, but also on their utility.[2] The frameworks for this study proved useful in achieving the research objective as will be seen below. In addition to this introduction, there are five other parts. The first three focus on theoretical, conceptual and methodological frameworks respectively. The fourth part seeks to espouse the utility/functionality of the research design. To this end, it juxtaposes the research design against traditional legal research. The fifth part concludes the chapter.

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1 Fisher, C, *Researching and Writing a Dissertation: Guidebook for Business Students* (2nd ed) (England: Pearson Education, 2007) 126

2 *Ibid*

3.2 THEORETICAL FRAMEWORK

Within the context of society, the consequences of taxation are varied. One is the fact that taxation catalyses behaviour along the compliance spectrum. Premised on this, the conclusion is that there is a causal relationship between taxation and compliance. This is because taxation actuates taxpayer compliance behaviour. A plethora of other economic factors or variables, provisions of law (i.e. legal variables), the perception and morality of taxpayer as well as associates (i.e. behavioural variables) all, however, have the capacity to actuate and/or influence taxpayer compliance behaviour.

Premised on the foregoing, the theory of planned behaviour (TPB) provides the theoretical framework for this research. This choice is made as the TPB takes into account the above variables as well as providing a potentially robust understanding and/or explanation of taxpayer compliance behaviour. In addition to reviewing the TPB, this section also reviews other theories that have been, and could be, used in tax compliance studies as well as making a statement as per the functionality of the theories vis-à-vis tax compliance analysis.

3.2.1 The Theory of Planned Behaviour

The origin of the theory of planned behaviour (TPB) is traceable to the theory of reasoned action (TRA). TPB was developed as a model for predicting and explaining human behaviour situations over which individuals lack the ability to exert self-control.[3] The TRA has as its core the proposition that behavioural intentions are influenced by the individual's attitude and subjective evaluation of the cost and benefit of the behavioural outcome as well as whether the individual has volitional control.[4] The TRA, *inter alia*, does not contemplate the fact that there are individuals who perceive themselves as lacking (or actually lacking) volitional control of their attitude and behaviour. This proved to be a limitation of the functionality and acceptance of the theory.[5] Ajzen remedied this shortcoming by the addition of a third element to the TRA. The TPB, thus, differs from the TRA because of the concept of perceived behavioural control (PCB) which is a person's

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[3] Ajzen, I, 'The Theory of Planned Behavior' (1991) Vol. 50 (2) *Behavior and Human Decision Processes* 179, 181

[4] Armitage, CJ & Conner, M, 'Efficacy of the Theory of Planned Behaviour: A Meta-Analytic Review' Vol. 40. (No. 2) *British Journal of Social Psychology* 471-499

[5] See Ogden, J, 'Some Problems with Social Cognition Models: A Pragmatic and Conceptual Analysis' (2003) Vol. 22 (No. 4) *Health Psychology* 424-428 where the author criticised the TPB in a manner that could be interpreted as amounting to highlighting the functionality of the TPB. See also Ajzen, I & Fishbein, M, 'Questions Raised by a Reasoned Action Approach: Reply to Ogden' (2004) Vol. 23 No. 4 *Health Psychology* 431-434 where arguments to counter Ogden were proffered

perception of the ease or difficulty of performing the behaviour of interest.[6] This makes the TPB best suited for studies involving individuals or subjects with incomplete volitional control.[7]

The fact that the TPB is used to predict and explain human behaviour in specific contexts makes it an example of a human behavioural theory. Other human behaviour theories are the social cognitive theory,[8] the protection motivation theory (PMT),[9] the health belief model (HBM),[10] and the TRA. Much of the body of knowledge referred to as TPB was, however, developed by the duo of Fishbein and Ajzen.[11] At the core of the TPB is the notion that the (lack of) intention to perform any type of behaviour is the most important immediate determinant of that behaviour,[12] and it postulates that human behaviour is the product of three beliefs (or considerations) to wit:

a. Behavioural beliefs. These are the beliefs about the likely consequences of the behaviour of the individual and others. These could be a favourable or an unfavourable attitude towards the behaviour.[13]
b. Normative beliefs. These are a person's belief that a particular person or group of persons expects him/her to act in a certain way. They are considerations relating to social pressure/ expectation or the subjective norms of the individual and they catalyse perceived social (or subjective) norms and/or pressure.[14]
c. Control beliefs. These relates to the presence of factors that may facilitate or impede the performance of the behaviour. These differentiates TPB from TRA and they catalyse PCB.[15]

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6 Ajzen, supra note 3, 183

7 *Ibid*. Also see Sommer, L, 'The Theory of Planned Behaviour and the Impact of Past Behaviour' (2011) Vol. 10 (No. 1) *International Business & Economics Research Journa*l 91; Barber, JS, 'The Theory of Planned Behaviour: Considering Drivers, Proximity and Dynamics' (2011) Vol. 9 *Vienna Yearbook of Population Researc*h 31-35; Armitage & Conner, supra note 4, 472

8 See Bandura, A, *Social Foundations of Thought and Action: A Social Cognitive Theory* (Englewood Cliffs, NJ: Prentice-Hall, 1986)

9 Rogers, RW, 'A Protection Motivation Theory of Fear Appeals and Attitude Change' (1975) Vol 91 (1) *Journal of Psychology*, 93-114

10 See Strecher, VJ, *et al*, 'The Health Belief Model and Health Behaviour' in Gochman, DS (ed), *Handbook of Human Behaviour Research I: Personal and Social Determinants* (NY: Plenum Press, 1997) 72-75

11 See Ajzen, I, *Attitudes, Personality and Behavior* (2nd ed.) (England: OUP, 2005), 99-140; Ajzen, & Fishbein, supra note 5, 431-434; Ajzen, I, 'Perceived Behavioral Control, Self-Efficacy, Locus of Control, and the Theory of Planned Behavior' (2002) Vol. 32 (2) *Journal of Applied Social Psychology* 665-683 (Ajzen 2002); Fishbein, M, & Ajzen, I, 'Attitudes and Voting Behavior: An Application of the Theory of Reasoned Action' in Stephenson, GM & Davis. JM (eds), *Progress in Applied Social Psychology* (Vol. 1) (London: Wiley, 1981) 253-313

12 Ajzen, supra note 11, 117

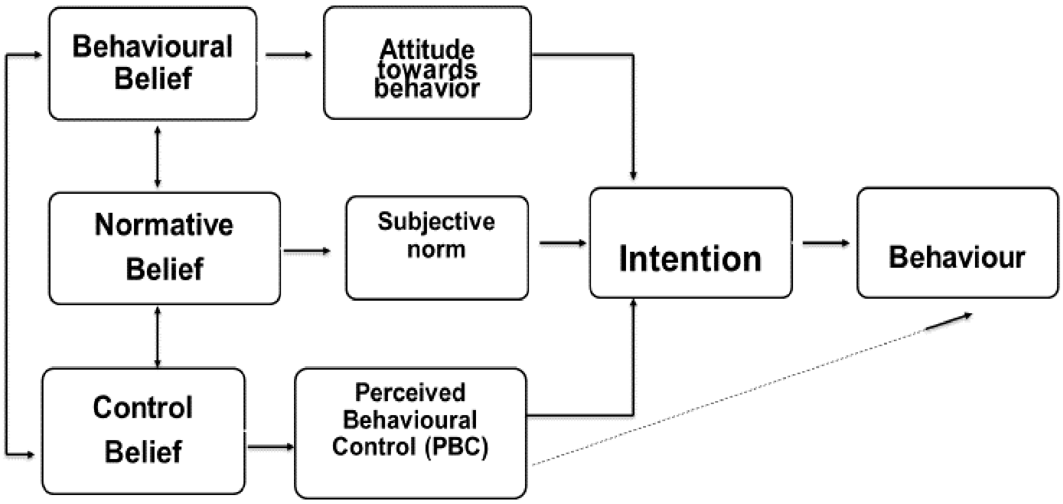
13 Ajzen, supra note 3, 188

14 *Ibid*

15 *Ibid*

Behavioural, normative and control beliefs vary and are a function of a wide range of external factors such as demographic variables, personal traits, etc.[16] Furthermore, TPB posits that behaviour is a product of intention and that the latter is catalysed by the products of the predictors (i.e. attitude, social or subjective norms and PCB).[17] Thus, an individual's attitude toward a behaviour, social pressure exacted by referents or subjective norms and PCB leads to the individual's intention to perform (or not perform) the behaviour.[18] If the attitude, subjective norm and PCB are positive or are pro the behaviour, the individual is mostly likely to perform the behaviour and vice versa. The relationship between the beliefs, their products, intention and behaviour are the assumptions on which TPB stands[19] and together they form a schema of the variables (Figure 3.1 below) that interface to bring about an individual's behaviour.

Figure 3.1: A schema of the TPB



Source: Adapted from Ajzen, supra note 3, 182

[16] See Dean, RN, *et al*, 'Testing the Efficacy of the Theory of Planned Behavior to Explain Strength Training in Older Adults' (2006) 15 *Journal of Aging and Physical Activity* 1, 2 where the authors stated that TPB meta-analyses have revealed that age moderates the intention–behaviour relationship in exercise applications

[17] Ajzen, supra note 3, 188-189

[18] See Ajzen, I & Fishbein, M, 'The Influence of Attitudes on Behavior' in Albarracín, D, *et el*, (eds), *The Handbook of Attitudes* (Mahwah, NJ: Erlbaum, 2005) 173, 195

[19] *Ibid*, 194

The TPB has been put to use in medicine,[20] business[21] and psychology[22] to predict and explain a spectrum of behaviour. Tax related research has also made use of the TPB. An example is the study by Langham, Paulsen and Härtel which, *inter alia,* investigated the factors that influence the decision of businesses with regard to income reporting and the making of deductions as provided for in the income tax law of the Commonwealth of Australia. The study revealed that the TPB is the most appropriate model for the development of understanding of tax compliance and the shaping of taxpayer behaviour.[23]

Also, Saad utilised the TPB (and the equity theory) in a study focused on Malaysian and New Zealand taxpayers to provide a comprehensive picture of how they perceive the fairness of their respective income tax systems as well as how this consequently influence their compliance behaviour. The study revealed that attitude towards compliance followed by subjective norms were the most constant factors explaining taxpayers' compliance behaviour across the two countries. [24]

Another is the study carried out in Canada by Trivedi *et al*[25] which involved the use of a TPB-based survey that had university students as the subject to explain tax compliance behaviour. The study revealed that attitude has a significant impact on taxpayers' decision-making relating to tax compliance and it further confirms Ajzen's thesis that attitude catalyses the formation of intention and the subsequent behaviour.[26]

The significance of the aforementioned studies lies in the fact that their adoption and utilisation of the TPB reduces the issue of taxpayer compliance to a behavioural response catalysed by variety of stimuli (e.g. the fairness, attitude, etc.). The benefit of this is the fact that it brings to the fore, the relationship between behavioural stimuli (positive or

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20 See Kroshus, E, *et al*, Understanding Concussion Reporting Using a Model Based on the Theory of Planned Behavior (2014) 54 *Journal of Adolescent Health* 269-274; Godin, G & Kok, G, 'The Theory of Planned Behavior: A Review of its Applications to Health-related Behaviors' (1996) Vol. 11(2) *American Journal of Health Promotion* 87-98; Sieverding M, *et al*, 'What Role Do Social Norms Play in the Context of Men's Cancer Screening Intention and Behavior? Application of an Extended Theory of Planned Behavior' (2010) Vol. 29 (1) *Health Psychology* 72-81

21 Balabanoff, GA, 'Mobile Banking Applications: Consumer Behaviour, Acceptance and Adoption Strategies in Johannesburg, South Africa (RSA)' (2014) Vol 5 (No. 27) *Mediterranean Journal of Social Sciences* 247-258; Omar, KO, *et al,* 'The Direct Effects of Halal Product Actual Purchase Antecedents among the International Muslim Consumers' (June 2012) *American Journal of Economics* 87-92

22 Conner, M, *et a*l, 'Application of the Theory of Planned Behaviour to the Prediction of Objectively Assessed Breaking of Posted Speed Limits' (2007) Vol. 98 (3) *British Journal of Psychology* 429-453

23 Langham, J, *et al*, 'Improving Tax Compliance Strategies: Can the Theory of Planned Behaviour Predict Business Compliance' (2012) Vol 10 (No. 2) *eJournal* of Tax Research 364-402

24 See Saad, N, 'Fairness Perceptions and Compliance Behaviour: Taxpayers' Judgments in Self-Assessment Environments' (2011) unpublished PhD thesis, University of Canterbury, New Zealand

25 Trivedi, VU, Shehata, M, & Mestelman, S, 'Attitudes, Incentives and Tax Compliance' (2005) Vol. 53 (No. 1) *Canadian Tax Journal* 29-61

26 Ajzen, supra note 3

negative) and tax compliance. That is, it highlights the fact that taxpayer compliance behaviour can be influenced in a positive direction by positive stimuli and vice versa.

The study by the duo of Murphy and Tyler on the moderating role of emotions[27] and personal norms[28] on compliance behaviour is worthy of mention even though they did not make use of the TPB. The respective studies sought to assess the impact of the relationship between perceptions of procedural justice and emotions as well as perceptions of procedural justice and personal norms (which is the same thing as the individual's subjective norms which in turn are product of the person's normative belief) on tax compliance behaviour. Their recommendations take into cognisance the relationship between the aforementioned variables (i.e. perception of procedural justice, emotions and personal norms). Part of the takeaway from the studies is the fact that emotions and personal norms, in the form of weak respect for law, are concomitant with less than optimal tax compliance and vice versa as well as the fact that fair treatment of the taxpayer is most likely to actuate compliance.[29]

Notwithstanding the foregoing, volumes have been written in criticism of the TPB. Ogden, after an analysis of the use of human behavioural theories (specifically, TRA, TPB, HBM, and PMT) in the study of health-related behaviour, recommended the rejection of the theories – TPB inclusive.[30] According to him:

1. The theories are untestable as they do not enable the generation of hypotheses as their constructs are unspecific;
2. The conclusions resulting from their application are often true by definition rather than by observation because they focus on analytic truths rather than synthetic ones; and
3. They have the propensity to create and change cognitions and behaviour rather than describe them because they rely on the use of questionnaires.[31]

The foregoing may be true, especially points 2 and 3, but they can be countered by specific research design considerations. For example, the use of the TPB can be blended with or integrated into a mixed method research framework that uses any of the observation-based

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27 Murphy, K & Tyler, T, 'Procedural Justice and Compliance Behaviour: The Mediating Role of Emotions' (2008) Vol 38 (Issue 4) *European Journal of Social Psychology* 652

28 Murphy, K, 'Procedural Justice and the Regulation of Tax Compliance Behaviour: The Moderating Role of Personal Norms' (2007) *Andrew Young School of Policy Studies International Studies Program Working Paper 07-31*,1-20

29 Murphy & Tyler, supra note 27, 665; *Ibid*, 14

30 Ogden, supra note 5, 427

31 *Ibid*

research tools as is the case with this investigation.[32] The utility of this is that the result from the observation provides 'raw-material' in the form of themes to be subsequently investigated using the questionnaire and it is also the basis of the conclusion resulting from the application of theory. Furthermore, since the questionnaire is derived from the themes synthesised from observing the manifestation of the cognitive process (i.e. behaviour) of the research subject, it would not be creating or changing cognition; rather it would, at the least be confirming it.[33]

Armitage and Conner are also of the opinion that TPB-based studies are limited in scope and sampling.[34] They argue further that:

1. The results of TPB-based studies involving meta-analysis of independent studies are insufficient because their result considered the direct antecedents of the individual's intention and behaviour (i.e. attitude, subjective norm and PCB) only.
2. They are often based on unpublished studies and did not consider the behavioural, normative and control beliefs of the individual.[35]

A further limitation of the TPB is that with regard to intention-behaviour relationships, there is usually a time interval between the measurement of intention and the performance of the behaviour. The interval creates an opportunity for events (i.e. intervening variables) which have the capacity to change intentions or the perceptions of behavioural control, thereby distorting the original measures and leading to inaccurate predictions of behaviour.[36] The foregoing is true as can be seen with the role of tax intermediaries vis-à-vis compliance behaviour within the tax system.[37]

For this investigation, the TPB is chosen because of its functionality with regard to the prediction of human behaviour in situations where people possess incomplete volitional control or lack the ability to exert self-control.[38] In relation to taxation and tax compliance this exists in situations where the taxpayer is faced with finite resources that have to be apportioned between varied needs and/or expenditure heads like the burden of tax and associated compliance cost, other overheads and recurrent costs associated with the continued existence of the business as well as the demands of shareholders and employees.

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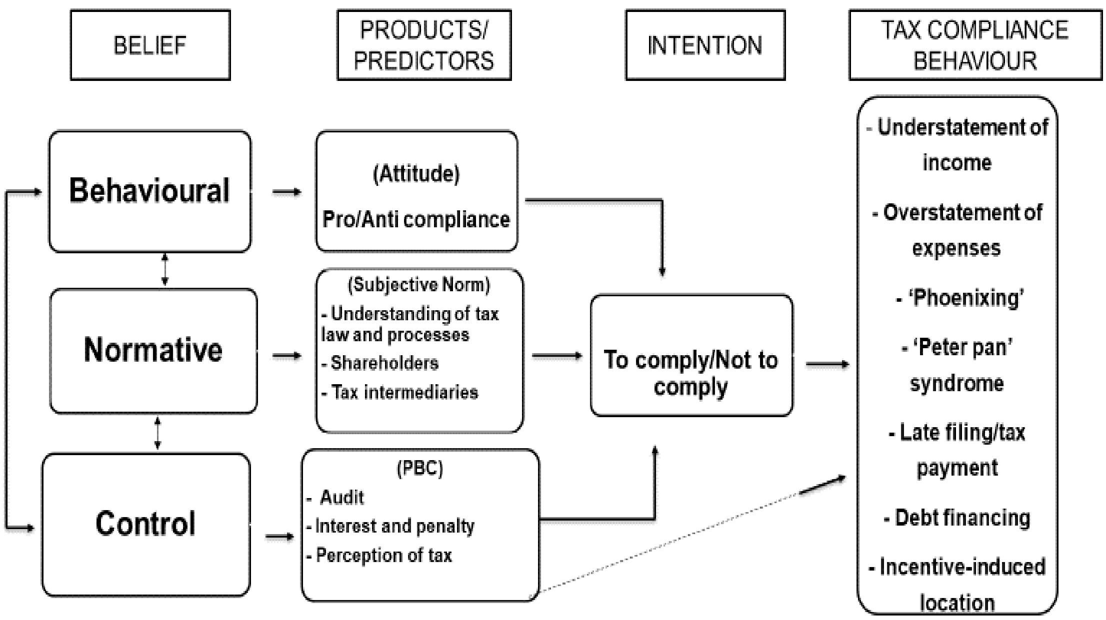
32 See paragraph 3.4 METHODOLOGICAL FRAMEWORK below for a description of the method and tools utilised in this research
33 Also see Ajzen & Fishbein 2004 where all of Ogden's conclusions were challenged
34 Armitage & Conner, supra note 4, 475
35 *Ibid*, 474
36 Ajzen, supra note 3, 185
37 See paragraph 3.3 CONCEPTUAL FRAMEWORK where this was taken into cognisance
38 Ajzen, supra note 3, 181

Another such situation arises where the mechanics and/or the taxpayer's understanding of the tax system compels the taxpayer or otherwise makes it a necessity to procure a tax intermediary. In this situation, it is without doubt, a fact that the taxpayer lacked complete volitional control. With the foregoing as background, the investigation conceptualises tax compliance using the TPB as presented in figure 3.2 below. A taxpayer is compliant or manifests compliant behaviour when it undertakes all that is required of it in the tax system at the right time. In the context of CIT this would be (1) registering for CIT on or before commencement of business but after incorporation, (2) financial reporting according to the applicable accounting and tax conventions and priniciples; and (3) self assessment, payment of the self assessed tax as well as filing of complete tax return on or before the due date without any form of inducement from the tax authority. While non-compliant behaviour (i.e. behaviour on the negative side of the compliance continium) would be any activity and/or conduct that does not aid or further compliance. Thus, underestimation of income, overstatement of expenses, late filing and/or payment tax, etc are examples of behaviours that are on the negative side of the compliance continium.

Figure 3.2: Researcher's conceptualisation of tax compliance using the TPB



Source: Author

3.2.2 Alternatives

Although the TPB has been adopted as the theoretical framework for this investigation, it should be noted that other theoretical models (and underlining frameworks) could be put to use in the quest for an understanding and/or explanation of taxpayer compliance behaviour. These theories are referred to below as alternatives and the discourse hereafter focuses on some alternatives with a view to highlighting intrinsic elements (and current developments) that impact on the utility and acceptance in explaining taxpayer compliance behaviour.

3.2.2.1 Economic Deterrence Theory

Credit for the origin of this model goes to Becker who developed the Simple Model of Rational Crime (SMORC)[39] to combat illegal behaviour including white collar crimes such as tax evasion.[40] At the core of the theory are two assumptions. The first is that individuals respond to incentives (whether positive or negative) and the prevalence of crime in a jurisdiction is inversely proportional to the effectiveness of the crime detection apparatus of the jurisdiction as well as the severity of the punishment on detection. The second is that individuals would commit crime and/or indulge in illegal behaviour only if there is an incentive to so do and that this conclusion is reached after a rational analysis of their situation to gauge the probability of apprehension (or success) as well as the consequence of failure.[41] From an economic point of view and in the context of taxation, the theory suggests that a taxpayer will embrace the option to evade (or avoid) tax if the expected gain or incentive (i.e. the hidden taxable income) would exceed the utility (i.e. income) derivable from the use of economic resources (i.e. the time and other resources like tax intermediaries) for purposes other than the tax evasion (or avoidance).

The duo of Allingham and Sandmo,[42] and also Srinivasan[43] subsequently analysed taxpayers' proclivity for under reporting of income with the intention of evading tax using Becker's SMORC. Allingham and Sandmo findings and conclusion gave birth to a model which holds that a taxpayer will declare less than its gross income if the penalty for the under declaration is less than the marginal tax rate.[44] Yitzhaki[45] introduced an improvement to the Allingham and Sandmo model by suggesting that penalty should be computed as a multiple of the tax actually evaded instead of as a multiple of the underdeclared income (i.e. charged on the undeclared income). With the foregoing, Yitzhaki eliminated the

39 Ariely, D, *The (Honest) Truth About Dishonesty: How We Lie to Everyone – Especially Ourselves* (USA: HarperCollins, 2012) 11

40 Becker, GS, 'Crime and Punishment: An Economic Approach' (Mar. - Apr., 1968) Vol. 76 (No.2) *Journal of Political Economy* 169-217

41 *Ibid*

42 Allingham, MG & Sandmo, A, 'Income Tax Evasion: A Theoretical Analysis' (1972) 1 *Journal of Public Economics* 323-338

43 Srinivasan, TN, 'Tax Evasion: A Model' (1973) 2 *Journal of Public Economics* 339-346

44 Allingham & Sandmo, supra note 42

45 Yitzhaki, S, 'A Note on Income Tax Evasion: A Theoretical Analysis' (1974) 3 *Journal of Public Economics* 201-202

substitution effect thereby solving the problem of the contradicting effects (i.e. the existence of an income and a substitution effect at the same time)[46] associated with the Allingham and Sandmo model in a situation the where tax rate is increased.[47] Yitzhaki improvement also ensured that the consequence of a detected evasion rises proportionately to increase in the gain from the evasion.[48]

This improvement of the Becker's SMORC by Allingham-Sandmo and Yitzhaki has been dubbed the ASY model[49] and so would it be referred to hereafter. At the core of the ASY model are the following assumptions:

i. Taxpayers are homogenous, risk adverse and are insulated from the world at the point of preparation/filing of income tax returns;
ii. That at the point of preparation/filing of income tax returns, the taxpayer is faced with the options of declaring or under-declaring income to the tax authority and the chosen option is the product of a rational cost-benefit analysis of the consequences of both options;
iii. That because of its risk aversion, the taxpayer would under declare (and consequentially evade tax) where the gains from choosing this option outweigh the loss;
iv. To deter under-declaration and improve tax compliance a penalty that is greater than the gain (i.e. income) derivable from the under-declaration should be imposed by the State; and
v. That where the probability of audit is constant and there is a high probability of detection, coupled with the risk aversion of taxpayers, taxpayers can be influenced into been more compliant.

46 Substitution effect is the variation in consumer preference or quantity demanded of goods occasioned by a change in the price of the goods or disposable income while income remains constant. In situations of increase in price occasioned by taxes, a consumer would replace expensive goods with cheaper alternatives. It also the case where a taxpayer favours strategies and arrangements that would generate and/or guarantee a disposal income that is greater than would have been the case without the strategies and arrangements. In this case, the taxpayer adjusts its options or substitutes noncompliant behaviour for the tax due on the income - a situation where, because of an increase in taxes, the taxpayer is left with less disposable income to take care of its demands

47 See Yitzhaki, supra note 45, 201; Batrancea, L, *et al*, 'Tax Compliance Models: From Economic to Behavioral Approaches' (2012) No. 38 E *Transylvanian Review of Administrative Sciences* 12, 18-19

48 For a more incisive discourse on the ASY, see Pickhardt, M & Prinz, A, 'Behavioural Dynamics of Tax Evasion: A Survey' (2014) Vol. 40 (Issue C) *Journal of Economic Psychology* 1-19; Slemrod, J & Yitzhaki, S, 'Tax Avoidance, Evasion, and Administration' in Auerbach AJ & Feldstein, M (ed.), *Handbook of Public Economics* (Vol. 3) (Elsevier Science BV, 2002) 1423, 1429-1436; Batrancea, supra note 47, 12

49 *Ibid*

The ASY model holds that the decision of how much tax to pay or not to pay eventually (and by extension the direction of the taxpayer compliance behaviour) is the product of the assessment of four variables: the gross income, the tax rate, the audit probabilities (i.e. the uncertainties of the outcome of an audit embarked upon by the TA to determine the actual gross income)[50] and the severity of consequential penalties (i.e. the fine rate). These variables impact on behaviour of taxpayers (and by extension compliance) differently. Thus, the following conclusions are premised on or are derivatives of the ASY model:

i. There is a direct relationship between gross income and evasion where the taxpayer has a low or decreasing risk aversion. Thus, in such situations the declared chargeable income (and compliance level of the taxpayer) would be low. Consequently, increase in gross income would impact negatively on the compliance behaviour of the taxpayer. Hence, with regard to every transaction subject to tax, HNWIs have the option to choose between avoidance and evasion as their income or wealth vests them with the capacity of being adept at tax planning and mitigation.[51] Alstadsæter *et al* corroborated the foregoing as the finding of their study, which combined random audits, micro-data leaked from the 'Swiss leaks' and 'Panama Papers' matched to population-wide wealth records in three Scandinavian countries (Norway Sweden and Denmark), was that tax evasion rises sharply with wealth.[52]

ii. There is an inverse relationship between high probability of detection and evasion, while that between the former and compliance is direct. This means that high probability of detection has a negative effect on evasion and a positive effect on compliance.[53]

iii. With risk adverse taxpayers, the relationship between tax rate and compliance is positive. Where there is no risk aversion, however, there is a direct relationship between the tax rate and evasion. Thus, an increase in the tax rate would mostly actuate evasion.[54] Hence high-priced or taxed imports/exports are mispriced, mis-invoiced or mislabelled so as to evade tax. The foregoing is corroborated by Fisman

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50 This includes of probability of the audit lifecycle, period, terms of reference detection, conviction, etc.

51 OECD, *Engaging with High Net Worth Individuals on Tax Compliance* (Paris: OECD Pres, 2009) 14

52 See Alstadsæter, A, *et al*, 'Tax Evasion and Inequality' (2017) *NBER Working Paper No. 23772*

53 See Modugu, KP & Anyaduba, JO, 'Impact of tax Audit on Tax Compliance in Nigeria' (2014) Vol. 5 (No.9) *International Journal of Business and Social Science* 207, 212

54 The Laffer Curve theory provides a theoretical premise for this. It posits that beyond a certain point the relationship between tax increase (either in the form of multiplicity or increased rates) and tax revenue becomes inverse as the tax becomes a disincentive to work or further production. At that point, it further posits, that if work or production is to continue, taxpayers would resort to devising ways to protect their capital and/or profit

and Wei who found that more tax revenue was lost for products with higher tax rates as a result of rampant underreporting of the unit values of the imports and mislabelling of the high taxed variants.[55]

iv. The existence of a heavy fine rate for the tax evaded and a high probability of detection impacts positively on compliance because in such a situation there is a reduction in the expected gains of evasion.[56] Table 3.1 below summarises the ASY model variable-evasion-compliance relationship.[57]

Table 3.1: The ASY model variables and evasion-compliance correlation

S/N	VARIABLE	CORRELATION	
		EVASION	*COMPLIANCE*
1	Gross income	Positive	Negative
2	Increased tax rate	Negative	Positive
3	High audit probability	Negative	Positive
4	Fine rate	Negative	Positive

Adapted from Weber, *et al*

3.2.2.2 Rational Choice Theory

The rational choice theory (RCT) also has its origins in economics and according to Heckathon, it holds that behaviour is purposive.[58] At its centre is the *homo economicus,* an abstraction - a consistently rational, self-interested individual with unlimited cognitive capabilities,[59] acting to maximise its own utility;[60] or the attainment of a pre-determined goal and the means to it.[61] Intrinsically, the RCT holds that the foregoing is always the

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55 See Fisman, R & Wei, S. 'Tax Rates and Tax Evasion: Evidence from "Missing Imports" in China' (2004) Vol. 112 (No.2) *Journal of Political Economy* 471, 493. Also see Crane, SE & Nourzad, F, 'Tax Rates and Tax Evasion: Evidence from California Amnesty Data' (1990) Vol. 43 (No. 2) *National Tax Journal* 189-199 where the authors found that evaders respond to higher tax rates by increasing their evasion activity and that high-income earners are more predisposed to evasion

56 Weber, O, *et al*, 'Behavioural Economics and Taxation' (2014) No.41 *Taxation Papers* 11

57 Adapted from Weber, supra note 56, 11-12

58 Heckathorn, DD, 'Overview: The Paradoxical Relationship Between Sociology and Rational Choice' (Summer 1997) Vol. 28 (No. 2) *The American Sociologist* 6, 7

59 Vriend, NJ, 'Rational Behavior and Economic Theory' (1996) Vol. 29 *Journal of Economic Behavior and Organization* 263, 264. See also Selten, R, 'What is Bounded Rationality' (1999) *SFB Discussion Paper B-454*, 3. Available at http://www.wiwi.uni-bonn.de/sfb303/papers/1999/b/bonnsfb454.pdf (accessed 11 May 2016)

60 Levitt, SD & List, JA, 'Homo Economicus Evolves' (2008) Vol. 319 (Issue 5865) *Science* 909-910 See also Schneider, S, 'Homo Economicus – Or more like Homer Simpson' (June 29 2010) *Deutsche Bank Research* 1-28. Available at https://www.dbresearch.com/PROD/DBR_INTERNET_EN-PROD/PROD0000000000259291.pdf (accessed 28 April 2016)

61 See Barros, G, 'Herbert A. Simon and the Concept of Rationality: Boundaries and Procedures' (2010) Vol. 30 (No. 3) *Brazilian Journal of Political Economy* 455,457 where the author defined rationality in a similar manner

drive for preferences manifested by individuals.[62] Dwivedi corroborated the foregoing when he stated that:

> … the main motivating force of private enterprise is profit. The private entrepreneurs would, therefore, not like to invest their capital in industries which have lower profitability even if such industries are of essential nature and of strategic importance for the national economy.[63]

The RCT stands on two premises: methodological individualism and the perception that choice is an optimising process.[64] The former means that the individual is the unit of analysis for every study focusing on social behaviours[65] and that social phenomena can be explained by adding up the behaviour of individuals in the society.[66] This means that for a successful social study, the group should first be deconstructed, an individual taken as a unit of analysis and thereafter the conclusion ascribed to the group.[67] Optimisation involves purposive action geared towards utility maximisation (i.e. endeavours geared towards the attainment of a goal or objective). In other words, it means that for there to be optimisation, whenever an individual is confronted by options, the option that best serves the individual's objective is always chosen.[68]

The aforementioned premises have been further broken down into self-interest, rational behaviour, maximisation of personal utility, reaction to constraints, fixed preferences and the availability of information.[69] The seminal work of Adam Smith, the 'spiritual' father of RCT, [70] provides further elucidation with regard to the foregoing. According to him:

> … [M]an has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only. He will be more likely to prevail if he can interest their self-love in his favour, and show them that it is for their own advantage to do for him what he requires of them. Whoever offers to another a bargain of any kind,

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62 Levin, J & Migrom, P, Introduction to Choice Theory (2004) 3. Available at http://web.stanford.edu/~jdlevin/Econ%20202/Choice%20Theory.pdf (accessed 28 April 2016)

63 Dwivedi, DN, *Managerial Economics* (7th ed) (India: Vikas Publishing, 2008) 631

64 See generally, Levin & Migrom, supra note 62; Kjosavik, DJ, 'Methodological Individualism and Rational Choice in Neoclassical Economics: A Review of Institutionalist Critique' (2003) No. 2 *Forum for Development Studies* 205-245

65 Rackner, L, 'Rational Choice and the Problem of Institutions: A Discussion of Rational Choice Institutionalism and its Application by Robert Bates' (1996) *Chr. Michelsen Institute Working Paper 6* 1, 4

66 Kjosavik, supra note 64. See also Elster, J, *Explaining Social Behavior: More Nuts and Bolts for the Social Sciences* (England: Cambridge University Press, 2007) 484 where the author refers to individual human action as the elementary unit of social life

67 Rackner, supra note 65

68 *Ibid*

69 Schneider, supra note 60, 4. See also Rankin, DJ, 'The Social Side of Homo Economicus' (2010) 1308 *Trends in Ecology and Evolution* 1-3

70 See Boudon, R, 'Limitations of Rational Choice Theory' (November 1998) Vol. 1014 (No. 3) *American Journal of Sociology* 817, 827 where Adam Smith was described as such. Also see Zafirovski, M, 'The Rational Choice Generalization of Neoclassical Economics Reconsidered: Any Theoretical Legitimation for Economic Imperialism?' (2000) Vol. 18 (No. 3) *Sociological Theory* 448, 464 were justification for this recognition was provided

> proposes to do this. Give me that which I want, and you shall have this which you want, is the meaning of every such offer; and it is in this manner that we obtain from one another the far greater part of those good offices which we stand in need of. It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages. Nobody but a beggar chooses to depend chiefly upon the benevolence of his fellow-citizens. Even a beggar does not depend upon it entirely. The charity of well-disposed people, indeed, supplies him with the whole fund of his subsistence. But though this principle ultimately provides him with all the necessaries of life which he has occasion for, it neither does nor can provide him with them as he has occasion for them. The greater part of his occasional wants are supplied in the same manner as those of other people, by treaty, by barter, and by purchase. With the money which one man gives him he purchases food. The old clothes which another bestows upon him he exchanges for other old clothes which suit him better, or for lodging, or for food, or for money, with which he can buy either food, clothes, or lodging, as he has occasion.[71]

The foregoing brings to the fore the fact that situations existing in society can be understood and explained after a consideration of what would be the manifested behavioural preference of *homo economicus* per situation.

3.2.2.3 Tax Minimisation Theory

The tax minimisation theory (TMT) stands on the principle enunciated by Lord Clyde in *Ayrshire Pullman Motor Services & Ritchie v CIR*[72] and Lord Tomlin in *IRC v Duke of Westminster*.[73] Lord Tomlin is credited to have stated that every man (natural and juristic) is entitled to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be in the *Duke of Westminster.* The issue before the House of Lords in the aforementioned case was whether the amounts paid pursuant to a deed executed by the Duke with his employees wherein, he covenanted to pay them certain weekly sums in respect of periods during which any of the employees was in his service were salary for service. The Law Lords held that it was incontrovertible that the deeds were brought into existence so as to permit the Duke to reduce his tax liability. They also refused the submission that focus should be on the substance instead of legal character or form.

71 Smith, A, An inquiry into the Nature and Causes of the Wealth of Nations, 13-14. Available at http://www.ifaarchive.com/pdf/smith_an_inquiry_into_the_nature_and_causes_of_the_wealth_of_nations%5B1%5D.pdf (accessed 28 April 2016)

72 (1929) 14 TC 754

73 (1935) All ER 259

In *Ayrshire Pullman Motor Services*, the former sole owner of a transport business drew up a partnership agreement wherein he agreed to share profit with his children. The agreement was contested by the revenue authority as it consequentially improved the financial position of the family of the former sole owner of the transport business while limiting the capacity of the revenue authority to impose commensurate tax. The court in that matter held that the agreement was legal and not a sham. In the context of the TMT, the dictum of Lord Clyde is instructive. According to him:

> No man in this country is under the smallest obligation, moral or other, so to arrange his legal relations to his business or to his property as to enable the Inland Revenue to put the largest possible shovel into his stores. The Inland Revenue is not slow - and quite rightly - to take every advantage which is open to it under the taxing statutes for the purpose of depleting the taxpayer's pocket. And the taxpayer is, in like manner, entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Revenue.[74]

From the foregoing, it is argued that the main characteristic of the TMT is that the law of the jurisdiction wherein the taxpayer operates provides some justification for the associated behaviour. Thus, behaviour premised on the TMT amounts to taking advantage of available tax planning opportunities, loopholes, weakness and/or ambiguities in the tax law.[75] Hence Rohatgi opined that a taxpayer is free to arrange its affairs in a manner that would generate tax savings and for this purpose, it can use legal forms that differ from their substance.[76] The dictum of Lord Nolan in *CIR v Willoughby* is confirmation of the foregoing as it shows that the presence of TMT amidst the framework of a tax system is part of the economic objectives of the state. While distinguishing tax avoidance and tax mitigation he stated that:

> The hallmark of tax avoidance is that the taxpayer reduces his liability to tax without incurring the economic consequences that Parliament intended to be suffered by any person qualifying for such reduction in his tax liability. The hallmark of tax mitigation, on the hand, is that the taxpayer takes advantage of a fiscally attractive option afforded to him by the tax legislation, and genuinely suffers the economic consequences that parliament intended to be suffered by those taking advantage of the option.[77]

From the foregoing, it is incontrovertible that the TMT means that taxpayers have a choice as per which option to take with regard to their tax burden; i.e. whether to make use of liability-reducing provisions in the tax law or not. Notwithstanding articulating the substance over form rule and being the reference point for the adoption of a substantive

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74 Supra note 72, 764-765

75 Rohatgi, R, Basic International Taxation Volume II: Practice (2nd ed) (India: Taxman Allied Services, 2007) 139

76 *Ibid*, 11

77 (1997) 4 All ER 65, 73

anti-taxpayer approach to the contemplation of tax avoidance[78] Hand, J, affirmed the foregoing in *Helvering v Gregory*[79] when he held that:

> [A]ny one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one's taxes.

The TMT does not relate to behaviour or strategies which the prevailing jurisprudence in the tax system has declared illegal, tagged tax evasion and would give rise to penalties.[80] Instead, it relates to any behaviour or strategy that is capable of fitting into the continuum that is referred to as tax planning[81] and results in the postponement of tax liability to subsequent periods or the gaining of an advantage which is ordinarily outside the reach of the taxpayer. It includes tax mitigation.[82]

3.2.3 Assessment of the Alternatives

That there exists a multiplicity of theories that have been and could be put to use in the provision of insight into the mechanics of taxpayer compliance behaviour is beyond conjecture. The question of their functionality is, however, not beyond conjecture, hence this section reviews the alternatives examined above from the perspective of their disciplinary and ideological boundaries vis-à-vis their application to the multi-disciplinary nature of taxation and its consequences.

3.2.3.1 Economic Models

Evident in the scope of the deterrence theory and the RCT is the fact that they perceive the taxpayer as an amoral rational omniscient being whose decisions are the output of a deliberate sequenced process that is often iterative and takes into cognisance the entire spectrum of relevant evidence or information.[83] This situates them amidst the ideological confines of the rational economic or classical model of decision making which has at its

78 Likhovski, A, 'The Duke and The Lady: Helvering v. Gregory and the History of Tax Avoidance Adjudication' (2004) 25 *Cardozo Law Review* 953, 962-963

79 69 F 2d 809, 810 (2nd Cir. 1934)

80 See *7Up Bottling Company Plc v Lagos State Internal Revenue Board* (2000) 3 NWLR (Part 650) 565, 591 for a definition of tax evasion

81 Abdul Wahab refers to tax planning as a continuum (inclusive if avoidance and evasion) that encompasses activities which affect the financial status or arrangement of the taxpayer. See Abdul Wahab, NS, 'Tax Planning and Corporate Governance: Effects on Shareholders' Valuation' (2010) (Unpublished PhD thesis submitted to the University of Southampton, United Kingdom) 16-21

82 Ipaye, A, *Nigerian Tax Law and Administration: A Critical Review* (London: ASCO Prime Publishers, 2014) 97-98. *Cf* Rohatgi, supra note 75, 138-140 where tax avoidance, tax planning and tax mitigation were distinguished. In Likhovski, supra note 78, 991-994, it was opined that the term 'tax avoidance', its political *cum* economic importance, the dichotomy between it and tax evasion are products of the 20th century as prior to that period, case law, legislation and professional legal literature referred to such conducts as tax evasion

83 See Lunenberg, FC, 'The Decision Making Process' (2010) Vol. 27 (No.4) *National Forum of Educational Administration and Supervision Journal* 1-12

core a rational decision maker who has the capacity to identify and collect all needed information for input into the decision making process as well as implement the decision.[84] Owing to the foregoing, the review deviates from the path utilised in the discussion on alternatives and considers both the deterrence model and the RCT as one, i.e. economic models.

The economic models have been variously criticised.[85] With regard to the economic deterrence model, the most prominent criticism is that it is the source of the 'puzzle of compliance'. Its existence was brought to the fore by the findings of a large number of empirical studies which revealed that the majority of taxpayers pay the right tax most of the time thereby leading to a high compliance rate notwithstanding the existence of a low probability of detection and light penalty for evasion or noncompliance.[86] In relation to tax compliance, RCT also manifests the same weakness, as within its ambit, the behaviour or preferences of a taxpayer would be deemed the product of the desire for optimisation of profit after tax. This is because, at the core of RCT, is the thesis that the attainment of predetermined goals and/or utility maximisation is the aim of the individual. In addition to being counter-intuitive, the finding of the empirical studies contradicts the foundation and prediction of the economic models which are that there would be high incidence of noncompliance in situations of low probability of detection and light penalty for evasion. Thus, by predicting far too much non-compliance than actually exists, the utility of economic models as a tool for understanding taxpayer compliance behaviour is manifestly inadequate.

The conception of behaviour as the consequence of an individual's rationality-propelled desire to attain utility maximisation or pre-determined goals, as well as the means to it, is another shortcoming. Related to it is the focus on optimisation, the maximisation of gain or the minimisation of the loss. This is not entirely the case as research abound which prove that taxpayer compliance behaviour is actuated and/or influenced by business

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84 *Ibid*, 2

85 See generally all the articles in (1997) Vol. 28 (No. 2) *American Sociologist*; Boudon, supra note 70 for criticisms of the RCT. For criticism of the economic deterrence model see Alm, J, *et al*, 'Economic and Non-Economic Factors in Tax Compliance' (1995) Vol. 8 (1) *Kyklos* 1-18; Andreoni, J, *et al*, 'Tax Compliance' (1998) Vol. 36 (2) *Journal of Economic Literature* 818–860

86 Alm, J, supra note 85, 4. An example of such studies is Andreoni, supra note 85

configuration,[87] environmental peculiarities, emotions[88] and the personal norms[89] of the taxpayer. The study by Spicer and Lundstedt revealed that perceptions of inequity, the number of evaders known, the probability of detection and experience with tax evasion and age actuate and/or influence taxpayer behaviour.[90]

One of the planks of the RCT is that the sole purpose of a rational individual is optimisation. This is far from true as there is actually no rational individual. This is because man's reality is plagued by an insufficiency of information and/or limited cognitive capacity which make the reaching of optimal decision impossible. This reality has led to the formulation of the bounded rationality theory. According to the originator of the theory, bounded rationality is a:

> [R]ationality that is consistent with our knowledge of actual human choice behavior, assumes that the decision maker must search for alternatives, has egregiously incomplete and inaccurate knowledge about the consequences of actions, and chooses actions that are expected to be satisfactory (attain targets while satisfying constraints).[91]

In real life, however, as a result of prevailing constraints, people rarely optimise. They manifest one of two behaviours after the identification of the options that would bring optimal satisfaction. They choose either a lesser option (otherwise referred to as satisficing) or they seek out an option that would yield benefit above the level of optimal satisfaction (otherwise referred to as meliorating).[92]

In the realm of taxation, the taxpayer as *homo economicus* manifests behaviour which amounts either to tax evasion or tax avoidance. This behaviour is often the by-product of deliberate rationalisation. Franzoni's assertion that a taxpayer's behaviour is a result of a rational calculus which involves a careful assessment of the costs and benefits of evasion

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87 See Swistak, A, 'Tax Penalties in SME Tax Compliance' (2016) Vol. 40 (1) *Finance Theory and Practice* 129-147, where it was argued that the size and/or configuration of SME predisposes them to non-compliant behaviour. In Tanzi, V & Shome, S, 'A Primer on Tax Evasion' (1993) Vol. 40 (No. 4) *IMF Staff Papers* 807 where it was argued that tax evasion is generally easier for independent contractors and professionals like doctors, lawyers, architects and those engaged in agricultural activities. Similarly, in Hansson, A, 'Tax Policy and Entrepreneurship: Empirical Evidence from Sweden' (2012) Vol. 38 (No.4) *Small Business Economics* 495, 497 it was argued that tax income underreporting and reclassification (which are examples of tax evasion and avoidance respectively) is favoured and executed by self-employed (a group which constitutes the bulk of SME

88 Levin & Migrom, supra note 62, 22; Murphy & Tyler, supra note 27

89 Murphy, supra note 26

90 Spicer, MW & Lundstedt, SB, 'Understanding Tax Evasion' (1976) Vol. 31 (Issue 2) *Public Finance* 295-305 cited in Wallschutzky, IG, 'Possible Causes of Tax Evasion'(1984) Vol. 5 *Journal of Economic Psychology* 371, 372-373

91 Simon, HA, *An Empirically Based Microeconomics* (Cambridge, UK: CUP, 1997) 17, quoted in Barros, supra note 61, 460

92 For an exposé on the bounded rationality theory, see Barros, supra note 61; Selten, supra note 56

supports the foregoing.[93] Though relating to taxpayers' affinity for the choice of tax evasion, the assertion is also true of any taxpayer behaviour catalysed by the desire to reduce/lighten a tax burden.

3.2.3.2 Tax Minimisation Theory

Another characteristic of behaviour or strategies premised on the TMT is that they do not come into being by happenstance. They are the product of information and deliberation as well as determination, and are undertaken with the genuine belief that an identified and/or anticipated advantage would be obtained by exploiting loophole(s) or other shortcoming(s) in the tax legislation.[94] Thus, the manifestation of a TMT-induced behaviour involves an understanding of tax administration, the use of specialists,[95] specialised products[96] and sometimes the use of shams.[97] The issue with TMT, however, is not one of functionality

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93 Franzoni, LA, 'Tax Evasion and Tax Compliance' in Bouckaert, B & DeGeest, D (Eds.), *Encyclopaedia of Law and Economics* (Vol. 4) (Cheltenham, UK: Elgar, 2000) 52, 53

94 Murray, R, *Tax Avoidance* (1st Ed.) (London: Sweet & Maxwell: 2012) 1

95 See Ipaye, supra note 82, 97; Arnold, BJ & McIntyre, MJ, *International Tax Primer* (2nd ed) (The Hague: Kluwer Law Intl. 2002) 7-14

96 See Del, W, 'Financial Alchemy: How Tax Shelter Promoters Use Financial Products to Bedevil the IRS (And How the IRS Helps Them)' (2013) Vol. 45 (No. 2) *Arizona State Law Journal* 1-63 for inter alia a discussion on the history and use of modern financial techniques to create tax-advantaged transactions and technical tax shelters

97 A sham is a transaction which has the appearance of creating legal right(s) and/or obligation(s) but is actually a ruse or 'window-dressing' to hide the reality of the transaction or the true intention of the parties to the transaction which could include the creation of different right(s) and/or obligation(s) or the existence of none of the foregoing. In *Snook v London and West Riding Investment Ltd* (1967) 1 All ER 518, the court emphasised that shams are characterised by the unequivocal intention of the parties to take part in the transaction. This means that, for a transaction or arrangement to be considered a sham, it must be shown that the parties intended to give effect to the arrangement in accordance with it terms. Historically, shams have been combated with the substance over form doctrine expressed in the maxim *plus valet quod agitur quam quod simulate concipitur* (i.e. what is actually done is more important than that which seems to have been done) on the premise of which the form of a transaction is ignored while attention is focused on true nature of the transaction and legally implications are subsequently attached thereto. Although the judgement in *WT Ramsay Ltd v Inland Revenue Commissioners* [1982] AC 300 is often referred to as the entry point of the doctrine into the realm of taxation, there is the US Supreme Court judgement in *Gregory v Helvering* 293 US 465 (1935). Notwithstanding the foregoing, the application of the doctrine is effectively a nullification of the rule in *Duke of Westminster* on which the argument that taxpayers are entitled to structure their affairs in a tax efficient manner (sham arrangements inclusive) is premised as well as provides impetus for re-characterisation of the offending transaction to ensure protection of the rule of law, the prevention of the abuse of fundamental legal principles as well as tax avoidance and/or evasion. A review of case law relating to the doctrine (within and outside the realm of taxation), however, does not point to the existence of linearity and/or certainty with regard to the application of the doctrine. In the Canadian case of *1524994 Ontario Ltd. v MNR* [2007] FCA 74 the court did not re-characterise a sham that was perpetuated against a third party so as to uphold an unintended tax that was triggered and became due to the *fiscus* as a result of the sham. The decision in this case seem to suggest that where the *fiscus* benefits from the sham, then no harm is done. See Sprysak, C, 'From Sham to Reality: Should a Wrong be Taxed as a Right' (2010) 55 *McGill Law Journal* 123 where the author critiqued *1524994 Ontario Ltd.* In South Africa, the decision in *Commissioner for the South African Revenue Service v NWK Ltd.* [2011] 2 SA 67 introduced a criterion which is akin to the business purpose or economic reality test which originated in *Gregory* for the determination of whether an arrangement is a sham. The decisions in *Bosch & Anor. v Commissioner for the South African Revenue Service* [2013] 5 SA 130 and *Roschon (Pty) Ltd v Anchor Auto Body Builders CC* [2014] 4 SA 319, however, seem to have reverted the guiding

but of a change in the ideology which underpins their conception. The current trend is what can be referred to as a systematic attack on TMT-behaviours and strategies. The most visible is the campaign to tar tax avoidance with the disapproval hitherto reserved for tax evasion, notwithstanding the fact that TMT-premised behaviour is sanctioned by law and is legal.[98] The use of words like abusive,[99] aggressive,[100] acceptable or unacceptable,[101] permissible or impermissible,[102] exogenous or endogenous,[103] moral or immoral[104] to qualify and describe tax avoidance strategies (without consideration of the consequences of this practice)[105] is an example of this trend. Another indication of this trend is the call

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principle to the manner which the parties to the arrangement or transaction intend to implement the transaction. In the light of the role which shams could play in the perfection of a transfer pricing endeavour, the foregoing is a source of worry. Did the courts in *Bosch* and *Roschon* hold that the economic or business reality of the situation of the parties and the transaction should not be considered where the sham drives a transfer pricing arrangement? If the answer is in the affirmative, then the decisions in *Bosch* and *Roschon* are at cross purposes with global consensus like the *OECD Transfer Pricing Guidelines* which unequivocally recommend that the economic and/or financial reality that underpin a transaction should be taken into cognisance when determining if it was entered at arms' length and not in breach of the transfer pricing rules. See OECD, *OECD Transfer Pricing Guidelines for Multinational Enterprise and Tax Administrations* (Paris: OECD, 2017)

98 See Freedman, J, 'Defining Taxpayer Responsibility: In Support of a General Anti-Avoidance Principle' [2004] No.4 *British Tax Review* 332, 335-336 where the author stated that 'all forms of avoidance, be they described as aggressive, acceptable or unacceptable, are legal…'. For further affirmation of the legality of tax avoidance, see also Oguttu, AW, 'Tax Base Erosion and Profit Shifting in Africa – Part 1: Africa's Response to the OCED BEPS Action Plan' (2016) *ICTD Working Paper* 54 7

99 For example, see the US IRS, Internal Revenue Manual 5:20: Abusive Tax Avoidance Transactions (ATAT). Available at https://www.irs.gov/irm/part5/irm_05-020-001.html#d0e55 (accessed 13 May 2016)

100 For a description of various arrangements, see OECD, *Study into the Role of Tax Intermediaries* (2008) 10-11. Available at http://www.oecd.org/tax/administration/39882938.pdf (accessed 13 May 2016)

101 See Rohatgi, supra note 75, 139-140, 143; Ipaye, supra note 82, 109 where it was implied that tax planning could be acceptable or unacceptable based on certain criteria

102 These words have found their way into legislation (e.g. section 80A-80L of the Income Tax No. 58 of 1962 (as amended) (South Africa). See Kanamugire, JC, 'A Critical Analysis of Tax Avoidance in the South African Income Tax Act 58 of 1962, as Amended' (2013) Vol. 4 (No. 6) *Mediterranean Journal of Social Sciences* 351-363 where it was argued that the purpose of the aforementioned section is the prohibition of impermissible tax avoidance and recommended that the law be amended to include provisions detailing permissible tax avoidance arrangements); decisions of court (e.g. *Ben Nevis Forestry Ventures Limited v CIR* [2009] 2 NZLR 106)

103 For definition and discussion focused on both, see Prebble, Z & Prebble, J 'The Morality of Tax Avoidance' (2010) Vol. 43 (No.3) *Creighton Law Review* 693, 698-700

104 *Ibid,* 700-701 where it was argued that tax avoidance is in addition to being legal, is also a moral scheme with the goal of minimizing tax liability

105 See CPA, *Corporate Tax Evasion, Avoidance and Competition: Analyzing the Issues and Proposing Solutions* (November 2013), 3. Available at https://www.cpacanada.ca/en/connecting-and-news/news/professional-news/2014/february/white-paper-on-tax-evasion-and-avoidance-issues (accessed 12 May 2016) for a discussion of a consequence. Also see Bond, S, *et al*, 'Tax Avoidance' in Chote, R et al. (ed) *The IFS Green Budget* (London: IFS/Morgan Stanley, 2006) where it was argued that the adjectives (as well as categorising evasion as illegal and avoidance as legal) blur the line of distinction between them as well as complicate and introduce uncertainty into the tax system. Available at http://www.ifs.org.uk/budgets/gb2006/gb2006.pdf (accessed 11 May 2016). Further see Freedman, J, 'Responsive Regulation, Risk and Rules: Applying the Theory to Tax Practice' (2011) Vol. 44 (No. 3) *University of British Colombia Law Review* 628, 631-633 where it was argued that these adjectives without judicial clarification create 'grey' areas characterised by uncertainty when the taxpayer and revenue authority hold different opinions

from tax administrators to taxpayers to pay a 'fair share' of tax or act as a 'good corporate citizen'[106] thereby introducing a moral element into tax administration and taxation. Datt assails these statements on two fronts. The first is that the call is tantamount to levying tax beyond the measure of what is legally due from the taxpayer. This is a request which the tax authority lacks capacity to make as tax is payable on an assessment raised in terms of the provisions of the extant tax law. The second is that, in relation to corporate taxpayers, the statements amount to a call to the 'directing mind and will' of the taxpayers[107] to breach their legal obligations to the company and its shareholders.[108]

Furthermore, the formulation and/or enactment of anti-avoidance rules (whether specific anti-avoidance rules (SAAR), general anti-avoidance rules (GAAR) or targeted anti-avoidance rules (TAAR), tax avoidance disclosure rules, transfer pricing rules, disclosure rules[109]) and the inclusion of broad provisions in municipal legislation[110] are also examples of counter-strategies that have been deployed in the systematic attack on TMT-behaviours

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106 See Datt, KH, 'Paying a Fair Share of Tax and Aggressive Tax Planning - A Tale of Two Myths' (2014) Vol 12 (No. 2) *eJournal of Tax Research* 410-432 where it was argued that the phrases convert what should be an objective determination of liability of tax into an emotive subjective concept with political overtones. See also Freedman, supra note 98, 336-339 for similar opinion

107 The directing mind and will here relates to the alter egos of the company; i.e. any and all persons (including the beneficial owner of the company) who is in a position to control or influence the activities of the company via acts or omissions. The relationship between the acts and omissions of the alter ego and that of the company is a consequence of incorporation. In *Lennard's Carrying Co. Ltd v Asiatic Petroleum Co. Ltd* (1915) AC 705, 713, Viscount Haldane espoused the concept of 'directing mind and will' and in the South African case of *Ngcwase v Terblanche* 1977 (3) SA 796 (A), 803-804 (*per* Joubert AJA) the relationship was succinctly captured thus: 'a statutory juristic person (*persona juris*) ... in law considered to be an abstract legal entity which exists as a juristic reality in the contemplation of law despite the fact that it lacks physical existence. It is in law through its representatives or agents (*per acotores syndicosque)* capable of knowing, intending, willing, acting, acquiring rights or obligations, possessing proprietary rights and of committing delicts (civil wrongs) and even crimes'

108 Datt, supra note 106

109 This takes the form of disclosure rules in the UK. Pursuant to it, users and professionals are obligated to advise HMRC of information regarding tax avoidance schemes which they have deployed. This is geared towards providing the HMRC with the opportunity of 'legislating' the exploited opportunity out of existence or countering it where it is deemed an incorrect interpretation of tax law. See generally, HMRC, *Dealing with HMRC – Guidance: Disclosure of Tax Avoidance Schemes* (2014). Available at https://www.gov.uk/guidance/disclosure-of-tax-avoidance-schemes-overview#history (accessed 12 May 2016). In the US, this is in the form of the 'Reportage Transactions' regime which obligates taxpayers who use reportable transactions and advisors who promote them to disclose to IRS: (1) listed transactions, i.e. those that are the same or substantially similar to transactions that the IRS and US Treasury have identified in public guidance to be tax avoidance transactions; and (2) reportable transactions, i.e. those (other than listed transactions) that are potentially abusive but have not been determined to be tax avoidance transactions. See sections 6011, 6111 and 6112 of the Internal Revenue Code of 1954; Masar, P, & Butterfield, S, 'Tax Shelters – Sound Strategy or Dangerous Game?' (April 2006) Vol. 4 (No. 4) *Journal of Business & Economics Research* 1, 6 *et seq*

110 For examples of this in Nigerian tax legislation, see section 22 of CITA; section 17 of PITA; section 15 of PPTA; section 23 of CGTA

and strategies.[111] The HMRC substantiated the foregoing assertion when it stated, with regard to the fundamental approach of the UK GAAR, that:

> The GAAR Study Group Report was based on the premise that the levying of tax is the principal mechanism by which the state pays for the services and facilities that it provides for its citizens, and that all taxpayers should pay their fair contribution. This same premise underlies the GAAR. It therefore *rejects the approach taken by the Courts in a number of old cases to the effect that taxpayers are free to use their ingenuity to reduce their tax bills by any lawful means*, however contrived those means might be and however far the tax consequences might diverge from the real economic position.[112]

The aforementioned rules effectively limit the space within which taxpayers can exercise the choice of whether to make use of liability-reducing provisions in the tax law or not. In addition, the attitude of some tax administration that all current and future actions taken by a taxpayer (whether or not they would lead to the reduction of tax liability) are suspect and should be countered is another testament to this emerging orientation.[113]

3.2.4 Application of the TPB to the research

Until now, the discussion has focused on the theoretical framework of this study and possible alternatives that could be (and have been) applied to understanding the variables existing in real time within the Nigerian tax system (or any other tax system) and having the capacity to have an impact on the compliance behaviour of taxpayers. This section builds on the foregoing as it provides justification for the adoption and utilisation of the TPB as the theoretical framework of this research. The first is its utility in the determination of the impact of taxation on business decisions, as well as ascertaining o the effect(s) of CITA incentives on the behaviour of taxpayers in the Nigerian tax system. This is a consequence of the fact that the TPB postulates that whether or not an individual has the intention to perform a particular kind of behaviour is the most important immediate

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111 See Rohatgi, supra note 75, 141-143 for an exposition on these anti-avoidance strategies. In Murray, 5, it was concluded that the intention underpinning the enactment of anti-avoidance legislation is the prevention of the advantage that would have been obtained by taxpayers in particular circumstance

112 HMRC, *HMRC General Anti Abuse Rule (GAAR) Guidance*, 4. Available at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/399270/2__HMRC_GAAR_Guidance_Parts_A-C_with_effect_from_30_January_2015_AD_V6.pdf (accessed 12 May 2018)

113 For example, see HMRC, 'Corporation Tax and Income Tax: Capital Allowances and Leasing - Anti-Avoidance', (November 2015) *Business Tax – Policy Paper*. Available at https://www.gov.uk/government/publications/corporation-tax-and-income-tax-capital-allowances-and-leasing-anti-avoidance/corporation-tax-and-income-tax-capital-allowances-and-leasing-anti-avoidance (accessed 9 May 2016) which details plans to amend legislation so that the HMRC is *inter alia* capable of adjusting the disposal value of the person making disposal of the plant or machinery as well as qualifying expenditure of the person acquiring it, and states that the proposed amendment would apply where the main purpose or one of the main purposes of the relevant transaction or a scheme or an arrangement of which it is part, is to enable a person to obtain a tax advantage in the form of a reduced or no balancing charge or an increased allowance

determinant of that behaviour[114] and that intention is a product of the individual's attitude towards the behaviour, the social pressure exacted by referents, or subjective norms and the PCB.[115]

Within the framework of this research, therefore, the decision and the behaviour of taxpayers is a function of their attitude towards the behaviour, social or subjective norms (which includes their morality and that of social referents), pressure from social referents (e.g. family, friends, associates and the tax authority),[116] the prevailing PCB (i.e. audit probabilities and process, enforcement mechanism such as interest and penalty and the taxpayer's perception of tax. Thus, if a taxpayer's perception, norms and emotions are favourably oriented towards tax and compliance, the taxpayer would most likely adopt and utilise the incentive in a compliant manner. Where the reverse orientation exists, the taxpayer is most likely to adopt and/or manifest tax avoidance strategies and/or behaviour. Whatever the case is, the taxpayer is situated on the compliance continuum. The right is indicative of a situation where the observed/manifested action[117] is the product of a positive orientation towards tax and the left is indicative of a situation where the observed/manifested action is the product of negative orientation.

Furthermore, the TPB has a questionnaire template as part of it that can be adapted to suit the peculiarity of any research context. This proved useful in the construction of the questionnaire that was put to use in the course of the study in soliciting information from the alter egos of taxpayers with regard to issues that had been predetermined and pre-identified as indicators of their perceptions of the themes of interest.[118]

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114 Ajzen, supra note 11, 117

115 Ajzen & Fisbein, supra note 4, 195

116 For example of research which confirms the relationship between social or subjective norms and behaviour in the realm of taxation, see Loo, EC, *et al*, 'Understanding the Compliance Behaviour of Malaysian Individual Taxpayers using a Mixed Method Approach' (2009) Vol. 4(1) *Journal of the Australasian Tax Teachers Association* 181-202 for evidence that a positive perception of the tax system and its fairness are strong influences on compliance behaviour; Bird, RM, *et al*, 'Tax Effort in Developing Countries and High Income Countries: The Impact of Corruption, Voice and Accountability' (2008) Vol. 38 *Economic Analysis & Policy* 38, 55–71 where it was argued that taxpayer satisfaction with government activities and the existence of strong institutions motivates compliance and willingness to pay taxes; Torgler, B, 'Speaking to Theorists and Searching for Facts: Tax Morale and Tax Compliance in Experiments' (2002) 16 (5) *Journal of Economic Surveys* 657, 669-673 where the author examines the impact of social variables like information availability and/or transparency, taxpayer participation in decision process, level/quantum of personal benefit derived from public good and service, etc. on the tax morale and tax compliance

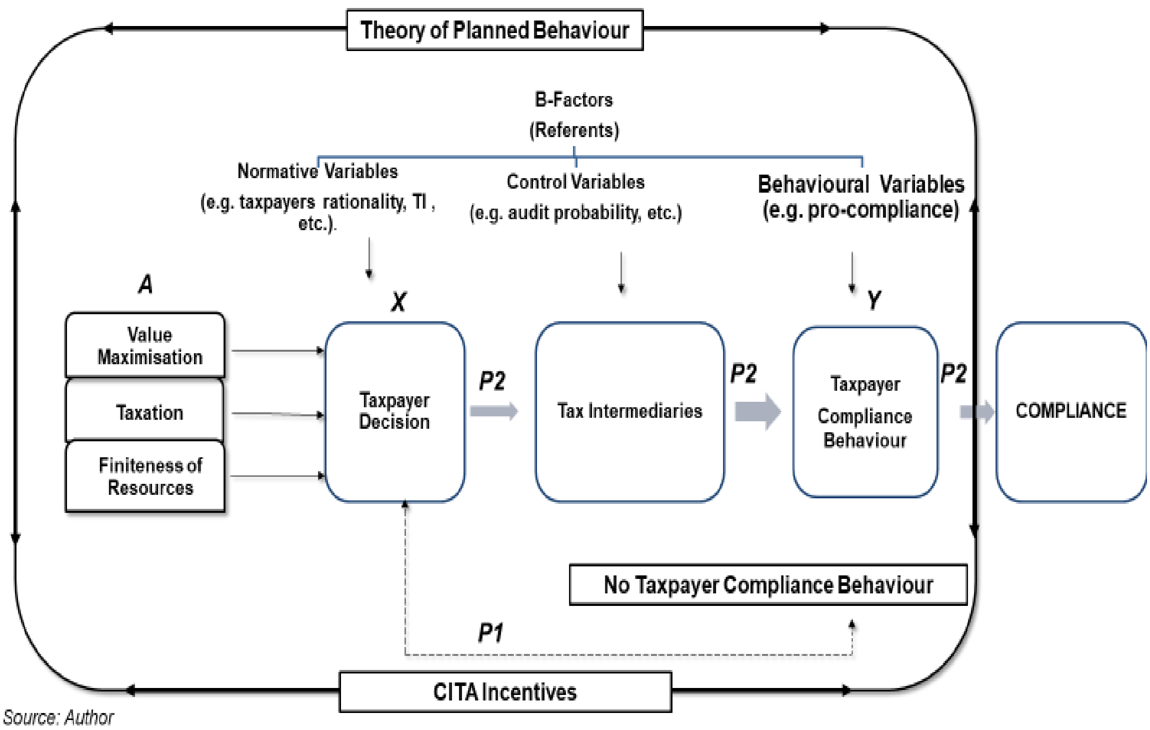
117 See Togler, B, 'Speaking to Theorists and Searching for Facts: Tax Morale and Tax Compliance in Experiments' (2002) Vol. 16 (No.5) *Journal of Economic Surveys* 657, 658 where tax compliance was described as the finally observed action (i.e. the end product of choices and decisions)

118 See chapter 6 for more discussion on the research questionnaire

3.3 CONCEPTUAL FRAMEWORK

The main objective of a company is the sustained generation of income and/or value maximisation from the optimum use of it finite resources.[119] The attainment of this objective is not by happenstance. It is the product of a calculus involving the consideration and interaction of a large number of variables as well as the risk generated by the prevailing micro and macro-economic issues associated with the location of the company.[120] This interaction has the propensity to situate the taxpayer (company) along the tax compliance continuum. This is because the variables actuate and influence the taxpayer's compliance behaviour. The pathway of interaction of these factors as well as the prevailing micro and macro-economic issues associated with the location of the company forms the theoretical framework of this research and this is presented below as *figure 3.3*.

Figure 3.3: Conceptual Framework



Source: Author

From the above it can be inferred that a number of variables influence tax compliance. Of interest are the trio of value maximisation, finiteness of resources and taxation. The figure suggests that, within the precinct of the interaction between the variables subsumed in the

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119 Dolenc, P, *et al*, 'What is the Objective of a Firm? Overview of Theoretical Perspectives' in Bojnec, S, *et al*, *Overcoming the Crisis: Economic and Financial Developments in Asia and Europe* (2012: University of Primorska Press, Koper) 51. See Jensen, MC, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2002) Vol. 12 (No. 2) *Business Ethics Quarterly* 235, 236 where it was espoused that value maximisation encompasses all that managers (i.e. alter egos) do to increase the total value of all financial claims including equity, debt, stock and warrants of the firm

120 See generally Dwivedi, supra note 63, 4-11

TPB and CITA incentives, value maximisation, taxation (especially compliance burden and its administration) and finiteness of resources actuate or influence taxpayers' decisions. From the figure it is obvious that the manifestation of the influence is along two paths (i.e. *P1* and *P2*). *P1* is representative of the scenario where the taxpayer without interacting with a tax intermediary, decides and attempts to manifests a tax compliance behaviour. It also indicates the taxpayer's return to the point where it makes the decision to procure a tax intermediary after failure to manifest a tax compliance behaviour occasioned by intervening B-factors such as the complexity of the tax system and filing requirements.[121] The tax intermediary, in line with its role, provides services to the taxpayer. These services can potentially impact on taxpayer compliance behaviour and position on the taxpayer on the compliance continuum, subject to the existence and influence of the *B-factors* on the decision, tax intermediary and the compliance behaviour.[122]

3.4 METHODOLOGICAL FRAMEWORK

This study is focused on Nigeria and, as such, it a case study. The defining traits of a case study are its focus, form of analysis and purpose. Mills *et al* put the foregoing in perspective when they describe a case study as a research strategy whose characteristics include:

> 1. a focus on the interrelationships that constitute the context of a specific entity (such as an organization, event, phenomenon, or person);
> 2. analysis of the relationship between the contextual factors and the entity being studied; and
> 3. the explicit purpose of using those insights (of the interactions between contextual relationships and the entity in question) to generate theory and/or contribute to extant theory.[123]

Case study is distinguished by the fact that the researcher and the research object constantly interact with each other so that the former gets to understand and interpret thoroughly the peculiarity of the research object within its own special context.[124] When viewed in terms of the epistemological divides, it is a research method that can be situated within the qualitative strand.[125] However, for this research, case study was adopted as the research

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121 Note that the B-factors in *figure 3*.3 are variables which can be situated within the theoretical framework of this research. Thus, filing requirements as it relates to company income tax compliance in Nigeria are control variables when conceptualised within the theoretical framework of this research. This is because they have capacity to facilitate or impede tax compliance

122 See chapter 6 (paragraph 6.3.3) for further discussion which relates to the causal pathway/TI-TpB relationship

123 Mills, A., *et al* (eds), *Encyclopaedia of Case Study Research* (Vol. 1) (California: Sage, 2010) xxxii-xxxiii

124 Mills, supra note 123, 66

125 See Creswell, JW, Qualitative Inquiry and Research Design: Choosing Among Five Approaches (2nd ed.) (California: Sage Pub., 2007) 73

strategy.[126] This decision was reached in the light of the research questions which intrinsically seek to facilitate an understanding of the taxpayer-CITA incentive-tax intermediary-compliance relationship in Nigeria.

The justification for the case study approach is the fact that social phenomenon such as tax compliance behaviour is contextual and not invariant in space and time. Thus, tax compliance behaviour differs according to environment and culture.[127] The adoption of a case study approach to the research facilitated the sourcing of answers to pertinent questions[128] in the context of Nigeria. It also enabled the understanding of the uniqueness of the Nigerian tax system as it allowed for the focus of attention on specifics within the jurisdiction. Furthermore, this actuated analysis and interpretation without the need for comparison to accommodate the differences associated with a multi-jurisdictional study.[129]

3.4.1 Method

The study was carried out using mixed methods. Mixed methods (also known as mixed research) involves the blending or integration of the epistemological divides (i.e. qualitative and quantitative methodologies) the stage of the design of the research and instruments, the collection and analysis of data as well as the interpretation and reporting of result stage.[130] The utility of a mixed research stems from fact that it furthers the attainment of depth of understanding as well as validity and corroboration[131] as well as has the capacity to birth superior research due to its methodological pluralism or eclecticism.[132] Furthermore, a mixed research fuses together the strengths of the epistemological divides and provides an innovative approach for addressing research issues because with it, qualitative data can be used to validate quantitative finds or the latter can be used to explain the findings of a qualitative inquiry.[133]

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126 See Denzin, NK, & Lincoln, YS, 'Introduction: The Discipline and Practice of Qualitative Research' in Denzin, NK, & Lincoln, YS, (eds.), *The SAGE Handbook of Qualitative Research* (3rd ed) (California: Sage Publ. Inc., 2005) 23

127 Berry, AJ, & Otley, DT, 'Case-Based Research in Accounting' in Christopher, H & Bill, L (eds.), *The Real Life Guide to Accounting Research: A Behind the Scenes View of Using Qualitative Research Methods* (Amsterdam: Elsevier, 2004) 233

128 Mills, supra note 123, 200

129 Saxon, N, *et al*, 'State and Local Sales Taxes and Business Activity in the United States' (2015) *IZA Discussion Paper 9413*, 3

130 Fetters, M., *et al*, 'Achieving Integration in Mixed Methods Designs - Principles and Practices' (2013) Vol. 48 (6 Pt. 2) *Health Service Research* 2134-2155; Onwuegbuzie, AJ, *et al*, 'Mixed Research as a Tool for Developing Quantitative Instruments' (2010) Vol. 4(1) *Journal of Mixed Methods Research* 56, 57-58

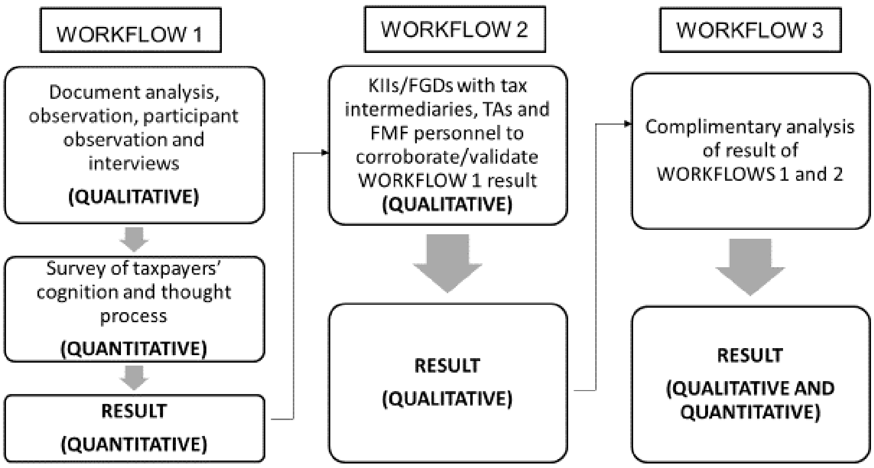
131 Onwuegbuzie, supra note 130, 56

132 Johnson, RB & Onwuegbuzie, AJ, 'Mixed Methods Research: A Research Paradigm Whose Time Has Come' (2004) Vol. 33 (No.7) *Educational Researcher* 14

133 Fetters, supra note 130, 2135

Figure 3.4 below is the schema of the methodology adopted for the research. It is a multi-stage mixed methods framework (MMMF). It deconstructed the research into three workflows and facilitated the collection, analysis of data and integration of the epistemological divides. In workflow 1, an exploratory sequential approach was utilised for data collection and analysis. The use of an exploratory sequential design for data collection and analysis requires that the researcher first collects and analyses qualitative data and the finding(s) therefrom is (are) subsequently used to drive quantitative data collection.[134] Qualitative data collection in the MMMF was done with a mix of observation, participant observation, interviews and document analysis of literature (as well as legislation). The findings therefrom went into the creation of a tool (a questionnaire) for subsequent data collection. The quantitative side of workflow 1 involved the use of a questionnaire to elicit information on the dimensions of the issues of interest to the research from the alter egos of the taxpayers. This provided quantitative data.

Figure 3.4: Multi-Stage Mixed Methods Research Framework



Source: Author

The result of workflow 1 provided the foundation on which stage two was built. It informed the data collection approach employed by workflow 2 and the latter further developed the themes emerging from the result of workflow 1. A consequence of this is that it provided an opportunity for the integration of the epistemological divides.[135] Essentially, workflow 2 utilised qualitative tools (i.e. key informant interview (KII), observation and participant observation) which yielded qualitative data. These were targeted at the tax intermediaries,

134 *Ibid*, 2136

135 *Ibid*, 2140; Onwuegbuzie, supra note 130, 58

personnel of FIRS and civil society organisations (CSOs).[136] The latter was included because of the fact that they were fast becoming influential in the Nigerian[137] as well as global[138] tax system through their activities. For example, the ActionAid Tax Treaties Dataset[139] has become the 'go to' source for information for tax treaty data analytics.[140]

Finally, the entire results (i.e. the quantitative and qualitative data from workflows 1 and 2) was analysed in a manner that ensured that complementarity was achieved. Complementarity is achieved when the result of a method-specific enquiry is used to, *inter alia*, elaborate, enhance and/or clarify the findings from another enquiry which utilised a method from the opposite side of the epistemological divide.[141] In the case of this study, the result of workflow 2, which is qualitative, was used in the manner espoused above vis-à-vis the result of workflow 1. It is also at this point that the last integration with regard to the interpretation and reporting of results is achieved. It should be noted that an iterative approach was adopted in the course of the workflow. This decision was a product of the recognition of the peculiarity of the research area (i.e. tax/taxation) and context (i.e. Nigeria) as well as the utility of a mixed methods research design.

3.4.2 Sampling scheme

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136 See de Búrca, G. & Walker, N, 'Law and Transnational Civil Society: Upsetting the Agenda?' (2003) Vol. 9 (No. 4) *European Law Journal* 387, 388-390 for a discourse on the history, conceptualisations and role of CSOs

137 See van Dorp, M, *How Shell, Total and Eni Benefit from Tax Breaks in Nigeria's Gas Industry: The Case of Nigeria Liquefied Natural Gas Company (NLNG)* (Amsterdam: SOMO, 2016). Available from https://www.somo.nl/how-shell-total-and-eni-benefit-from-tax-breaks-in-nigerias-gas-industry/ (accessed 5 January 2018); Oyedele, T, *Review of Mauritius-Nigeria Double Taxation Treaty* (2014). Available at http://www.actionaid.org/sites/files/actionaid/mauritius-nigeria_double_taxation_treat.pdf (3 October 2018)

138 See generally, TJN-A & ActionAid International, *Tax Competition in East Africa: A Race to the Bottom?* (2012) 11. Available at http://www.actionaid.org/sites/files/actionaid/eac_report.pdf (accessed 3 January 2018); SEATINI, *Tax Exemptions Implications on Socio-Economic Development* (Uganda: 2012) 6. Available from http://www.seatiniuganda.org/publications/downloads/89-tax-exemptions-implications-on-the-socio-economic-development-3rd-dec-2012/file.html (accessed 7 April 2018); TJN-A & Action Aid, *The West African Giveaway: Use and Abuse of Corporate Tax Incentives in ECOWAS* (2015). Available at http://www.actionaid.org/sites/files/actionaid/the_west_african_giveaway_2.pdf (accessed 3 January 2018); Action Aid, *Leaking Revenue: How a Big Tax Break to European Gas Companies has Cost Nigeria Billions* (2016). Available at https://www.actionaid.org.uk/sites/default/files/publications/leakingrevenue.pdf (accessed 3 January 2018). Also see Hearson, M & Kangave, J, 'A Review of Uganda's Tax Treaties and Recommendations for Action' (2016) *ICTD Working Paper 50*; Hearson, M, 'Measuring Tax Treaty Negotiation Outcomes: the ActionAid Tax Treaties Dataset' (2016) *ICTD Working Paper 47*

139 Hearson, M, *The ActionAid Tax Treaties Dataset* (Brighton: IDS 2016) Available at http://ictd.ac/datasets/action-aid-tax-treaties-datasets

140 See Hearson, M, supra note 138 where the author concludes after analysis of data derived from the ActionAid Tax Treaties Dataset that 'As a group, OECD countries appear to be moving towards treaties with developing countries that impose more restrictions on the latter's taxing rights, while non-OECD countries appear to be allowing developing countries to retain more taxing rights than in the past'

141 Onwuegbuzie, supra note 130, 58

The sampling scheme represents the overt approach(es) utilised in the selection of research participants from whom information is sourced.[142] To this end, a sampling scheme that was both purposive and convenient in nature was fashioned. The purposiveness of the scheme stems from the fact that research participants were selected 'based on a specific purpose rather than randomly.'[143] In the case of this research, participants were picked from the respective professional groups on the basis of their connection with taxpayers or the fact that they had interacted with the tax authority. Hence academics belonging to the professional groups as well as non-practising members were excluded. For the taxpayer group, qualification for participation was on the basis of the respondent being a 'directing mind and will' of the company (i.e. the taxpayer). From the ranks of the tax authority, participants were selected on the basis of contact with taxpayers and/or their intermediaries. Furthermore, because identified samples had to be accessible and willing to participate, a measure of convenience was introduced into the sampling scheme. This gave the latter the colouration of a convenience sampling scheme.

The purposiveness of the sampling scheme was further underpinned by the desire to recruit information-rich research participants from the different groups of research participants. Hence, the snowball technique was chosen as the option for the recruitment of respondents for the survey and KIIs. Snowballing is a technique for finding research subjects that is characterised by one subject aiding the researcher by providing introduction or referral to another subject, who in turn does the same with a third and so on.[144] It was resorted to when the sample population for the respective groups of research participants generally became hard to access.[145] With regard to the tax intermediaries group, the utilisation of snowballing technique was resorted to when the chief executive officers (and/or their designates) of the respective professional groupings tacitly refused to approve a 45 minutes slot for the conduct of focus group discussions at the mandatory development programmes or workshops of their professional groups. In the course of workflow 2, snowballing was also adopted for the recruitment of respondents from FIRS when randomised recruitment became impossible even after the gatekeepers had consented in writing to the research

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142 Collins, KMT, *et al*, A Mixed Methods Investigation of Mixed Methods Sampling Designs in Social and Health Science Research (2007) Vol. 1 (No. 3) *Journal of Mixed Methods Research* 267, 271

143 Teddlie, C & Yu, F, 'Mixed Methods Sampling: A Typology with Examples' (2007) Vol. 1 (No.1) *Journal of Mixed Methods Research* 77, 80

144 Atkinson, R, & Flint, J, 'Accessing Hidden and Hard-to-Reach Populations: Snowball Research Strategies' (2001) (Issue 33) *Social Research Update*, 1-4; Collins, supra note 142, 272

145 Heckathorn, D 'Comment: Snowball Versus Respondent-Driven Sampling' (2011) Vol. 41 (No. 1) *Sociological Methodology*, 355-366

being undertaken in their domain and the same shown to the prospective research participants.[146]

3.4.3 Sample size

For this research the relevant study population is comprised of two subgroups: (1) micro and small companies (MSCs) on the FIRS database; and (2) the entire spectrum of tax intermediaries. Identifying a study population is of importance as it determines the set of entities from which the research sample can be drawn as well as the validity of research findings.[147] Notwithstanding the foregoing, surveying the entire population of MSCs would have been difficult from a resource (i.e. cost, time and logistics) and ethics perspective. Hence the study utilised a population subset or sample (n) as proxy.

Typical, sample size is determined using one of two approaches to achieve the right population-sample balance that would guarantee the correct inference and the validity of research findings.[148] The determination of MSC sample (n) that would be required for the study was, however, made impossible by the fact that the population (N) of MSCs was not, and could not be, determined. What exists currently is the total number of taxpayers on the database of FIRS and this figure includes members of the armed forces of the Federation, Nigeria Police and staff of the Ministry of Foreign Affairs and non-resident individuals.[149] It could not be used as N for the determination of n for a study focused only on MSCs.

In addition to the foregoing, all it sought to show is that there are factors outside the narrow confines of law and economics paradigms that actuate and/or influence tax compliance behaviour. And not all taxpayer behaviour was of interest to the investigation. Behaviour of interest was any which relates to the incorporation of a company, the creation and keeping of financial records for tax purposes and the payment of tax. These and other issues

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146 Notwithstanding its helpfulness in situations where the research group or population is hard-to-reach or impenetrable, the use of snowballing is characterised by a few challenges which hamper the utility of the sample for generalisation. Prominent amongst these is the problem of representativeness and sampling principles which respectively arise from the fact the selection of respondents is not randomised but dependent on the subjective choices of the respondents. See Atkinson & Flint, supra note 144

147 Sadia, F & Hossain, SS, 'Contrast of Bayesian and Classical Sample Size Determination' (2014) Vol. 13 (No. 2) *Journal of Modern Applied Statistical Methods* 420; Harzig, A, *et al*, 'Challenges in International Survey Research: A Review with Illustrations and Suggested Solutions for Best Practice' (2012) 4. Available at https://harzing.com/download/intres.pdf (accessed 13 May 2018)

148 These are the frequentist approach (which utilises the confidence interval range of the values of the sample) and the decision theoretic approach (which determines sample size as utility problem that is resolved by balancing expected costs and benefits). For a more in-depth discourse on the approaches to sample size determination see, Sadia & Hossain, supra note 147; Ryan, TP, *Sample Size Determination and Power* (New Jersey: Wiley, 2013) (chapter 2)

149 See chapter one (paragraph 1.3: Research context – The Nigerian Tax System) for a description of tax space of FIRS

encountered during the field work actuated the (re)design of the entire research as a small *n*-study.[150]

A characteristic of a small *n*-study is that the representativeness of *n* to ground extrapolation and generalisation of the findings of the investigation is not relevant. Small *n*-studies are mostly suited for scenarios in which compelling theoretical reasons exist to resolve a behavioural problem.[151] Justification for the design as a small *n*-study is the fact that it provides the opportunity to: (1) study/observe issues and subtleties of interest with a view to deriving understanding of the behaviour of specific subjects in the natural world and not to derive averages of the population; and (2) allow for repeated interrogation of the same issues and subtleties of interest from different perspectives in a manner that is akin to replication to establish the internal validity of a social experiment.[152] The tax compliance discourse, as well as the multiplicity of theoretical prisms through which it is conceptualised, provides justification for the use of small *n*-study in the quest for understanding and resolution of the issues associated with tax compliance behaviour. The foregoing, the fact that the research was designed as a case study, the venturing away from determinism, the small *n*-sample and the choice of research tools (i.e. the KII, observation and participant observation) makes the research idiographic in nature.[153]

Furthermore, to be a suitable research participant in terms of the survey, the taxpayer ought to have been in existence before the 2013 year of assessment. Thus, for an alter ego to participate, the company ought to have been incorporated by 2012. This design decision impacted on the sample size and was the product of an attempt to achieve as much as possible a balance between recall error (or bias) and information truth value.[154] Hence, the

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150 See Chapter 6 for a discussion of the field work

151 Barnett, SD, *et al*, 'Small *N* Designs for Rehabilitation Research' (2012) Vol. 49 (No. 1) *Journal of Rehabilitation Research and Development* 175-186, 176

152 For discourse on the benefits of using small sample in social/behaviour studies, see generally Normand, MP, 'Less is More: Psychologists Can Learn More by Studying Fewer People' (2016) Vol. 7 (934) *Frontiers in Psychology* 1

153 For a review of idiographic research and its opposite, see generally Luthans, F & Davis TRV, 'Idiographic Versus Nomothetic Approaches to Research in Organisations' (1981). Available at http://www.dtic.mil/dtic/tr/fulltext/u2/a104548.pdf (8 October 2018); Luthans, F & Davis TRV, 'An Idiographic Approach to Organizational Behaviour Research: The Use of Single Case Experimental Designs and Direct Measures' (1982) Vol. 7 (No. 000003) *The Academy of Management Review* 380

154 Research has shown that there is an inverse relationship between the length of time over which subjects are asked to recall information and the accuracy of the report. Thus, the recall window (with or without other factors like the respondent's involvement with/interest in the survey) shapes the response and impacts on the validity of the result of study for which the self-reported data was collected. See Clarke, PM, *et al*, 'Optimal Recall Length in Survey Design' (2008) Vol. 27 (5) *Journal of Health Economics* 1275 where the choice of which side of the divide to favour was described as the product of a trade-off. Also see Kjellsson, G, *et al*, 'Forgetting to Remember or Remembering to Forget: A Study of the Recall Period Length in Health Care Survey Questions' (2014) Vol. 35 *Journal of Health Economics* 34; Araujo, T, *et al*, 'How Much Time Do You Spend Online? Understanding and Improving the Accuracy

recall window for the research was pegged to the span between the 2013 and the 2017 year of assessment. With regard to the other research tools, however, this criterion was irrelevant as they were not used to collect self-reported data.

3.5 UTILITY OF THE RESEARCH DESIGN

In the light of the fact that the study is being carried out within a legal environment, a conclusion would be that since that taxation starts with law (i.e. tax cannot be imposed and deviations therefrom introduced without a law to that effect[155]) the research would be legalistic in design (and upholding the doctrinal/theoretical or black letter tradition and analysis) as is typical of legal scholarship.[156] It is, however, not. The choice of design was influenced by: (1) the fact that the subject and mechanics of taxation is beyond the realm of law;[157] (2) the desire to avert reference to the research as 'not really academic … unexciting, uncreative, and comprising a series of intellectual puzzles scattered among large areas of description' because of the disciplinary affiliation of the researcher;[158] and (3) the fact that solution(s) to problems and/or answer(s) to questions are never within the boundaries of a single academic discipline.[159] The last of the foregoing is true with regard to the issues of interest to this study. For example, the gamut of tax morale literature has put beyond conjecture the inadequacy of sanctions and/or the economic deterrence model in relation to tax compliance.[160] In the same vein, amidst the tax compliance discourse, manifestations like the 'puzzle of compliance' and the Peter Pan syndrome[161] do not make

of Self-Reported Measures of Internet Use' (2017) Vol. 11 (No.2) *Communication Methods and Measures* 173, 175-176

155 *Coltness Iron Company v Black* 6 App. Ca. 315, 330. See *SA Authority v Regional Tax Board* (1960-2000) 2 NTLR 686, 700 (judicial enunciation of this principle in Nigeria)

156 George, T, 'An Empirical Study of Empirical Legal Scholarship: The Top Law Schools' (2006) Vol. 81 (1) *Indiana Law Journal* 141, 142

157 See Mangioni, V & Mckerchar, M, 'Strengthening the Validity and Reliability of the Focus Group as a Method in Tax Research' (2013) Vol. 11 (No. 2) *eJournal of Tax Research* 176 where it was argued that taxation is an area of research populated by scholars from diverse disciplines including law, accounting, economics, psychology, sociology and political science). Van Oordt described taxation as a large pile of sand which borrows or is consisted by portion of others (i.e. disciplines) piles of sand. See Van Oordt, ML, 'A Quantitative Measurement of Policy Options to Inform Value-Added Tax Reform in South Africa' (2015) (Unpublished PhD thesis submitted to the University of Pretoria, South Africa) 12

158 Becher, T, 'Towards a Definition of Disciplinary Cultures' (1991) Vol. 6 (2) *Studies in Higher Education* 109, 111

159 Leedy, PD & Ormrod, JE, *Practical Research: Planning and Design* (10th Ed) (New Jersey: Pearson, 2013) 74

160 See Togler, B, 'What Do We Know About Tax Morale and Tax Compliance?' (2001) Vol. 48 International Review of Economics and Business 395-419; Feld, LP & Frey, BS, 'Deterrence and Tax Morale: How Tax Administrations and Taxpayers Interact' (2002) (unpublished manuscript). Available at http://www.oecd.org/dataoecd/9/51/2789923.pdf (accessed 29 March 2018)Andreoni, supra note 85

161 Dilling-Hansen is of the opinion that the Peter Pan syndrome is a characteristic of 'life-style' firms: that is, firms that were established primarily as a vehicle for the creation of revenue to support the basic costs of living of its owner(s). He further argued that when the owner(s) of such firms accumulate the wealth needed to afford basic luxury goods; profit maximisation becomes less important. See Dilling-

sense from an economic perspective, and so relying solely on economic theories like rationality and profit maximisation[162] solution would not do justice to the discourse.

With the foregoing as motivation, a design that took the research out of the confines of black letter/doctrinal analysis was developed. This prevented a situation where the output (i.e. the answers to the research question) would be of limited utility vis-à-vis the nuances subsumed in the research questions and would make the traditional doctrinal cum interpretative analysis for which law is renowned insufficient to ground a deeper understanding of the issues of interest to the research. Thus, a 'hybrid', constituted of both legal and social science methodologies, was fashioned and utilised. Furthermore, the MMRF (which relied heavily on social science research methods and tools) allowed for the infusion of empiricism and qualitative research paradigms into the research process as well as created a platform for a more robust exploration of the peculiarities that characterised the research context[163] which in this case is Nigeria.

In the light of the foregoing, the conclusion is that the design, depending on the ideological inclination of an assessor or reviewer, takes the research into the realm of empirical legal study or makes it a socio-legal study. Its fits into the first mould because it seeks to test or analyse a positive theory of law using techniques developed in the social sciences.[164] It is socio-legal because it considers legal provisions (CITA incentives) and legal practices (tax practices and the provision of intermediary services) within the context of social practices (the business and commercial practice of the taxpayers and the tax professional) which constitute their immediate environment. Furthermore, the fact that the research examines the relationship among taxpayer, tax administration and tax intermediaries in the context of legal provisions, rules and processes associated with tax compliance as well as their effect from the perspective of the aforementioned trio amounts to subjecting legal provisions, rules and legally defined roles (i.e. the role of tax intermediary) to empirical inquiry.[165] This also makes the research socio-legal. In addition, the design provided a more

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Hansen, M, 'SMEs: Peter Pan Syndrome of Firms not Grown Up?' (2017) Vol. 3 (No. 1) *Athens Journal of Business and Economics* 7, 14-15

162 See Coffman, RB, 'Is Profit Maximization Vs. Value Maximization Also Economics Vs Finance?' (1983) No. 12 *Journal of Financial Education* 37-40 where the author highlights the shortcoming of profit maximisation as a decision function

163 Van Hoecke, M, 'Legal Doctrine: Which Method(s) for What Kind of Discipline?', in M. Van Hoecke (Ed.), *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?* (London: Hart Publishing, 2011) 1-18

164 George, supra note 156, 141

165 Lacey, N, 'Normative Reconstruction in Socio-Legal Theory' (1996) Vol. 5 *Social and Legal Studies* 131, 132

robust option which black-letter legal research does not provide and which best suits the multi-disciplinary nature of the subject of tax.

In more specific terms, the methodology framework facilitated the assessment of the utility of the legal provisions (i.e. CITA incentives) and the appreciation of the dynamics between the variables of interest (i.e. tax incentives, MSCs, tax intermediaries and compliance) in a social context. It aided social auditing of law[166] by facilitating the transposition of the law relating to CITA incentives into the social space for the purpose of gap-identification and analysis with regard to the legal ideal and social reality underpinning provision of CITA incentives and their utilisation by MSCs. Furthermore, the methodology framework provided a mix of research tools and methods. This mix allowed for triangulation. Triangulation is the validation of data (or information) on a variable through cross verification from multiple sources or methods.[167] The information from observation, participant observation and interviews (i.e. qualitative data) was used to further explore the underpinnings (i.e. why taxpayers respond as they did; the context of their response; and the thought process and decision that gave rise to their behaviour), the trends and themes which emerge from the quantitative findings as well as assessing their validity.[168] Creswell confirmed this use of qualitative research when he stated that '[W]e use qualitative research to follow up quantitative research and help explain the mechanisms or linkages in causal theories or models'.[169] In addition, the quantitative data from the questionnaires was also used to validate the themes (i.e. qualitative data) teased out of the literature on the variables of interest.[170]

The theoretical framework provided the researcher with a clear background against which questions that could link the variables of interest subsumed in the research were formulated. For example, questions which sought to determine whether the taxpayers could possible resist the allure of noncompliant behaviour in the face of finite resources, the desire for business continuity coupled with sub-optimal understanding of the intricacy and mechanism of the tax system were inspired by the element of limited volitional control over behaviour in the TPB.

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166 Vibhute, K & Aynalem, F, *Legal Research Methods: Teaching Material* (2009). Available at https://chilot.files.wordpress.com/2011/06/legal-research-methods.pdf (accessed 21 November, 2017)
167 Mills, supra note 123, 200
168 Creswell, supra note 125, 40
169 *Ibid*
170 Fetters, supra note 130, 2135

3.6 CONCLUDING REMARKS

This chapter was a walk-through of the research design. To this end it has provided an in-depth exposition especially as it relates to the theoretical foundation of the research, the conceptualisation of the interactions of the research variables and the adopted research methodology. It also justifies the choice of research design from a functional perspective which relates to the nature of the area of research. As has been stated previously, the chapter ties into previous chapters by virtue of the fact that it further espouses the theoretical perspectives from which taxpayer compliance behaviour can be perceived; an endeavour first undertaken in chapter two.

A fact which resonates through this chapter is that research focusing on tax would yield a more robust result if not confined to the boundaries of the jurisprudence of a discipline. This is because tax is by nature multidisciplinary and to understand it better, researchers should be able to cross the borders of disciplinary divides. This would, in addition to allowing the researcher see beyond (and also circumvent) norms and barriers put in place by disciplinary affiliation, place them on an elevation from which they can look further afield for new insights and guidance in research design and conduct.[171]

Finally, the research frameworks provided a structured approach to the research in general and, more specifically, impacts on the data gathering and analysis as will be seen in subsequent chapters. While it is acknowledged that the theoretical and conceptual frameworks is indicative of a leaning towards determinism, it should be repeated that this is not the intention.[172]

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[171] Mangioni, supra note 157, 189

[172] See Chapter one (*Paragraph 1.3: Research Context – The Nigeran Tax System)* for a discussion on determinism and why it is not the choice of this research

CHAPTER FOUR: LAW AND ADMINISTRATION OF COMPANIES INCOME TAX INCENTIVES IN NIGERIA

4.1 INTRODUCTION

In chapter two, a review of tax incentives was undertaken, and this established the groundwork for the current chapter which moves the narrative from the general (at which point the focus was *inter alia* on the nature, effect and use of tax incentives) to specifics. To this end, chapter four identifies and reviews the income tax incentives available in the Nigerian tax system to companies whose profit accrue in, is derived from, brought into, received in or attributable Nigeria as well as the administration of such incentives. However, the scope of this chapter does not include analysis of the law in the manner associated with legal scholarship or a discussion focused on the effectiveness of the incentive provisions. The reason for this seeming limitation in the scope of the chapter is presented in *infra* in part 6 of the chapter.

That being said, it should be noted that the chapter has five other parts. Part two reviews the legal framework of CIT in Nigeria. To this end, it highlights the triggers of the tax and entities who qualifiers to be taxed. In parts three and four the incentives within the CIT regime to which companies are entitled are identified and reviewed. Part five synthesizes consequences of the configuration of the legal framework for and administration of income taxation in Nigeria as well as highlights their implication. Part six concludes the chapter.

4.2 LEGAL REGIME FOR COMPANY INCOME TAXATION

The CITA regiments the taxation of the income of companies in Nigeria. Section 9 provides that:

> (1) Subject to the provisions of this Act, the tax shall, for each year of assessment, be payable at the rate specified in subsection (1) of

section 40 of this Act upon the profits of any company accruing in, derived from, brought into, or received in Nigeria in respect of:

(a) any trade or business for whatever period of time such trade or business may have been carried on;

(b) rent or any premium arising from a right granted to any other person for the use or occupation of any property; and where any payment on account of such a rent as is mentioned in this paragraph is made before the expiration of the period to which it relates and is included for the purposes of this paragraph in the profits of a company, then, so much of the payment as relates to any period beginning with the date on which the payment is made shall be treated for these purposes as accruing to the company proportionately from day to day over the last mentioned period or over the five years beginning with that date, whichever is the shorter;

(c) dividends, interests, royalties, discounts, charges or annuities;

(d) any source of annual profits or gains 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 benefit arising from a pension or provident fund of the Personal Income Tax 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 bills, treasury or savings certificates, debenture certificates or treasury bonds.

(2) For the purposes of this section, interest shall be deemed to be derived from Nigeria if:

(a) there is a liability to payment of the interest by a Nigerian company or a company in Nigeria regardless of where or in what form the payment is made; or

(b) the interest accrues to a foreign company or person from a Nigerian company or a company in Nigeria regardless of whichever way the interest may have accrued.

(3) In this section, ‘dividend’ means:

(a) in relation to a company not being in the process of being wound up or liquidated, any profits distributed, whether such profits are of a capital nature or not, including an amount equal to the nominal value of bonus shares, debentures or securities awarded to the shareholders; and

(b) in relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money's worth or otherwise, other than those of a capital nature earned before or during the winding-up or liquidation.

Section 13 provides that:

(1) The profits of a Nigerian company shall be deemed to accrue in Nigeria wherever they have arisen and whether or not they have been brought into or received in Nigeria.

(2) The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria-

(a) if that company has a fixed base of business in Nigeria to the extent that the profit is attributable to the fixed base;

(b) if it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, to the extent that the profit is attributable to the business or trade or activities carried on through that person;

(c) if that trade or business or activities involves a single contract for surveys, deliveries, installations or construction, the profit from that contract; and

(d) where the trade or business or activities is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, so much of the profit will be adjusted by the Board to reflect arm‘s length transaction.

(3) For the purpose of subsection (2) (a) of this section a fixed base shall not include facilities used solely for the:

(a) storage or display of goods or merchandise;

(b) collection of information.

The substance of the foregoing provisions is that, for each year of assessment, CIT shall be payable by a company upon profits accruing in, derived from, brought into, received in or attributable to any part of Nigeria.[1] The above section, read in conjunction with section 11 of CITA which defines a foreign company as any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria, makes CITA applicable to Nigerian and foreign (or non-resident) companies.

The foregoing provisions are precise, clear and devoid of any doubt or ambiguity as per the intendment of the legislature. Had the reverse been the case, the interpretation that favours the person charged to tax would prevail.[2] In this circumstance the option open to the company is compliance with the provisions of the CITA notwithstanding the strain of

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1 See section 9 and 13 CITA

2 See *SE Ola v Federal Board of Inland Revenue* (2011) 5 TLRN 136, 157 and *Nigerian Breweries Plc v. Federal Inland Revenue Service* (2016) 24 TLRN 40, 48 where this principle was reiterated

the CIT on its finance. The dictum in *Ahmadu v Governor of Kogi State*[3] affirms the above assessment. In that case, the court held that:

> A law which imposes pecuniary burden is … subject to the rule of strict construction. All charges upon the subject must be imposed by clear and unambiguous language because in some degree they operate as penalties. Thus, the subject is not to be taxed unless the language of the statue clearly imposes the obligation. The language of the statue must not be strained in order to tax a transaction which, had the legislature thought of it, would have been covered by appropriate words. In a taxing legislation, therefore, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax; no presumption at all. Nothing is to be read in and nothing is to be implied. One can only look fairly at the language used. But the strictness of interpretation may not always inure to the subjects' benefit, to be for if the person sought to be taxed comes within the letter of the law, he must be taxed, however great the hardship may appear to the judicial mind.

CIT is generally levied and paid at the rate of 30 percent of the total profits for every year of assessment.[4] For a Nigerian company, this is 30 percent of its worldwide income (i.e. profit accruing in, derived from, brought into or received in or attributed to Nigeria). For non-resident companies (NRCs), it is not as straight forward. They could be taxed either under section 13(2) or section 30 (1) of CITA. The former is utilised where the NRC has a fixed base in Nigeria and the 30 percent CIT rate is applied in this instance on the profit of the fixed base. Thus, an NRC who derives income from Nigeria is subject to CIT in Nigeria notwithstanding the fact that (1) it was incorporated and is resident outside Nigeria; (2) it has no office or place of business in Nigeria and all contracts relating to economic activities in Nigeria were entered outside Nigeria; and (3) the returns from economic activities are paid to it outside Nigeria. In *Offshore International SA v FBIR*[5] the court held that there is no exemption or immunity from CIT conferred on a company because it is not incorporated or resident within Nigeria or because it has no office or place of business in Nigeria or because the contract was executed outside Nigeria or because the money from the economic activity was paid outside Nigeria.[6]

NRCs (as well as non-NRCs) are taxed under section 30 (1) when any of the following conditions exist:

i. the trade/business has produced no assessable profits;

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3 (2002) 3 NWLR (Pt.755) 502

4 See section 40 (1) CITA

5 (2011) 4 TLRN 58

6 *Ibid,* 80

ii. the assessable profits produced appear less than might be expected to arise from such a trade or business; and

iii. the true amount of the assessable profits of the company cannot be readily ascertained.[7]

Section 30(1) of CITA obligates FIRS to impose the CIT rate on a 'fair and reasonable' percentage of the total turnover of the taxpayer that is accruing to or derived from Nigeria where the economic activity from which the income is derived is not consultancy, management, technical or agency services.[8] In *Addax Petroleum Services Ltd v FIRS*[9] this provision of the CITA was explained as follows:

> Section 30(1)(b) of CITA requires the Respondent to "assess and charge [the Appellant] for the year of assessment on such a fair and reasonable percentage of that part of the turnover attributable to that fixed base." The Respondent must first determine what portion of the appellant's turnover is attributable to the Appellant's transactions at, from, in, near, on, over, or under Addax Nigeria's premises. Then the Respondent must levy as tax a percentage of that portion of the turnover. The percentage levied must be "fair and reasonable". In determining what is fair and reasonable, the Respondent may consider tax rates on other companies, and tax rates in other jurisdictions.[10]

The core of the jurisprudence of section 30(1) is that it is an anti-avoidance provision,[11] provides the basis for a turnover assessment,[12] and ensures that the tax authority has the unchallengeable discretion to determine what is a fair and reasonable percentage in the context of provision of section 30(1).[13] What is a 'fair and reasonable' percentage of the turnover is not a legal construct but the product of fact gleaned from the deemed profit return filed by the NRC or determined by FIRS using industry averages and ratios in any of the situations highlighted above.[14] Since 1996, 'fair and reasonable' is 20 percent of turnover.[15] This means that any taxpayer charged under section 30(1) would pay CIT on

7 See FIRS, 'The Taxation of Non-Residents in Nigeria' (22 March 1993) *Information Circular No.: 9302*, para 5.1

8 Income from consultancy, management, technical or agency services carried out by a company is subject to the withholding tax (WHT) regime which subjects such income to a rate usually less than the 30 percent CIT rate. See paragraph 4.3.2 Preferential CIT Rate *infra* for a discussion of the WHT in Nigeria

9 (2013) 9 TLRN 126

10 *Ibid*, 135

11 See *Mobil Oil Nigeria Ltd v FBIR* (1977) 1 NCLR 1

12 See *SEDCO Forex International Incorporated v FIRS* (2015) 18 TLRN 43, 50-52 where the scope of turnover assessment was considered

13 *Shell Petroleum International Mattscgappij BV v FBIR* (2011) 4 TLRN 97, 110

14 Supra note 7

15 See Adebiyi, O & Isiadinso, O, 'Section 30(1)(b)(i) CITA – Turnover Assessment: What Constitutes Fair and Reasonable Percentage of Turnover', *Business Day*, 13 March 2018, 9

20 percent of its turnover, and this translates to an effective tax rate of 6 percent of turnover for the taxpayer.

Based on the foregoing, the scenarios for the application of section 13(2) and 30 (1) of CITA are different. The determinant is whether a profit exists and whether it is ascertainable. Where it does, section 13(2) applies. In the absence of the foregoing, section 30 (1) applies.[16] *Saipem Contracting Nig. Ltd & 2 Ors v FIRS & 2 Ors*[17] corroborates some of the foregoing. The facts were that the plaintiffs, Saipem Nigeria (first plaintiff), Saipem Portugal and Saipem SA (a French company), entered into a consortium turnkey contract for construction, installation and fabrication to be performed in Nigeria and an offshore component to be performed in Portugal. The finished product was to be imported into Nigeria by Shell (the third plaintiff). The first and second plaintiffs secured an advanced tax ruling (ATR) from FIRS to the effect that the profits from the services performed in Portugal would not be taxed in Nigeria. The matter arose after FIRS subsequently withdrew the ATR issued in favour of the first and second plaintiff and, thereafter, charged the applicable taxes.

The plaintiffs, inter alia, argued that because the second plaintiff (an NRC) was to execute the offshore component of the contract and had no fixed based in Nigeria, pursuant to sections 9 and 13 of CITA, it was not liable to CIT. In their response, the defendants argued that, notwithstanding the splitting of the contract into two components, a single contract attributable to Nigeria was entered into by the parties by virtue of the fact that the contract document specified that the execution and payment were to take place in Nigeria. They

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16 See *Addax Petroleum Services Ltd v FIRS,* 132-133 and 138

17 (2014) 15 TLRN 76. Also see *Saipem Contracting Nig. Ltd & Ors v FIRS & Ors* (2018) LPELP-45118(CA) where after upholding the decision of the Federal High Court, the Court of Appeal stated that:

> It is fitting to wrap up the resolution of these issues by referring to the dictum of Tobi, JCA (as he then was) in *Phoenix Motors Ltd vs. N.P.F.M.B.* (*supra*) at 731 where the learned jurist of most blessed memory stated: "If a statute is revenue based or revenue oriented, it will be part of sound public policy for a Court of law to construe the provisions of the statute liberally in favour of revenue or in favour of deriving revenue by Government, unless there is a clear provision to the contrary. This is because it is in the interest of the generality of the public and to the common good and welfare of the citizenry for Government to be in revenue and affluence to cater for the people. That is the only way it can distribute wealth to the people to facilitate development to all and sundry. And this is more so in a country such as ours, where most citizens open their mouths with all gluttony to receive assistance and welfare packages from Government in almost all sectors of development in our frail and flabby economy. No Court of law should lend its hands to a person or body bent on beating the efforts of Government at collecting revenue....." I kowtow. As it was in 1993 when the learned jurist penned the above words, so it is today, even more so. The tax revenue due from the 2nd and 3rd Appellants will definitely assist the Government of Nigeria in its developmental efforts towards a better and more prosperous nation." *per* Ogakwu, JCA (Pp. 39-52, Paras. A-B)

further argued that the foregoing made the first plaintiff liable to CIT pursuant to section 13(2)(c) of CITA. With regard to the second plaintiff (the NRC in the contract), it was argued by the defendants that, since the former derived a portion of its profit from Nigeria or earned income attributable to Nigeria, that portion of its profit or income was subject to tax in Nigeria. They further argued that in the light of the foregoing the DTA exemption was inapplicable as it was the portion of its income attributable to Nigeria and not the global income that was being taxed. The Federal High Court upheld the argument of the defendants that NRCs are chargeable to CIT on their income or profit derived or attributable to Nigeria. The court further noted that DTAs are not meant to give tax due to one country to another country but to ensure that the same income is not subjected to double taxation in two different countries. In addition, it held that since the plaintiffs failed to show that the transaction in question had suffered tax in another jurisdiction, the provision of the DTA referred to would not be taken into cognisance.

That being said, it should be noted that, in 2015 a slight change was introduced to the administrative template for the taxation of NRCs. Currently, a deemed profit return is not accepted from taxpayers (NRCs inclusive) as they are required to file an income tax return (which includes an audited financial statement,[18] tax as well as capital allowance computations for the relevant year) in compliance with section 55 of CITA.[19] The rationale for this, according to FIRS, is the desire to actualise the objectives of the *Income Tax (Transfer Pricing) Regulations (No.1) 2012*[20] which includes ensuring that Nigeria is able to tax on a basis that corresponds with the economic activities undertaken in Nigeria and the provision of a level playing field for both multinational enterprises (MNE) and independent companies doing business in Nigeria.[21] This change gave birth to issues that impacted negatively on tax compliance. Amongst these issues were:

i. Who should the financial statement submitted as part of the tax return relate to where the NRC has multiple associates through which its Nigerian operations are

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18 Typically, an audited financial statement is complete where it is made up of (a) chairman's statement, (b) board of directors' report, (c) auditors' report, (d) statement of accounting policies, (e) profit and loss account, (f) balance sheet (g) cash flow statement, (h) notes to the account, (i) statement of value added, (j) summary of 5-years financial statement where the company is publicly quoted. See FIRS, *Guidelines for Examination of Accounts and Returns for Tax Purposes* (Abuja: 2010) 12. Hereafter referred to as FIRS, Examination of Accounts Guidelines

19 See FIRS, *Public Notice on Filing of Tax Returns by Non-Resident Companies Under the Companies Income Tax Act, CAP C21 LFN 2004 (As Amended)* (2015). Available at http://www.firs.gov.ng/Resource-Centre/Documents/Public%20Notice%20on%20Income%20Tax%20Returns%20by%20Non%20Resident%20Companies.pdf (accessed 12 April 2018)

20 Note that this was revoked and replaced on 12 March 2018 by the *Income Tax (Transfer Pricing) Regulations 2018 (TPR)* Subsequent reference is to the extant regulation

21 See FIRS, supra note 19. Also see Regulation 2, TPR

carried out or where the NRC is an MNE? Should it be for the entire spectrum of its activities or should it relate only to its Nigerian operations?

ii. How will the FIRS verify costs (e.g. head office charges, etc.) and deal with capital allowances on assets in terms of section 24 of CITA where the same is not wholly attributable to the Nigerian operation?[22]

The majority of the issues associated with the TPR have been taken care of by Nigeria's signing and ratification of the *Multilateral Competent Authority Agreement on the Exchange of Country-By-Country Reports* (CbC MCAA) as well as the issuance of the *Income Tax (Country by Country Reporting) Regulations 2018* (CbCR) in January 2018. The CbC MCAA and CbCR have ushered in a regime that provides FIRS with information about the magnitude of income derived from Nigeria (relative to global income) by MNEs,[23] and with the information, FIRS can easily determine the magnitude of an NRC's income connected to Nigeria (relative to global income) that is subject to CIT.

Furthermore, it should be noted that in Nigeria companies self-assess for CIT on a preceding year basis.[24] This they do by taking into cognisance provisions of CITA which relates to profits exempted and other provisions relating to the ascertainment of taxable profit in their financial statement and thereafter file their tax returns not later than six months after the end of their accounting year.[25] This means that with regard to the 2018 year of assessment, a company whose accounting year runs from January 1 to December 31 would have to file a financial statement that relates to the period from January 1 to December 31 2017 as part of its tax return[26] not later than June 30 2018 to be deemed to

22 For further discussion of these issues and more see Oyedele, T, 'Taxation of Foreign Companies Operating in Nigeria: Matters Arising from Deemed Profit Basis of Taxation and the Way Forward' (July 2014) *PwC Tax Watch Series.* Available at https://www.pwc.com/ng/en/assets/pdf/tax-watch-july-2014.pdf (accessed 12 April 2018); Ajayi, A, 'Taxation of Non-Resident Companies in Nigeria; EY, Nigeria Requires Nonresident Companies to File Tax Returns with Audited Financial Statements and Tax Computations on Actual Profits' (2014) *Global Tax Alert.* Available at http://www.ey.com/Publication/vwLUAssets/Nigeria_requires_nonresident_companies_to_file_tax_returns_with_audited_financial_statements_and_tax_computations_on_actual_profits/$FILE/2014G_CM4634_TP_Nigeria%20requires%20nonresident%20companies%20to%20file%20tax%20returns%20with%20audited%20financial%20statements.pdf (accessed 12 April 2018)

23 This is as a result of the three-tiered reporting template made mandatory by both the CbC MCAA and CbCR. The three-tiered reporting template is part of the recommendations subsumed in Action 13 of the G20/OECD BEPS Framework. See OECD, *Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report*, OECD/G20 Base Erosion and Profit Shifting Project, (Paris: OECD Publishing, 2015)

24 See section 29 CITA

25 See section 52(2), 55(2)(a) CITA. Also see section 57 CITA which creates a different regime for companies operating in a Nigerian stock exchange as a capital market operator

26 A complete tax return is constituted of (1) a duly completed self-assessment form; (2) a statement of tax computation which is inclusive of a minimum tax computation; (3) a capital allowance computation schedule; (4) evidence of tax payment, whether in part or in full; and (5) an audited financial statement. See section 55(1) CITA; and FIRS, supra note 18, 6

have discharged its filing obligation as prescribed by CITA. Where the company files after June 30 2018, pursuant to section 55 (3) of CITA, the company would be liable to pay as penalty for late filing the sum of NGN 25000 for the first month in which the non-compliance occurs and NGN 5000 for each subsequent month of non-compliance.

The foregoing is a general summary of the assessment, payment and filing obligation of all companies in Nigeria. In the course of the ascertainment of profit for the purpose of the imposition of CIT, companies are granted some concessions which have the potential to impact on the taxable income, the CIT payable by the companies, their profit after tax and disposable income. These concessions bring about a deviation for the general template for the administration of CIT and are effectively tax incentives. The next two parts of this chapter are devoted to identifying, grouping and analysing these tax incentives. The review will lean heavily on the discourse relating to the nature, effect and types of CIT incentives in chapter two.

4.3 CITA INCENTIVES

Since CITA is the principal piece of legislation with regard to the taxation of companies and administration CIT in Nigeria, it is only logical that a review of tax incentives due to or granted to companies starts from it. For purpose of convenience, the tax incentives contained in CITA will be referred to as CITA incentives. CITA incentives like every other tax incentive are provisions with the capacity to reduce the taxable income or profit of companies or effectively defer their tax liability.[27] They are granted by the Federal Government of Nigeria (FGN) and are essentially of two broad groups (or types). These are CIT rate incentives (CRI) and investment cost recovery incentives (ICRI) and they manifests in five forms (i.e. CIT holidays, preferential CIT rate, investment allowance, investment credit and accelerated depreciation).[28] Types and forms notwithstanding, CITA incentives are non-general provisions within or connected to the CITA which provide companies subject to CIT with economic advantage(s).[29] The approach hereafter is to examine CITA incentives within the templates of the forms identified in chapter two.

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[27] US Department of Treasury, *Resource Centre: Tax Expenditures* (2017). Available at https://www.treasury.gov/resource-center/tax-policy/Pages/Tax-Expenditures.aspx (accessed 4 January 2018)

[28] See chapter 2 (paragraph 2.3.6: Typology) for discussion focused on the types and forms of CIT incentives

[29] Zee, HH, *et al*, 'Tax Incentives for Business Investment: A Primer for Policy Makers in Developing Countries' (2002) Vol. 30 (No. 9) *World Development* 1497, 1498. See also Barbour, P, An Assessment of South Africa's Investment Incentive Regime with a focus on the Manufacturing Sector (2005) *ESAU Working Paper 14*, 2

4.3.1 CIT Holiday

CIT holiday is traditionally the exemption of the beneficiary from the payment obligation associated with CIT for a specific period of time. It also comes in the form of the exemption of a specific portion of an income accruing to a qualified taxpayer from CIT or the deferring of the discharge of the tax liablity associated with the income or a part thereof to a latter date. Hence, while the former is the tradititional expression (or form) of CIT holiday, the latter is the non-traditional expression (or form) of CIT a holiday.

As per design, Zolt recommends that tax provisions which bestow CIT holidays should also require beneficiaries to mandatorily file tax returns for the relevant year(s) (or period) of the CIT holiday.[30] Section 55 (1) of CITA embodies this recommendation as it provides that:

> Every company, including a company granted exemption from incorporation shall, whether or not a company is liable to pay tax under this Act for a year of assessment, with or without notice from the Service, file a self-assessment return with the Service in the prescribed form at least once a year …

With such a condition as part of the incentive-granting provision or the general legal framework for CIT, beneficiaries of CIT holidays would remain in the tax net. In addition, it provides FIRS with historiacal records and data that could be put to use for post-holiday period assessment/audit as well as tax incentive/expenditure impact analysis.

The CITA contains both the traditional and the non-traditional forms of CIT holiday. The discussion will now focus on outlining them.

a. Traditional CIT holiday

i. Exemption from minimum tax

Section 33(1) of CITA is the basis for charging a company minimum tax where in any year of assessment it (a) makes a loss or (b) the tax payable on the ascertained total profits is less than the minimum tax. Section 33(2) of CITA provides the formula for the computation of minimum tax. It stipulates that the minimum tax to be paid shall be:

a. The higher of 0.5 percent of gross profit, 0.5 percent of net assets, 0.25 percent of paid-up capital, 0.25 percent of turnover where the turnover of the company of that year of assessment is NGN 500,000 or below.

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[30] Zolt, EM, 'Tax Incentives: Protecting the Tax Base' (2015) Draft Paper No. 3 *Papers on Selected Topics in Protecting the Tax Base of Developing Countries*, 17

b. The minimum arrived at above plus 0.125 percent of the turnover in excess of NGN 500,000 where the turnover for the year of assessment exceeds NGN 500,000.

Section 33(3) of CITA can, however, be deemed to grant a CIT holiday to qualified companies in specific circumstances as it stipulates that the provisions of section 33 shall not apply if the company:

a. undertakes agricultural trade or business as defined in section 11(9) of CITA; or
b. is financed by at least 25 percent imported equity capital; or
c. is within the first four calendar years of its commencement of business.

It is surmised that the development of the agro-allied sector of the Nigerian economy, the desire to pull foreign investments towards Nigeria and the provision of a viable environment for new or young companies to grow underpins the CIT holiday that is grantable pursuant to section 33(3) of CITA. However, it should be noted that the policy which underpins the extension of this provision to a business constituted of at least 25 percent imported equity capital is latently discriminatory. This is because it amounts to favouring foreign equity over the indigenous counterpart. It also impacts negatively on the value-creation capacity of businesses that do not meet the other two criteria for qualification and are financed exclusively by indigenous equity capital or foreign equity capital that is less than the 25 percent threshold.

Another flaw in the provision is that it lacks a sunset clause and there are no provisions to guide the administration of the provision. Hence, a qualified company can perpetually be in a no-tax liability position by virtue of this provision. The danger which the provision creates can be best appreciated where the company is part of a conglomerate or multinational. In such a situation the qualified company could most likely become the favoured vehicle for the group's tax avoidance manoeuvres.

Notwithstanding the foregoing, it should be noted that a tax return would not be complete without a minimum tax computation as it plays a key role in the determination of the CIT liability of the company. This is because, the CIT that would be levied on a taxpayer is ordinarily the higher of the self-assessed tax liability and the minimum tax computed by the taxpayer. Hence, the taxpayer is expected to pay the higher of both and the evidence of payment (part or whole) must be included as part of the tax return submitted to FIRS.

ii. Export oriented exemption

This is an exemption granted companies engaged in export-oriented business. Section 35 (3) of CITA provides that the profit or gains of a 100 percent export-oriented undertaking, notwithstanding its location in Nigeria, shall be exempt from tax for the first three consecutive years of assessment subject to the following conditions:

1. The undertaking or business is 100 percent export oriented;
2. The undertaking is not formed by splitting or breaking up or reconstructing a business already in existence;
3. The company manufactures, produces and exports articles during the relevant years and the export proceeds form 75 percent of its turnover for the relevant years;
4. The business is not formed by transfer of machinery or plants previously used for any purpose to it or where machinery or a plant previously used for any purpose is transferred, such transfer shall exceed 25 percent of the total value of the machinery or the undertaking; and
5. The business repatriates at least 75 percent of the export earnings to Nigeria and places them in a domiciliary account in any registered and licenced bank in Nigeria.

It should be noted that the aspect of this provision which relates to the companies sited within any of special economic zones has been rendered to be of no effect by the *Nigeria Export Processing Zones Act* (NEPZA)[31] and the *Oil and Gas Export Free Zone Act* (OGFZA).[32] This is because these laws excludes the application of all tax laws to approved entities or enterprises operating or undertaking approved activities within the delineated area.[33]

iii. Solid mineral mining exemption

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31 Cap. N107 LFN 2004

32 Cap. O5 LFN 2004

33 See paragraph 4.4.2 Special Economic Zone Incentive *infra* for further discussion focused on special economic zones

Section 36 of CITA states that, 'a new company going into the mining of solid minerals shall be exempt from tax for the first three years of its operation'. Pursuant to it, qualified companies are entitled to CIT holiday for the specified period. This provision is fraught with shortcomings. First is the fact that CITA does not provide further guidelines with regard to its administration. In addition, a definition of the phrase 'a new company' and a commencement marker with which qualification for the incentive can be determined is absent.

The above shortcomings create space for conjecture. This state of affairs is better appreciated when this provision of CITA is juxtaposed with the legal framework of the pioneer status incentive (PSI).[34] What is the administrative process that has to be followed and/or complied with by taxpayers desirous of harnessing this incentive? Another relates to the relationship between this incentive and the PSI. In a situation where a taxpayer qualifies for this incentive and the PSI, can it lay claim to both? If yes what is the order? Or are they mutually exclusive?[35] Shortcomings such as the foregoing are consequences of a seeming lack of legal or administrative provisions guiding or regimenting the CITA incentive-PSI nexus and they create uncertainties.[36]

CITA incentive-PSI nexus uncertainties create compliance issues as they have the potential of actuating taxpayers into value maximisation. Thus, in a CITA incentive-PSI nexus uncertainty situation such as the second above, it is only rational that a qualified company would first apply for, secure and enjoy the PSI before applying for the grant of a three years CIT holiday pursuant to section 36 of CITA instead of applying for an extension of the PSI which is usually granted for a maximum of two years. This sequencing is the logical option in the circumstances in view of the fact that paragraph 3.1.1 of the Federal Ministry of Industry, Trade and Investment (FMITI) *Application Guidelines for Pioneer Status Incentive 2017*[37] makes the bringing of an

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34 The PSI is a creation of the *Industrial Development (Income Tax Relief) Act* Cap I7 LFN 2004 (IDITRA). See paragraph 4.4.1: Pioneer Status Incentive *infra* for a review of the legal framework and administration of the PSI

35 These questions are a consequence of the appraisal of the relevant provisions. Section 36 CITA limits qualification to 'new' company while section 1(3) IDITRA is silent with regard to the 'age' of an applicant. Hence, it is surmised that qualified taxpayer can first enjoy the benefit of the former before bringing an application for the PSI

36 For ease of reference, this state of affairs would hereafter be referred to as CITA incentive-PSI nexus uncertainties

37 Available at https://www.invest-nigeria.com/?mdocs-file=10984 (accessed 9 May 2018) (hereafter referred to as FMITI Guidelines)

application for PSI in the first year of production a condition for the grant as well as the fact that, in terms of the shortcomings with section 36 of CITA, a company can still be 'new' even after fours year post incorporation.

iv. Gas utilisation exemption

Pursuant to section 39 (1) (a) of CITA, a company engaged in gas utilisation (downstream operations) is entitled to the grant of an initial CIT exemption of three years and this may, subject to the satisfactory performance of the business, be renewed for an additional period of two years. Section 39 (1) (b) further provides that an applicant has the right of election between this tax holiday and an additional gas utilisation investment allowance of 35 percent as both cannot be claimed or granted to a company.[38]

As is the case with section 36 of CITA, the gas utilisation exemption creates CITA incentive-PSI nexus uncertainties as there seems to be nothing preventing a taxpayer from first bringing an application for the PSI pursuant to the IDITRA and subsequent renewal before laying claim to the gas utilisation exemption. This would be possible as the administrative regimes seem independent and there is no guideline or regulation which fuses both regimes.[39]

v. Provisional tax

Section 77 (1) of CITA states that 'notwithstanding any other provision of this section, every company shall, not later than three months from the commencement of each year of assessment, pay provisional tax of an amount equal to the tax paid by such a company in the immediately preceding year of assessment in one lump sum'. This provision remains part of CITA notwithstanding Nigeria's adoption of a self-assessment regime as enshrined in sections 52 and 55 of CITA. Section 77(1) fits the profile of a tax incentive because it provides a company with the opportunity for deferment of the discharge of tax liability for a year of assessment. For example, a company with a filing (and payment) due date[40] that is after March but before December (which for our purpose is June 30) can instead of paying the tax due on the

38 This is discussed *infra* under *paragraph 4.3.3 Investment Allowance*

39 Section 39 CITA limits participants in the administration of the gas utilisation exemption to FIRS and the Federal Ministry of Petroleum, while the IDITRA limits participants in the administration of the PSI to FIRS, NIPC, FMITI and IID

40 See section 55(1)(c), CITA which makes payment of the whole or part of the self-assessed tax a pre-condition to the filling of a tax returns

returns for a particular year, pay provisional tax if the benefit of such decision outweighs any consequential loss.

Although it could be argued that the foregoing is not the intendment of the legislature, the reality is that, where a company who ought to pay a higher tax in the particular year of assessment compared to the preceding year harnesses section 77(1) as espoused above, the section has effectively provided the taxpayer with a CIT holiday vis-à-vis the difference between the tax bill for the year of assessment (determined by self-assessment or administrative assessment) and that of the preceding year. The CIT holiday stems from the fact that the payment of the difference is deferred to a date after the due date and this is possible because, pursuant to section 77(2) of CITA, the taxpayer can hold-off payment of the difference until 14 December of the year of assessment without the accrual of liability in the form of interest and penalty for late payment. Furthermore, where the taxpayer has chosen the provisional tax option, it automatically for that year ceases to be a self-assessment filer but is relieved of its liability to file the returns on before the filing due date. This is because section 77 relates only to payment of tax and not filing of tax return.

That being said, from observation and participant observation,[41] it was gleaned that newly incorporated businesses, especially micro and small companies who have not procured the service of tax intermediaries are under the impression that they are entitled to a CIT holiday pursuant to section 55(2) of CITA. The latter provides that:

> Subject to this Act or any regulation made, *the time of filing returns shall be*:
>
> a. in the case of a company that has been in business for more than eighteen months, not more than six months after the end of its accounting year; and
>
> b. *in the case of a newly incorporated company, within eighteen months from the date of its incorporation or not later than six months after the end of its first accounting period, whichever is earlier*; in addition, the form of returns shall be signed by a director who must be the chairman or the managing director of the company and the secretary respectively.[42]

41 Observation and participant observation are two of the research tools utilised for data collection in the course of this research. See chapter 6 (*paragraph 6.2.1: Research Tools* for a discussion focused on the research tools utilised on the course of this research

42 Italics are for emphasis

The provision relates to the filing and not the payment obligation of both old and newly incorporated companies. At a conceptual level, the two obligations are not the same. This is because, ideally, it is the taxpayer's (whether an old or newly incorporated company) self-assessment that forms the basis of its payment obligation. Furthermore, both obligations crystallise on a preceding year basis which is the same as after a one accounting year (i.e. a 12 months period of doing business or being in existence). That accounts for reference in the provision to 'not more than six months after the end of its accounting year' for old companies and 'within eighteen months from the date of its incorporation or not later than six months after the end of its first accounting period' for newly incorporated companies. Thus, the provision creates associated but distinct obligations[43] and does not create a CIT holiday whether for newly incorporated or old companies.

b. Non-traditional CIT holiday

i. Convertible currency exemption

Section 37 of CITA provides that twenty-five percent of income in foreign currencies derived from tourists by a hotel shall be exempt from tax, provided that such income is put in a reserved fund to be utilised within five years for the building or expansion of new hotels, conference centres and new facilities for the purpose of tourism development. As this provision creates a regime that is different from the generally which is specifically for the benefit of hotels, it is effectively a CIT holiday. Thus, other economic actors who provide accommodation and others services akin to that of hotels (e.g. owners of properties offered on Airbnb™) cannot enjoy this provision as they are not hotels. What is however missing is a sunset clause as CITA is silent about the duration of the holiday. A consequential question is whether the incentive is to accrue to a taxpayer for as long as it is in the hotel business.

4.3.2 Preferential CIT Rate

The grant of this incentive entitles beneficiaries to a CIT rate that is less than the generally applicable rate. That is, beneficiaries of the incentive pay CIT at a rate which is less than

[43] Their distinctiveness can be seen from the different penalties associated with their breach. The penalty for filing non-compliance is NGN 25 000 for the first month in which it first occurs and N5 000 for each subsequent month the failure continues, while that for payment non-compliance is interest at the prevailing minimum rediscount rate of the Central Bank of Nigeria for tax denominated in naira or the higher of the prevailing London Inter Bank Offered Rate and the minimum rediscount rate of the Central Bank of Nigeria for tax denominated in a foreign currency plus an additional sum equal to 10 percent of the amount of tax payable. See section 55(3) CITA for penalty for filing non-compliance and section 32 FIRSEA for penalty for payment non-compliance

what is generally provided by CITA. Pursuant to section 40(1) of CITA, CIT is generally 30 percent of the total profits accruing in, derived from, brought into or received in Nigeria for every year of assessment. However, under CITA, there are two exception to the foregoing as under them qualified taxpayers are entitled to preferential CIT rates. They are:

i. *Section 40(6) of CITA*

Section 40(6) of CITA provides that:

> Where in any of the basis period for the year of assessment in which a company commenced business and the next following four years of assessment as determined under the provisions of section 29 of this Act, a Nigerian company engaged in manufacturing or agricultural production, mining of solid minerals or wholly export trade, earns a total gross sales (turnover) of below one million naira, there shall be levied and paid by the company, tax at the rate of twenty kobo on every naira of the total profits.

The foregoing means that a Nigerian company[44] engaged in manufacturing or agricultural production or mining of solid minerals or wholly export trade which newly commenced business shall be charged CIT at the rate of 20 percent where in that year of commencement of business and the next four years its total gross sales (turnover) is below NGN 1million. Thus, a taxpayer whose turnover qualifies it in the sixth year of commencement of business or thereafter would be denied the incentive and be taxed at 30 percent.

On its own, the provision does not warrant a second look as the answer to the question of whether a taxpayer qualifies as beneficiary of this incentive is the product of facts. These facts can be gleaned from various documents such as tax returns, bank statements and transactions records. Juxtaposed against section 36 of CITA pursuant to which new companies involved in the mining of solid minerals are exempt from tax for the first three years of their operation, however, the situation is different. This is because both provisions side-by-side provides a taxpayer with total gross turnover of below NGN 1million with the option of either the CIT holiday for three years pursuant to section 36 or the preferential CIT rate for five years pursuant to section 40(6). This option further creates the opportunity for tax avoidance by the taxpayer.

ii. *Withholding tax regime*

Theoretically, the extant withholding tax (WHT) regime provides taxpayers with preferential CIT rate. This conclusion is premised on the understanding on which this analysis is based (i.e. that tax incentives are provisions granted companies by the

[44] The ‘nationality’ of the company is determined in terms of section 11 (4), CITA

FGN with capacity to reduce their taxable income or profit and increase their profit after tax (or disposable income) or effectively defer their tax liability). In Nigeria, the WHT rate ranges from five to ten percent depending on the categorisation and source of the income.[45] Figure 4.1 provides a summary of the extant WHT rates applicable to companies in Nigeria. Compared to the 30 (or 20) percent CIT rate, the WHT regime offers more tax savings. In the light of the existence of factors like low tax morality or low risk adverseness, sub-optimal tax enforcement capability, etc., the probability of a company utilising the preferential CIT rate offered by the WHT regime to minimise its tax liability is rather high.

Figure 4.1: WHT regime in Nigeria

Type of payment/source of income	Rate (%)
Royalty	10
Interest	10
Rent (including hire, lease and charter of equipment)	10
Dividend	10
Consultancy and professional services	10
Management services	10
Technical services	10
Commissions	10
All aspects of building, construction and related activities	5
All types of contracts and agency arrangements other than outright sale and purchase of goods and property in the ordinary course of business	5

4.3.3 Investment Allowance

Investment allowance is often industry, location or industry-oriented. It is industry-oriented when it is granted to encourage investment in certain sectors of the economy and it is location-oriented if the grant is for the purpose of the development of a geographical area. Investment allowance is usually a stipulated percentage of the initial cost of a capital investment or of capital expenditure (CAPEX) and it is deducted from or expensed against the taxable income of a particular year(s). In Nigeria, the following investment allowances are provded to taxayers via the CITA:

i. *Research and Development Allowance*

Section 26 (1) and (2) of CITA provides that a company is entitled to claim expenses incurred on research and development in a relevant year from the total profits of the

45 See sections 77-80, CITA. Also see FIRS, 'Guidelines on the Collection Procedure for Withholding Tax (WHT) and Value Added Tax (VAT) by Ministries, Parastatals and other Agencies of Government' (20 February 1985) *Information Circular No. 9502;* FIRS, Explanatory Notes on the Application of Withholding Provisions to Contracts and Agency Arrangements' (1 October 1998) *Information Circular No. 9801*. All available from http://www.firs.gov.ng/Resource-Centre/Pages/Tax-Circulars.aspx

same year. This, however, is limited to ten percent of the total profits of the relevant financial year. Take note that the research and development allowance is deducted before any allowable deduction is made pursuant to section 24 and/or section 25 of CITA.

ii. *Reconstruction Investment Allowance*

The reconstruction investment allowance (RIA) is ten percent of the expenditure by a company on plant and equipment.[46] This allowance is granted in the year the asset is first put to use like the initial allowance portion of the capital allowance for which the purchaser (i.e. the company/taxpayer) qualifies by virtue of the same expenditure.[47] CITA takes the relationship between RIA and capital allowance further by making the provisions of the Second Schedule applicable to the determination of RIA. This means that the conditions relating to ownership and use of asset (i.e. the 'wholly, reasonably, exclusively and necessarily' test and the possession of Certificate of Acceptance of Fixed Asset) contained in the Second Schedule mandatorily apply to RIA.[48]

Furthermore, section 32 (4) and (5) provides that:

> (4) If in the case of any qualifying expenditure incurred on the new asset, any such event as is mentioned in the next following subsection occurs within a period of five years beginning with the date on which the expenditure was incurred, no investment allowance shall be made in respect of the expenditure, or if such allowance has been made before the occurrence of the event, it shall be withdrawn.
>
> (5) The events referred to in subsection (4) of this section are:
> (a) any sale or transfer of the asset representing the expenditure made by the company incurring the expenditure otherwise than to a person acquiring the asset for a chargeable purpose or for scrap;
> (b) any appropriation of the asset representing the expenditure made by the company incurring the expenditure to a purpose other than a chargeable purpose;
> (c) any sale, or transfer or other dealing with the asset representing the expenditure by the company incurring the expenditure, being a case where it appears that the expenditure was incurred in contemplation of the asset being so dealt with, and being a case where it is shown either:
> (i) that the purpose of obtaining tax allowances was the sole or main purpose of the company for incurring the expenditure or for so dealing with the asset; or

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46 Section 32 (2) CITA

47 Section 32 (1) CITA

48 See *paragraph 4.3.5 Accelerated Depreciation* below for an examination of these conditions

(ii) that the incurring of the expenditure and the asset being so dealt with were not *bona fide* business transactions or were artificial or fictitious transactions and were designed for the purpose of obtaining tax allowances.

Section 32 also obligates both the seller/transferor and the buyer/transferee of an asset for which RIA had been granted to inform FIRS if any of the events mentioned in section 32 (6) occurs before the expiration of the five-year moratorium and penalises noncompliance.[49]

It should be noted that section 32(4) – (9) embodies a claw-back mechanism designed to recapture the revenue foregone or ‘spared’ by government as a result of the initial grant of the RIA and to discourage fly-by-night or footloose investment. The benefit to be derived from this provision is, however, limited as it relies heavily on the ‘good will’ of the companies involved in the transaction. Where the good will is lacking, the underpinning objective (i.e. the claw back of hitherto spared tax) would be defeated without the tax authority being any the wiser.

iii. Rural Investment Allowance

This is granted pursuant to section 34 of CITA to a company where it invests in the provision of electricity, water or tarred roads to facilitate its trade or business. To qualify for the allowance, the provided infrastructure must be at least twenty kilometres from similar government/state-provided infrastructure.[50] This makes the rural investment allowance both location and industrialisation oriented.

Note that the grant of rural investment allowance does not prevent the grant of the initial allowance associated with the qualified CAPEX on the assets utilised in the provision of the infrastructure. It is, however, matched to or granted against the profits of the year in which the investment (i.e. the infrastructure) was completed. Thus, where earth-moving equipment is purchased by a company for the purpose of road construction, the company is granted initial allowance in the year the equipment is first put to use and rural investment allowance for the cost of the road construction in the year the road is completed. In addition, it cannot be carried forwarded to another year of assessment if not fully expensed in the year of assessment where it is granted.[51]

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49 See generally section 32(6) – (9) CITA

50 Section 34(1) CITA

51 Section 34(3) CITA

Furthermore, it should be noted that the rural investment allowance and reconstruction investment allowance granted under section 32 cannot be claimed in respect of the asset expenditure relating thereto.[52] They are mutually exclusive. Pursuant to section 34(2) of CITA the rural investment allowance is granted as follows:

	Percent
No facilities provided at all	100
No electricity	50
No water	30
No tarred road	15

iv. *Gas Utlisation Investment Allowance*

Gas utilsaton is 'the marketing and distribution of natural gas for commercial purposes and includes power plant, liquefied natural gas, gas to liquid plant, fertilizer plant, gas transmission and distribution pipelines.'[53] This definition relates to the downstream sector of Nigeria's gas industry[54] and companies operating within it qualify for the grant of the gas utilisation investment allowance awarded at the rate of 35 percent pursuant to section 39(1) (b) of CITA.

It should be noted that this allowance is granted as an alternative to the gas utilisation exemption granted pursuant to section 39 (1)(a) of CITA. Take note that this provision does not reduce the value of the asset. Furthermore, its claim or grant estops the beneficiary from qualifying for accelerated capital allowance (i.e. accelerated depreciation) in the form of the additional investment allowance of 15 percent provided by section 39(1) (c) (ii) of CITA. This is because this incentive is granted after the enjoyment of CIT holiday period pursuant to section 39 (1)(a) of CITA. Thus, where the taxpayer elects to enjoy the gas utilisation investment allowance, it cannot be granted the additional investment allowance of 15 percent provided by section 39(1) (c) (ii) of CITA.

v. *Investment Tax Relief*

Section 40(10) of CITA states that:

> Where a company has incurred an expenditure on electricity, water, tarred road or telephone for the purpose of a trade or business carried on by the company which is located at least 20 kilometers away from electricity, water, tarred road or telephone facilities which are provided

52 Section 34(1) CITA

53 Section 39 (3) CITA

54 The regime for the taxation of the oil or petroleum sector in Nigeria is provided by the *Petroleum Profits Tax Act* Cap. P13 LFN 2004

by the Government, the company shall be allowed a relief called investment tax relief for each year expenditure is incurred on each such facility at the following rate of the expenditure:

a.	no facilities at all	100%
b.	no electricity	50%
c.	no water	30%
d.	no tarred road	15%
e.	no telephone	5%

This incentive could have been described as a duplication of the rural investment allowance under section 34 of CITA but for the following:

1. The grant of a five percent relief for the absence of telephone infrastructure. This provision is not part of the rural investment allowance.
2. The investment tax relief is claimable for each year the relevant expenditure is incurred for a maximum period of three years and it is not available to a company that has already been granted pioneer status.[55]

Furthermore, the consequence of both provisions also varies. With the rural investment allowance, it is expected that the taxpayer would present the aggregate expenditure incurred in providing the infrastructure when it makes the claim in the year of assessment wherein the date of the completion of the investment falls. For the investment tax relief, the taxpayer is expected to present annually for a maximum of three years the expenditure incurred on the respective infrastructure.

Albeit the foregoing, CITA is silent with regard to the relationship between the investment tax relief and the rural investment allowance. Can a taxpayer claim the former for a three years period and then after at the completion of the investment bring a claim for the latter which would cover the outstanding expenditure? Where the foregoing is not possible which of the provisions should the taxpayer rely on in its quest for minimising its tax burden? Or, can the investment tax relief be claimed concurrently with the reconstruction investment allowance granted under section 32 of CITA since the latter cannot be claimed with the rural investment allowance?[56] Based on the foregoing, it would be safe to conclude that the existence of both provisions has created space for conjecture and uncertainty: a development which does not augur well for compliance within the tax system.

55 See section 40(11) CITA. One should not be quick to conclude that this provision is unnecessary verbiage in light of the consequences of the grant of pioneer status. The value of the provision stems from the fact that it shrinks the space for speculation and promotes certainty with regard to the relationship between the incentive and the pioneer status incentive

56 See section 34(1) CITA

vi. Plant, Machinery and Equipment Investment Allowance

CITA provides, at paragraph 18 (3) of the Second Schedule, that, where a company has incurred CAPEX on plant and machinery or acquires same through a finance lease contract whose terms provide for the transfer of ownership, risks and reward to the hirer or lessee, the company shall qualify for an investment allowance of ten percent of such expenditure, subject to the acquisition being wholly, exclusively, necessarily and reasonably for the purpose of a trade or business carried on by the company. Paragraph 18 (7) further provides that, where a company has incurred expenditure wholly, exclusively, necessarily and reasonably for the purposes of agricultural plant and equipment, an investment allowance of ten percent of such expenditure shall be due to that company.

Although both provisions grant an incentive of ten percent of the investment made on plant, machinery and equipment, the distinction is that sub-paragraph (3) relates to qualified CAPEX by way of a finance lease while sub-paragraph (7) relates to agricultrual plant and equipment specificially. The shortcoming associated with the provision is that CITA does not state whether a taxpayer can claim both (whether concurrently or otherwise) for a particular qualified CAPEX in a particular year of assessment. Thus, the question subject to conjecture relates to whether a taxpayer who acquires argricultural equipments, plants and machinery via a finance lease can claim both incentives in view of the fact that the singular expediture satifies the conditions of sub-paragraphs (3) and (7). In the absence of a clear statement to the mutual exclusivity of the rural investment allowance and the reconstruction investment allowance, it is argued that there is nothing stopping the taxpayer from making a claim for both investment allowances.

4.3.4 Investment Credit

Theoretically, investment (tax) credit is granted a taxpayer to reduce the latter's CIT liability.[57] Zee, *et al* provides a template for the administration (and amangement) of investment tax credit thus:

> Once the amount of tax credits to be granted to a qualified project is determined, it would be ''deposited'' into a special tax account (kept simply in the tax file of the enterprise undertaking the project) in the form of a bookkeeping entry. The enterprise receiving this incentive would in all respects be treated like a regular taxpayer and, therefore, be subject to all applicable tax provisions and regulations, including the computation

[57] See Chapter 2 (paragraph 2.3.6: Typology) for a review of investment credit

> of taxable profits and the requirement to file tax returns. The only difference would be that its income tax liabilities would be paid from credits ''withdrawn'' from its tax account until the balance is reduced to zero. If desired, such a tax account could be closed after a specified period (i.e., a sunset provision is attached to the account), so that all unused tax credits are simply allowed to expire.[58]

From the foregoing, it can be deduced that Zee *et al* recommends that the value of the investment tax credit to which a taxpayer is entitled in a particular year of assessment be used to reduce the tax liability for that year. This means that, when computing the CIT payable, the investment credit should be applied after the taxable profit has been determined. This distinguishes it from the investment allowance which is deductible from or expensed against the assessable/adjusted profit to arrive at the taxable profit of a particular year.

That being said, amidst the CITA, the following incentives, styled as investment credit or investment tax credit exists:

i. *Research and Development Credit*

   This is granted pursuant to section 26(3) of CITA to taxpayers engaged in research and development activities for commercial purposes that have been charged CIT at the rate of 20 percent of qualifying CAPEX relating to their research and development activities.

ii. *Obsolete Plant and Machinery Replacement Credit*

   This is granted pursuant to section 41 of CITA to a company that has incurred CAPEX for the replacement of an obsolete plant and machinery at the rate of 15 percent of the cost of the expenditure.

An important fact to note from the foregoing is that the basis for the determianation of the value of both the investment tax credit is the CAPEX. Furthermore, the administration of investment tax credit in Nigeria is not in accordance with the prescription of Zee, *et al*. It is expensed against the assessable profit of the taxpayer in the same manner as an investment allowance.

4.3.5 Accelerated Depreciation

Typically, businesses charge depreciation as an expense before arriving at profit before tax in their income statement. Depreciation is calculated using a variety of methods.[59] The

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58 Zee,HH, *et al*, 'Tax Incentives for Business Investment: A Primer for Policy Makers in Developing Countries' (2002) Vol. 30 (No. 9) *World Development* 1497, 1505

59 The main methods are the straight-line method, declining balance method, sum-of-the-years'-digits method and the units of production method. See Petronijevic, P, *et al*, 'Methods of Calculating

choice of method is often the product of the accounting policy of the company or business. The case is different for tax purposes in Nigeria as depreciation is not allowed notwithstanding the computational method utilised by the company.[60] Any depreciation captured in the financial statement of a company is added back to the net profit by the tax authority in the course of the determination of the taxable profit of the company. Consequently, in lieu of the depreciation, the company is granted what is referred to as capital allowances and the focus of this review is the regime for the grant of capital allowances in Nigeria.

The grant of capital allowances provides a transparent and equitable means of depreciating or expensing CAPEX[61] against income. CITA expressly identifies the CAPEX that would qualify the taxpayer for the grant of capital allowance, the rate and the duration of the grant.[62] The latter, for purposes of tax, is equal to the useful life of the asset and is indicative of the period the asset would be taken into cognisance in the list of assets of taxpayer. This means that not every CAPEX by a company qualifies it for capital allowance. A CAPEX would attract capital allowance where it is expensed on the acquisition of a qualified capital asset (QCA) or the expenditure is a qualified capital expenditure (QCE). Note that an asset or expenditure is deemed qualified if it is provided for in CITA.

Essentially, the grant of capital allowance allows for the accelerated depreciation of an asset. The distinct feature of accelerated depreciation is that the QCE is expensed at a higher rate early in the life of the asset. This feature is possessed by the capital allowance granted pursuant to the CITA. The latter provides that a taxpayer who incurs a QCE would be granted what is referred to as initial allowance (IA) in the year the asset acquired is first put to use at a rate specified in Table I of the Second Schedule.[63] It further provides that for each year an asset which is the product of QCE is used for the purpose of the trade or business of the owner, the owner would be granted an annual allowance (AA) at the rate specified in Table II of the Second Schedule.[64] Unlike the IA which is granted taxpayers

Depreciation of Construction Machinery' (2012) Vol.10 (1) 220 *Journal of Applied Engineering Science* 43-48 for a review of the methods

60 See section 27, CITA

61 CAPEX is every financial disbursement for the acquisition of an asset or assets that have a useful life of at least one year for the purpose of their incorporation into or use in the production-distribution chain. Pursuant to paragraph 17, Second Schedule of CITA, expense incurred for the repair, maintenance or alteration of the same asset(s) are not considered QCE entitling the business to capital allowance. They are allowable from the net profit for the purpose of determining assessable profit pursuant to section 24 of CITA

62 See Second Schedule, CITA

63 Paragraph 6(1) of Second Schedule, CITA

64 Paragraph 7(1) of Second Schedule, CITA

who incur QCE in full, notwithstanding the month in the basis period[65] of the year of assessment the asset was put to use, the AA is usually reduced proportionately to the months of use in the first year of assessment.[66] The aggregate of the IA and AA is the capital allowance which a taxpayer qualifies for because of the incurred QCE. The amount is an allowable deduction against the assessable profit in the computation of taxable profit.

Furthermore, sections 39 (1)(c) of CITA introduces a slight modification to the utilisation of the provisions of Second Schedule as the basis for the determination of the capital allowance of companies in Nigeria. It provides that:

> (1) A company engaged in gas utilisation (downstream operations) shall be granted the following incentives, that is:
>
> …
>
> (c) accelerated capital allowances after the tax-free period, as follows, that is:
>
> (i) *an annual allowance of 90 percent* with 10 percent retention, for investment in plant and machinery[67]

Gas utilisation[68] is associated with companies in the downstream of Nigeria's oil and gas industry. This provision introduces a variation with regard to the QCE incurred by such companies in the acquisition of plant and machinery. It is conjectured that this distinction is a by-product of the economic policy orientation that considers the hydrocarbon minerals industry (i.e. oil, gas and coal) to be special and requiring a special tax regime.[69]

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65 Basis period is a concept used in the determination of the tax liability of taxpayers. Its importance stems from the fact that it aids the infusing of certainty into the tax system. This is because, notwithstanding the variance in the accounting year end of companies, the basis period for the computation of their tax liability is uniform. It should be noted that in the context of CIT, there are two types of basis period: (1) preceding year basis period (PYB); and (2) actual year basis period (AYB). For PYB, profit for a year of assessment is the profit of the year preceding or before the year of assessment and it is that accounting period that is deemed the basis period of the year of assessment. For AYB, profit for a year of assessment is the profit for the actual year and its accounting period is the basis period of the year of assessment. For a discussion which extends to the role played by the concept in the determination and computation of assessable profit see Ojo, S, *Fundamental Principles of Nigerian Tax (Second edition)* (Lagos: Sagribra Tax Publications, 2009) 185-216. Also see section 29, CITA

66 Paragraph 7(1) of Second Schedule, CITA

67 Italics for emphasis

68 See section 39 (3), CITA for the definition of gas utilisation. Also see paragraph 4.3.3: Investment Allowance for the review of another gas utilisation incentive

69 See *Davis Tax Committee Report on Oil and Gas* (2016), 42. Available at http://www.taxcom.org.za/docs/20171113%20Oil%20and%20Gas%20Report%20on%20website.pdf (accessed 18 April 2018) where this orientation was expressed; KLøvås, K, & Osmundsen, P, 'Petroleum Taxation: Experience and Issues' (2009). Available at http://www1.uis.no/ansatt/odegaard/uis_wps_econ_fin/uis_wps_2009_8_lovas_osmundsen.pdf (accessed 18 April 2018) where it was hypothesised that the creation of a special regime for hydrocarbon taxation is due to (1) different characteristics of projects associated with their exploration and production, (2) host governments and international oil companies (IOCs) profit maximisation desire, and (3) the fact that the number of relevant parameters for the determination of profit and taxable income is larger than what is accommodated in traditional income tax framework

In addition, section 35 of CITA further modifies the Second Schedule. It provides that, with regard to QCE incurred on building and plant equipment used in manufacturing in an export processing zone, capital allowance shall be granted at the rate of 100 percent in the relevant year of assessment. The provision is, however, of no legal effect as the legislation which set-up the export processing zones expressly excludes from application, within the spatial confines of the zones, every tax (or revenue-related) piece of legislation of the respective tiers of government in Nigeria.[70]

Table 4.2 below summarises the capital allowance regime in Nigeria. One of the effects of the regime is that the valuation of the assets once acquired is determined (in)directly by government. Thus, by the 2018 year of assessment, an excavator that was bought and put to use in the 2016 accounting year would have the nominal value of NGN10 in the list of capital asset submitted as part of the tax return for the 2017 financial year. This is notwithstanding the fact that the owner could derive utility from putting the asset to use for an indeterminable number of years to come.[71] It further reveals that in Nigeria the government determines both the rate at which an asset is depreciated and also the useful life of the asset. This brings uniformity and certainty into the tax system.

Table 4.2: Assets and Capital Allowance Rates

QCE	**IA (%)**	**AA (%)**
Building		
• Industrial and non-industrial	15	10
Mining	95	Nil
Plant		
• Agricultural production	95	Nil
• Gas utilisation	Nil	90
• Others	50	25
Furniture and fittings	25	20
Motor vehicles		
• Public transportation	95	Nil
• Others	50	25
Plantation equipment	95	Nil
Housing estate	50	25
Ranching and plantation	30	50
Research and development	95	Nil

It should be noted that the grant of capital allowance is not automatic as it is subject to the following conditions:

i. Wholly, Reasonably, Exclusively and Necessarily Test

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70 For paragraph 4.4.2: Special Economic Zone Incentive *infra* for further discussion on export processing zones

71 Note that a disposal triggers the provisions of paragraph 10 of Second Schedule of CITA. See paragraph 4.3.5.1 below for discussion on the consequence of the disposal of QCA

The Second Schedule of CITA provides that, for a claimant to be granted capital allowance, the relevant QCE must be wholly, reasonably, exclusively and necessarily incurred for the purpose of a trade or business.[72] This condition would have been similar to the four-way wholly, reasonably, exclusively and necessarily (WREN) test applied in the determination of the deductibility of expenses incurred by a company in the production of profit pursuant to section 24 of CITA except for paragraph 19 of the Second Schedule. The latter makes the test less stringent with regard to capital allowance. See *Discussion Box 4.1* below for review of the WREN test.

The decision in *Nigerian Breweries Plc v Federal Inland Revenue Service* reiterates the position of the law that for an expense to be tax deductible it has to have been incurred in the course of an act which produces or generates of related income. This was affirmed in *A v The Commissioner for the South African Revenue Service*[73] where the court quoted with approval the decision in *Port Elizabeth Electric Tramway Co. Ltd v CIR*[74] thus:

> … income is produced by the performance of a series of acts, and attendant upon them are expenses. Such expenses are deductible expenses, provided they are so closely linked to such acts as to be regarded as part of the cost of performing them.
>
> A little reflection will show that two questions arise (a) *whether the act, to which the expenditure is attached is performed in the production of income*, and (b) *whether the expenditure is linked to it closely enough.*[75]

The questions in *Port Elizabeth Electric Tramway Co. Ltd v CIR* are criteria for the determination of whether an expense is deductible. From the words of the court, it is surmised that both criteria (i.e. questions) must be answered in the affirmative before an expense is deemed deductible. In *SPDC v FBIR*[76] the Supreme Court of Nigeria held in the affirmative with regard to (1) whether exchange loss and Central Bank of Nigeria commission incurred by the appellant in meeting its obligation to the Federal Government of Nigeria, and (2) whether expenses incurred in meeting statutory obligation in relation to scholarship expenses are allowable deductions for the purpose of petroleum profit tax.[77] An examination of the reasoning of the court in *SPDC v FBIR*

72 See paragraphs 6 (1) and 7(1)
73 (2012) 8 TLRN 66, 81
74 8 SATC 13, 16
75 Italics mine for emphasis
76 (2009) 1 TLRN 224
77 This is imposed pursuant to the *Petroleum Profits Tax Act* Cap. P13 LFN 2004. It is the principal legislation regimenting the taxation of profits from petroleum operations in Nigeria. Pursuant to section 10 of the Act, a company involved in petroleum operations capacity to deduct expenses is subject to the expense being that which was wholly, exclusively and necessarily incurred by the business

Discussion Box: 4.1: The WREN Test

Section 24 of CITA provides that for any expense to be allowed as a deduction from the income of a company in any period, that expense must be wholly, exclusively, necessarily and reasonably incurred during that period for the purpose of generating that income. This provision creates the 'wholly, exclusively, necessarily and reasonably' (WREN) test: a four-way test that any expense incurred by a company must contemporaneously pass before it becomes deductible.

In *Nigerian Breweries Plc v Federal Inland Revenue Service* (*supra*), the role of the WREN-test was affirmed. The facts of the case are that the appellant paid buying commission and handling charges to a foreign-related party under an arrangement for procurement of goods outside Nigeria. The appellant deducted the buying commission and handling charges in the course of determining its assessable profits for 2008 to 2014 years of assessment. This the respondent disallowed on the basis that the disputed expenses were incurred outside Nigeria and are therefore non-deductible under the provisions of section 27(i) CITA and thereafter raised additional assessment for the appellant. In its objection, the appellant argued that section 27(i) CITA did not apply to its case as the expenses were not incurred on its behalf but were incurred by it for and on behalf of another company outside Nigeria; and that the applicable provision should be section 24 CITA. The respondent was not convinced by the appellant's explanation and subsequently issued a notice of refusal to amend the assessment which subsequently actuated this appeal to the Tax Appeal Tribunal (TAT).

At TAT, the issue for determination was whether expenses incurred outside Nigeria on another company's behalf would be allowable deductions under CITA. The TAT held that section 27(i) did not apply to the situation as deductions for any expense incurred by the taxable company outside Nigeria outside Nigeria for another were not allowable. It further held that the above deductions were subject to the general rule and that since the appellant's documentary evidence pointed to the fact that the expenses were incurred wholly, exclusively, necessarily and reasonably in the production of profits, they were allowable deductions under section 24 of CITA.

Noteworthy is the fact that this ruling put beyond conjecture the pivotal nature of section 24 and affirms that what is important is the determination of whether the expense was WREN-incurred. Thus, the rule – pending the upturning of the ruling on appeal by a superior court – is that location or jurisdiction where expense was incurred is inconsequential.

provides the answers to the questions in *Port Elizabeth Electric Tramway Co. Ltd v CIR* although the court did not pose to itself. With regard to the issues laid before it, the court held that the expenditure (i.e. the loss and commission as well as the scholarship expenses) were necessary expenses which the appellant would incur for the purpose of the undertakings and operations which resulted in the income subject to the *Petroleum Profits Tax Act.*[78]

ii. Ownership and Use of Asset

The asset for which a QCE has been incurred must be owned by the claimant and be in use at the end of the basis period of the year of assessment to which the claim

78 Supra note 76, 253-266

relates.[79] With regard to ownership, paragraph 18 introduces a variation with regard the use of lease contracts for the acquisition of assets that would entitle a taxpayer to claim capital allowance. The paragraph provides that the lessor is entitled to the capital allowance at the prescribed rate in the situation of an operating lease contract[80] while the lessee claims with regard to assets acquired using a finance lease.[81]

iii. *Possession of Certificate of Acceptance of Fixed Asset*

Possession of a certificate of acceptance of fixed asset (CAFA) is a mandatory prerequisite for the recognition of CAPEX for both accounting and tax purposes in Nigeria. This is because Rule 4 of the Financial Report Council of Nigeria[82] issued pursuant to sections 8(2), 30, and 53(2) of FRCA[83] prohibits the recognition of transactions in the financial statements of a company if regulatory approval had not been obtained for the transaction before its consummation.

CAFA is issued companies by the Industrial Inspectorate Division (IID)[84] of the Federal Ministry of Industry, Trade and Investment (FMITI) for CAPEX of NGN 500,000 in Nigeria after they have been inspected and valued. Thus, in the absence of a CAFA, a company and FIRS would not be able to recognise any CAPEX for accounting and tax purposes. The requirement of a CAFA as a prerequisite for the grant of capital allowance provides some assurance to government agencies[85] of the value of the CAPEX incurred by companies. It, however, it impacts negatively on the ease of doing business in Nigeria in general[86] as it effectively adds another layer of complexity to CIT administration in Nigeria. Furthermore, compliance with the

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79 Paragraph 8, Second Schedule, CITA

80 Paragraph 17(1) (b), Second Schedule, CITA. See also, paragraph 4.2.1 (1), FIRS Guidelines on the Tax Implications of Leasing' *FIRS Information Circular No. 2010/01*. Available at http://www.firs.gov.ng/Resource-Centre/Tax%20Circulars%20Document%20Library/GUIDELINES-ON-THE-TAX-IMPLICATIONS-OF-LEASING-2010-01%20(1).pdf (15 April 2018)

81 Paragraph 18 (2) (b), Second Schedule, CITA. See also, paragraphs 4.1.1 (1) and 4.1.2(1), FIRS Guidelines on the Tax Implications of Leasing' *FIRS Information Circular No. 2010/01*

82 Established pursuant to Financial Reporting Council Act (No. 6) 2011 (FRCA)

83 Available from http://www.financialreportingcouncil.gov.ng/corporate-governance/ (accessed 15 April 2018)

84 IID was established pursuant to the Industrial Inspectorate Act Cap I8 LFN 2004 (IIA)

85 See section 5(2) Industrial Inspectorate Act which specifically mentions the predecessor of FIRS

86 For argument on the relevance of CAFA, see Deloitte, 'Certificate of Acceptance on Fixed Assets (CAFA) – Is it Time to Review Process and Threshold or Discontinue?' (2015) *Inside Tax.* Available at https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/tax/inside-tax/ng-certificate-of-acceptance-of-fixed-assets-CAFA.pdf (15 April 2018). For arguments against the relevance of the CAFA see PwC, 'Government says Companies must obtain Approval for their Assets' (August 2016) *Tax Alert.* Available at http://pwcnigeria.typepad.com/files/pwc-tax-alert_acceptance-certificate-for-assets_aug-2016.pdf (accessed 15 April 2018); Ajayi, S, 'The Importance of Certificates of Acceptance for Tax and Financial Reporting Purposes' *PwC Tax Bites.* Available at https://www.pwc.com/ng/en/assets/pdf/acceptance-certificates-tax-bites.pdf (accessed 15 April 2018)

requirements for the issuance of CAFA adds to the cost of tax compliance borne by companies in Nigeria.

Note that in addition to the above conditions, the grant of capital allowance is subject to the following restrictions:

i. *Limitation to $66^2/_3$ percent of the assessable profit*

Pursuant to second schedule of CITA, the capital allowance which a taxpayer can claim at the end of the basis period in any year of assessment is limited to $66^2/_3$ percent (i.e. two-third) of the assessable profit.[87] This limitation effectively forestalls a situation where capital allowance is used to put the taxpayer in a position of no assessable profit on which CIT can be charged. Where the capital allowance of the company for a year of assessment exceeds the $66^2/_3$ percent threshold, the balance is carried forward to the next year of assessment.

Note that the $66^2/_3$ percent threshold rule does not apply to companies in the manufacturing and agro-allied industry.[88] In *Oando PLC v FBIR*[89] the Court of Appeal commented on the $66^2/_3$ percent threshold rule and its consequence thus:

> … the proper interpretation and construction of paragraph 24(7) of the 2nd Schedule of CITA is that the deductible entitlement as capital allowance by companies is not to 66.66% of their assessible profits of the relevant year of assessment, but in the case of agro-allied industries or those engaged in the trade or business of manufacturing they are entitled to 100% claim as capital allowance, so they are not affected by the above restriction. … My stance here is that for any company to be exempted from the restriction and enjoy 100% relief of capital allowance, it must be clearly and shown that it is in the agro-allied industry or engaged in the trade or business of manufacturing as a matter of indisputable fact not speculation. … A company can therefore not be allowed to claim capital allowance in the guise of engaging in the business of manufacturing when as a matter of fact and record, 95% of the company's business falls outside manufacturing and as such a large chunk of the expenses relates to such other endeavour. Such practice if allowed will not doubt defeat the whole intent and purpose of enacting the law.[90]

The foregoing means that, to qualify for the non-restriction of capital allowance, the taxpayer must provide facts that shows that it is primarily involved in any of the qualified line of business (i.e. the agro-industry or manufacturing).

ii. *Book Balance*

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87 Paragraph 24 (7), Second Schedule, CITA

88 *Ibid*

89 (2015) 18 TLRN 1

90 *Ibid*, 21-23 (*per* Oseji, JCA)

As has been stated earlier, the provision of a transparent and equitable means of depreciating or expensing CAPEX underpins the grant of capital allowance. Pursuant to the second schedule of CITA, the entire QCE is not expensed as NGN 10 is mandatorily retained in the accounts for tax purposes until the asset is disposed.[91]

iii. *Disposal of Qualified Capital Asset*

Although a taxpayer is at liberty to dispose of its assets, there is a restriction were the disposal relates to a QCA for which capital allowance had previously been claimed. This triggers one of two scenarios. The first is where the company becomes entitled to a balancing allowance and the second is where the company is entitled to a balancing charge. A balancing allowance is granted the owner of a QCA when, at its disposal, the sales proceed is less than its tax written down value (TWDV).[92] Where the disposal or sale generates proceeds greater than the TWDV of the asset, the difference between the capital allowance previously claimed and the sales proceed is deemed income accruing to the owner of the QCA.[93] It is consequently added to the assessable profit of the year of assessment in which the sale took place and is subjected to tax at the CIT rate. While a balancing charge is an incentive claw-back provision, it is surmised that the balancing allowance ensures that the QCE is fully expensed.

4.4 INCENTIVES OUTSIDE CITA

Although CITA incentives are the focus of this investigation, it should be noted that there are also provisions outside CITA that also reduce the CIT burden of companies. A consideration of these is, thus, necessary in view of the fact that the CITA recognises the existences of these provisions. For example, section 18 of CITA exempts from tax the profit (or income) of a company that is derived from investment in the shares of another company which has been exempted from tax by the IDITRA. In addition, section 40 (11) of CITA provides that the investment tax relief would not be available to a company already granted the pioneer status. Furthermore, CITA states, in section 23 (1) (s), that the profit of a company established within an export processing zone or a free trade zone shall be exempt from CIT provided that the entire production of such company is exported. It is against this

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91 Paragraph 7 (1), Second Schedule, CITA

92 See paragraph 9 of Second Schedule of CITA. TWDV is the historical cost of the asset less the capital allowance already claimed. It is the same as the book value or net book value of the asset

93 See paragraph 10 of Second Schedule of CITA

backdrop that that the pioneer status incentive and tax incentives accruing to companies by virtue being situated in special zone are reviewed in this part.

4.4.1 Pioneer Status Incentive

a. Legal framework

The pioneer status incentive (PSI) is primarily a CIT holiday granted companies operating in designated industries or producing products designated as pioneer products for a specified period of time. Thus, the underlying objective of the PSI is the reduction of the cost of doing business in Nigeria via the grant of CIT holiday to qualified companies making investments in industries or products gazetted[94] as 'pioneer'.[95]

The PSI is granted under the IDITRA which also creates a multi-entity framework for the administration of the PSI. Pursuant to section 1(1) of the IDITRA, the President of the Federal Republic of Nigeria[96] may direct the publication of a list of industries and products (otherwise referred to as the list of pioneer industries and pioneer products) in a gazette upon being satisfied that:

i. the industries are not being carried on in Nigeria on a scale suitable to the economic requirements of Nigeria or at all, or there are favourable prospects of further development in Nigeria of such industries; or
ii. it is expedient in the public interest to encourage the development or establishment of such industries in Nigeria by declaring them pioneer industries and any product of their products to be a pioneer product.

The IDITRA, *inter alia,* vests the responsibility of receiving PSI applications and conveying same to the President for approval,[97] communicating the notice of any condition specified by the President for approval of a PSI application to the company,[98] and the

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94 There are currently 99 gazetted pioneer industries. See *List of Pioneer Industries and Products, 2017* Government Gazette No. 164 2017, available at http://blog.deloitte.com.ng/wp-content/uploads/2018/11/Gazetted-List-of-Pioneer-Industries-and-Products.pdf (10 November 2018) released in November 2018 but with August 2017 as its effective date. Note that the increase from 71 pioneer industries (see the *List of 44 Pioneer Industries/Products Approved by the National Council of Ministers in 1989,* Gazette No. 61 2015, available at http://pwcnigeria.typepad.com/files/pioneer-industries-products_official-gazette.pdf (accessed 5 February 2018) and NIPC, *New Additions to Pioneer List 070817,* available at https://www.invest-nigeria.com/pioneer-status-incentives-document/ (accessed 5 February 2018)) is not the consequence of the addition of new industries to the list but that of further break down for purpose of clarity

95 FMITI, 'Application Guidelines for Pioneer Status Incentive' (Abuja, 2017) 3. Available at https://www.invest-nigeria.com/?mdocs-file=10984 (9 May 2018) (hereafter referred to as FMTI Guidelines)

96 Hereafter referred to as President

97 Section 2, IDITRA

98 Section 3(5), IDITRA

cancellation of a PSI certificate upon application of the company concerned,[99] etc. on the Minister in charge of the FMITI.[100] To facilitate the discharge of its responsibility vis-à-vis the PSI, the Minister, pursuant to section 2(1) of the IDITRA issued the *Application Guidelines for Pioneer Status Incentives 2017* (Guidelines) to ensure clarity with regard to the aim and requirements of the PSI and to outline the application process as well as guide the assessment of applications for the PSI.[101]

The Nigerian Investment Promotion Commission (NIPC) established pursuant to the *Nigerian Investment Promotion Commission Act*[102] and saddled with the responsibility of encouraging, promoting and co-ordinating investment in the Nigerian economy,[103] is the agency primarily responsible for the administration of the PSI. This power is delegated to it by the Minister. In the exercise of this powers, the NIPC issued the *Pioneer Status Incentive Regulations 2014* (PSIR) to provide policy clarification, consistency and transparency in the process of application for the PSI.[104]

Other agencies which participate in the administration of the PSI are FIRS and IID. It is the responsibility of FIRS, pursuant to sections 6 (5) of IDITRA to issue a certificate of qualifying capital expenditure to PSI applicants to cover the period of operation of the company prior to the production day. [105] In addition, section 10 (4) and (5) of IDITRA vest the same responsibility on FIRS with regard to an application for extension of the PSI. Thus, FIRS must certify CAPEX which the applicant for extension claims should be accepted as qualifying expenditure within the PSI regime. The role of the IID in the course of the foregoing relates to the issuance of CAFA for all the expenditure on QCAs.

b. Application and Qualification

From the foregoing, it is obvious that the CITA, IDITRA, NIPCA, PSIR and the *Guidelines* constitute the legal framework for the application and qualification for PSI. The CITA is the foundation on which the system for the taxation of companies in Nigeria is built. The IDITRA recognises this as it provides that the CITA is the principal Act and that it (i.e. the

99 Section 7(1), IDITRA
100 Hereafter referred to as Minister
101 See FMITI Guidelines, 2
102 Cap N117 LFN 2004. Hereafter referred to as NIPCA
103 Section 4, NIPCA
104 Paragraph 1, PSIR. The exercise of the power is pursuant to section 30 of the NIPCA which confers on NIPC the power to make regulations (a) providing for anything requiring to be prescribed under the Act; and (b) generally for carrying out the principles and objectives of the NIPCA
105 'Production day' means the day on which the activities of a pioneer company commence for the purposes of the IDITRA. It is usually evidenced by a certificate issued by the IID. See sections 6(4) and 25, IDITRA; FMITI Guidelines, 4-5

IDITRA) should be read as one (and not in conflict) with CITA.[106] Sections 6(6) of IDITRA further accentuated this principal-subsidiary relationship between the two pieces of legislation. It states that:

> The provisions of the Parts IX and X of the principal Act (which relate to objections and appeals) and off any rules made thereunder, shall apply, *mutatis mutandis*, to any certificate issued by the Director or the Board under this section as if such certificate were a notice of assessment given under the said provisions of the principal Act.[107]

It needs to be established that vis-à-vis the PSI, the other three are not on an equal footing. The IDITRA is the principal piece of legislation. The NIPCA is an establishment *cum* administrative legislation which gave birth to the NIPC as well as spells outs it functions, etc. The PSIR is not on the same pedestal with the IDITRA and NIPCA. The fact that it was issued by NIPC in the exercise of the power conferred on it by section 30 of NIPCA and not an enactment of the legislature (i.e. the National Assembly), makes it a subsidiary piece of legislation.[108] In *Njoku & Ors. v Iheanatu & Ors.*[109] Garba, JCA held:

> a subsidiary legislation or enactment is one that was subsequently made or enacted under and pursuant to the power conferred by the principal legislation or enactment. It derives its force and efficacy from the principal legislation to which it is therefore secondary and complimentary.

In *Phoenix Motors v NPFMB*[110] the court put beyond doubt the 'ranking' of subsidiary legislation and a principal legislation or statute when it held that:

> In law, a statute can only be amended or repealed by another statute. … A statute cannot be amended or repealed by a subsidiary legislation. A Legal Notice being a subsidiary legislation does not have a legal life of its own in the sense that it can be made completely outside the enabling statute and stand alone as a separate piece of legislation. As a matter of law, subsidiary legislation derives its validity from the enabling law… Therefore it has no statutory power or strength to amend, repeal or abrogate a provision or provisions of the enabling statute.[111]

With regard to the *Guidelines*, the conclusion is that it is of the same status as the PSIR as it is a subsidiary legislation issued pursuant to section 2 of IDITRA.[112] This distinction between CITA, IDITRA, PSIR and the *Guidelines* is necessary in view of the changes (or

106 See section 25 and 26, IDITRA
107 *Cf* section 10(7), IDITRA
108 See *Trade Bank Plc v Lagos Island Local Government Council* [2003] 3 NWLR (Pt. 806) 11
109 (2008) LPELR 3871
110 (2012) 7 TLRN 89, per Niki-Tobi, JCA (as he then was)
111 Ibid, 102-103
112 See *Guidelines*, 2 where reference was made to the section of the IDITRA pursuant to which the Minister can specify the form which a PSI application is to take

variations) introduced by the PSIR and the *Guidelines* to the application requirement and qualification criteria for PSI under the IDITRA. Figure 4.3 summarises these variations.

Figure 4.3: Summary of variations in the PSI-administration space

Points of variation	IDITRA	PSIR	Guidelines
Minimum investment (estimated cost of QCE)	Section 1(4) (a) and (b): • *NGN 50,000 for indigenous-controlled company* • *NGN 150,000 for other companies*	Paragraph 3(1) (b): • *NGN 10 million*	Paragraph 3.3.3: • *NGN 100 million*
Application fee	Section 2(4): • *NGN100*	Paragraph 3(3)(i): • *NGN 200,000*	*Nil*
Issuance	Section 1(1), 2(6), 10 (2) & (3): • *President*	Paragraph 10: • *NIPC*	*Nil*
Tenor	Section 10(2): • *5 years maximum (broken down thus - 3:1:1 or 3:2 year(s) period)*	*Nil*	*Nil*
Cancellation	Section 6(10), (11), 7(2): • *President* Section 7(1): • *Minister, FMITI*	Paragraph 13: • *NIPC*	*Nil*

The introduction of these variations by the FMITI and NIPC into the administrative framework for the PSI raises the question of whether the IDITRA has been amended by the corresponding provisions of the PSIR and *Guidelines*. Where the answer is in the negative, the consequential questions are: (1) what is the operative provision with regard to the minimum investment required to qualify for the incentive; and (2) who is the competent authority responsible for the issuance and cancellation of the certificate evidencing the grant of PSI? These questions are pertinent in view of the fact that, in the eye of an assessor, the variations rob the Nigerian tax system of certainty. Against the backdrop of the trite principle that a principal piece of legislation can only amend (including repeal and revoke) another principal legislation, it stands to reason to conclude that the variations introduced by the PSIR and the *Guidelines* cannot be amendments to the IDITRA. In addition, the variations cannot take precedence over the provision of the IDITRA as they (i.e. the PSIR and the *Guidelines*) are subsidiary pieces of legislation.

Furthermore, the variations in the PSIR raises the question of whether a delegated legislation which derives its force and efficacy from a general piece of legislation (i.e. the NIPCA) can amend a specialised or principal legislation (i.e. the IDITRA). It is well established that a general legislation cannot amend special or principal legislation and that the provisions of the former yields to those of the latter where both contain provisions relative to the same subject. This principle has its origin in the maxim: *generalia* *specialibus non derogant*. In *Mrs F. Bamgboye v Administrator-General*[113] the foregoing was stated thus:

> It is an accepted canon of construction that where there are two provisions, one special and the other general, covering the same subject matter, a case falling within the words of the special provision must be governed thereby and not by the terms of the general provision. The reason behind this rule is that the legislature in making the special provisions is considering the particular case and expressing its will in regard to that case; hence the special provision forms an exception importing the negative; in other words, the special case provided for in it is excepted and taken out of the general provision and its ambit: the general provision does not apply... The above rule of construction applies equally, of course, when the special and the general provision are enacted in the same piece of legislation.

Furthermore, in *CITN v ICAN (No. 1)*[114] the court held with regard to the issue of the existence of conflict between the provisions of general and special legislation (i.e. the superiority of the provisions) thus:

> I share the view of the claimant's counsel that *the rule of constitution (sic) is to the effect that where a statute treats a matter in a general manner, and another statute treats it as a special concern, the special worlds (sic) of the latter statute will prevail over more general statutory provisions.*
>
> Regarding the further contention that rule 17(4) of the Association of National Accountants of Nigeria Rule, made under the Association of National Accountants of Nigeria Act, Cap. A26 of the laws of the Federation of Nigeria 2004, describes a practicing public national accountant as including an expert in taxation, I find that as those Rules are in the nature of subsidiary legislation, they cannot be made to override the words of a principal enactment as the CITN Act. *Indeed, the law is trite that where there is a conflict between a superior enactment and an inferior one, the words of the inferior enactment must be declared null and void to the extent of their inconsistency with the superior law. In such circumstances, it matters not which came first in time.*[115]

Also, in *Oando PLC v FBIR*[116] where the issue before the Court of Appeal was the determination of superiority between the section 19 of CITA and section 380 of CAMA with regard to the issue of the taxation of dividend, it was held that: (1) the former and latter are respectively special and general enactments; (2) in the circumstances, the former is superior with regard to the issue of the taxation of dividend.[117]

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113 14 WACA 616, 619, *per* Bairamian J. (as he then was)

114 (2013) 10 TLRN 19

115 Ibid, 49, per Okunnu, J. Italics are mine for emphasis

116 Supra note 89

117 See *Independent Television/Radio v Edo State Board if Internal Revenue* (2014) 16 TRLN 37, 58-59 where the Court of Appeal reiterated the superior position of special provisions in course of statutory interpretation

Relative to the pioneer status incentives, the NIPCA is a general legislation. But it lacks status in relation to the IDITRA as its provisions do not supersede or amend that of the IDITRA. This is also the fate of the PSIR provisions vis-à-vis the IDITRA. They are for all intent and purpose subsidiary legislation. This means that they lack capacity to amend the IDITRA provisions in the context of the grant and regulation of the pioneer status incentives. Therefore, to qualify for the PSI, pursuant to section 2 of IDITRA, the applicant ought to:

a. Be or propose to be incorporated in Nigeria. Thus, non-resident companies would not qualify for PSI.[118]
b. Make the application in the form prescribed or specified by the Minister wherein, *inter alia*, it shall:
   i. State whether or not the company would be an indigenous-controlled company; and
   ii. Give the names, address, nationality and shareholding of each director where the company is already incorporated; or the name, address and nationality of each promoter of the proposed company
c. Provide along with the application, the estimated CAPEX to be incurred on or before production day if the application is granted. This estimation must not be less than the minimum prescribed by the IDITRA.[119] Note that where, after approval, the certificate of QCE issued by FIRS is to the effect that the applicant's CAPEX is less than the threshold, the President is at liberty to cancel a pioneer status incentive certificate.[120]

The grant of the pioneer status incentives is regimented by the provisions of the IDITRA. on the basis of the primary place it occupies on the hierarchy of relevant legislation. Other provisions are relevant to the extent of filling lacunas in the IDITRA framework. This role does not extend to modifying the administrative framework for the grant and administration of the pioneer status incentive. Thus, the prevailing provisions with regard to the grant of the pioneer status incentive are that of IDITRA. Accordingly, an application may be approved in terms of the application or varied.[121] Once approved, a pioneer status incentive certificate is issued to the applicant specifying the maximum tax relief (i.e. CIT holiday)

118 Also see section 3(3) and (4) IDITRA which states that where a PSI application is approved, the approval will state the time frame within which a proposed company must be incorporated and that the PSI certificate would be issued after the incorporation
119 See section 1(4), IDITRA
120 See section 6(11) IDITRA
121 See section 3 IDITRA

period and sometimes the permissible by-products of its activities.[122] Section 10 of the IDITRA provides that the tax relief shall be for a period of three years after which the President shall grant an extension on application for a period of one year and thereafter for another one year commencing from the end of the first period of extension or for one period of two years. The extension of the exemption is not automatic. It is subject to the President *inter alia* being satisfied as to:

a. The rate of expansion, standard of efficiency and the level of development of the company;
b. The implementation of any scheme:
    i. for the utilisation of local raw materials in the processes of the company; and
    ii. for the training and development of Nigerian personnel in the relevant industry;
c. the relative importance of the industry in the economy of the country;
d. the need for the extension, having regard to the location of the industry; and
e. such other relevant matters as may be required.[123]

4.4.2 Special Economic Zone Incentives

A special economic zone (SEZ) is a delineated geographical area within the territory of a country. It is characterised by the existence of regulatory arrangements and systems that vary from those operating in the rest of the country. They are usually set aside to host specific or targeted economic activities. In Nigeria, the SEZ regime is created by the NEPZA and the OGFZA.

SEZ incentive are a collection of incentives but of interest is that which exempts approved enterprises within the SEZs from all Federal, State and Government taxes, levies and rates.[124] Essentially, SEZ incentives are spatially related. Approved companies operating within the delineated zone are granted a CIT holiday for as long as they remain approved enterprises and/or undertake approved activities within the zone. This is because pursuant to sections 18(1) of NEPZA and OGFZA, legislative provisions pertaining to taxes (as well as levies, duties and foreign exchange regulations) do not apply within any area identified as a SEZ.[125] The reverse is, thus, expected to be case:

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[122] See section 3 IDITRA. Hence it is the profit from the sale of the products/services (as well as permissible bye-products) covered by the certificate that is CIT exempt. Section 12(2), IDITRA makes any incidental income, non-pioneer product and impermissible bye-products is subject to CIT.

[123] Section 10(3) IDITRA

[124] See section 8 NEPZA and section 8 OGFZA

[125] Part 6, *Investment Procedures, Regulations and Operational Guidelines for Free Zones in Nigeria 2004* issued pursuant to section 10(4) of the NEPZA further reiterates this incentive. Available at http://www.nepza.gov.ng/images/NEPZA2004Regulations.pdf (accessed 11 May 2018)

1. Where the income is derived from economic activities in any other part of Nigeria. Paragraph 3(7), Part 6 of the *Investment Procedures, Regulations and Operational Guidelines for Free Zones in Nigeria* 2004 (hereafter referred to as 'SEZ Guidelines') affirms the foregoing. It provides that approved enterprises having a contract for supplies or design with companies in the customs area (i.e. in any other part of Nigeria) are liable to suffer WHT on the income derived therefrom. In this circumstance the approved enterprise is deemed to be a non-resident company and the Nigerian rules of attribution of income subsumed in section 9 and 13 of CITA become applicable. The approved enterprise would, thus, suffer WHT (which is effectively CIT) at the rate of 10 percent. Also, a similar situation arises where a portion of the production of the approved enterprise is disposed within Nigeria. Under section 23(1)(s) of CITA, in such situation the approved enterprise would be liable to CIT on the part of its profit derived for the disposal of its products within Nigeria.

   On the above point, *Nigerdock Nigeria Plc FZE v FIRS*[126] is instructive as it affirms the foregoing. The appellant was an approved enterprise in terms of the NEFZA and was located within a SEZ. It however provided service to non-approved enterprises outside of the SEZ for a space of 5 years. FIRS subsequently raised assessment on the income earned from services provided outside the SEZ. The appellant objected on the ground that it was an approved enterprise registered with NEPZA and carried out its business activities exclusively within the SEZ wherein it was registered. A notice of refusal to amend was issued to the company by FIRS and it appealed to the TAT. At the TAT, the issue for determination was whether the income derived by the appellant on the services provided to the non-approved enterprise outside of the SEZ was subject to the relevant taxes in operation outside of the SEZ. The TAT stated that the tax exemption provided by sections 8 and 18(1) of the NEPZA would apply to an approved enterprise on condition that its operations are within the confines of the SEZ and that, if the approved enterprise operates outside the SEZ, it would be liable to relevant taxes. Regrettably, the TAT did not rule in a favour of either of the parties as there was insufficient evidence to show the actual value of the work carried out by appellant within and outside the SEZ under the contract with the unapproved enterprises outside of the SEZ.

[126] (2016) 24 TLRN 1

2. Where the company is not an approved enterprise[127] or where the income is not from an approved activity. Paragraph 3(3), Part 6 of the SEZ Guidelines affirms the former.

Notwithstanding the CIT holiday enjoyed by approved enterprises, they are obligated to file tax returns as mandated by section 55 of CITA. Paragraph 3(5), Part 6 of the SEZ Guidelines affirmed the foregoing by mandating that approved enterprises submit their tax returns through the zone authority to FIRS.

4.5 FINDINGS

The focus of this chapter has been the identification and review of CIT incentives available to companies within the Nigerian tax system as well as their administration. In the course of this, it was established that the CIT incentives available in the tax system are within and outside of CITA. Figure 4.4 below summarises the expressions of CIT incentives in the Nigerian tax system. It reveals that majority of the incentives are provided to companies via CITA in forms which are essentially CIT holidays and investment allowances.

Also, it was revealed that tax incentives in Nigeria are normative (i.e. rule based). This state of affairs is a function of the fact that taxation is the product of legislation, and so no tax would be imposed on the subjects (and deviations or variations to the general rule) without words in an Act of Parliament to that effect.[128] This is the role played by the provision identified and reviewed above.

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127 Section 9(3) NEPZA defines 'approved activity in terms of the activities specified in its Third Schedule, while section 26 OGFZA defines approved activities as that specified and approved by the Authority established by section 2 OGFZA

128 See *Imprest Bakolori v FBIR* (2010) 2 TLRN 168 in affirming this rule, it was held that a budget speech could not on that premise for the imposition of a tax as it was no more than a mere intimation of proposed government fiscal strategy for the fiscal year and creates no liabilities until there is a legislation to give effect to it. Also see *Woolwich Building Society v IRC* [1993] AC 70

Figure 4.4: CIT Incentive Expression in Nigeria

FORM (manifestation/expression)		TYPES				
		CRI		ICRI		
		CIT Holiday	Preferential CIT Rate	Investment Allowance	Investment Credit	Accelerated Depreciation
	in CITA	Section 33(3): Exemption from minimum tax	Section 40(6): Reduced CIT rate	Section 26(1) & (2): R&D allowance	Section 26(3): R&D credit	Second Schedule: Capital Allowance
	in CITA	Section 35(3): Exported-oriented exemption	Section 78-79: WHT regime	Section 32(2): Reconstruction investment allowance	Section 41: Replacement of obsolete plant and machinery credit	
	in CITA	Section 36: Solid mineral mining exemption		Section 34: Rural investment allowance		
	in CITA	section 37: Convertible currency exemption		Section 39(3): Gas utilisation allowance		
	in CITA	Section 39: Gas utilisation exemption		Section 40: Investment tax relief		
	in CITA	Section 77(1): Provisional tax		Paragraph 18, Second Schedule: Plant, machinery and equipment investment allowance		
	outside CITA	Section 10 IDITRA: PSI				
	outside CITA	Section 8 of NEPZA & OGFZA: SEZ incentives				

Another finding was that the design of some of the incentive provisions and their relationship with others give rise to opportunities for uncertainties and tax avoidance. As was noted earlier:

a. 33(3) of CITA, section 36 and 40(6) provides opportunity for tax avoidance.
b. Section 34 and section 40(10) of CITA pursuant to which the investment tax relief and rural investment allowance are respectively granted introduces uncertainty into the tax system. This is also the case with sections 32 and 34 of CITA. There is no guideline either in or outside of CITA on their relationship.
c. Section 39 of CITA and PSI also create opportunities for tax avoidance. This is because the former provides a three years CIT holiday and would thus be more attractive compared to a renewal of PSI.

With regard to the accelerated depreciation granted in the form of capital allowance, the impact of the 'bureaucratic processes' leading to the issuance of CAFA merits review. This is because, in addition to increasing the cost of compliance borne by taxpayers, it has the propensity of providing an avenue for abuse of the tax system. The incentives outside CITA are not spared the same fate. The facts of *Nigerdock Nigeria Plc FZE v FIRS* are evidence of the fact that the privileges associated with location in a special economic zone are prone to abuse by the beneficiaries.[129] As highlighted in the course of the examination of the pioneer status incentive, the interplay of the provisions of the primary and secondary legislation as well as general and special legislation create a regime fraught with uncertainty and conflict if not properly scrutinised. Thus, the conclusion is that the provisions of the IDITRA is *primus inter pares* with regard to the NIPCA and is the superior legislation with regard to the PSIR as well as the *Guidelines.* As such, it is argued that reference should be had to the provisions of the IDITRA for all things pioneer status incentive and recourse had to the NIPCA, PSIR and *Guidelines* where there is a lacuna in the IDITRA to the extent that they do not conflict with (and compliment) the IDITRA.

Also, it should be noted that there is no special dispensation or concession for MSCs.[130] They prepare their tax return using the template derived from the provisions of CITA. They also file and pay the tax due in accordance with the relevant provisions of the CITA as would every other corporate taxpayer in the Nigerian tax system. They are not entitled to any special tax incentive. The preferential tax rate granted under 40(6) of CITA cannot be described as a special tax incentive dispensation for MSCs as any taxpayer (notwithstanding the size of its turnover in previous years of assessment) is entitled to it insofar as its circumstances qualifies it for the incentive. Also, MSCs can apply for and be granted any of the tax incentives discussed above where they meet the qualifying criteria set-out in the relevant legislation.

Overall, the implication of the reviewed tax incentives and the consequential behaviour of taxpayers on the public finance architecture of the state, its capacity to mobilise revenue and economic growth is worthy of note. This is as a result of the linkage between tax incentives, financial capital demand and supply, economic activities (i.e. production and consumption in the economy). Thus, where tax incentives granted favour the wealthy, there is a high propensity to save. This savings is further channeled toward wealth accumulation and financial investments as a result of their low marginal propensity to consume.[131] In addition, there is the paradox of thrift which is a situation characterised by contraction of economic growth actuated by a drop in aggregate demand occasioned by autonomous savings by economic agents (profit and wage earners inclusive) during an economic recession. This reduces the consumption and investment capacity in the economy, leads to

[129] See Zolt, supra note 30, 27 where the author list this abuse as No. 8 of top ten abuses of tax incentive regime

[130] See Chapter 1 (Paragraph 1.4.6: Scope and Limitation) for a definition of MSCs vis-à-vis this research

[131] See Dabla, E, *et al.*, 'Causes and Consequences of Income Inequality: A Global Perspective' (2015) *IMF Staff Discussion Note* (No.13), 8. Available at https://www.imf.org/external/pubs/ft/sdn/2015/sdn1513.pdf (accessed 4 January 2018)

income leakage and impacts negatively on the GDP as well as the revenue available for national expenditure.

Where taxpayers claim tax incentives that they are not quaified for or are motivated to prepare (and file) financial statements laced with material inaccuracies and misstatements,[132] the capacity of the state to raise the income required to drive public expenditure is limited. Subsequently, a revenue gap (or negative budget gap) is created in the economy. To bring about balance, governments resort to options like increase of the tax rate, the introduction of multiple taxes, debt financing of public expenditure with funds sourced from the domestic financial market (comprised of the money and capital market) or external loans and aids, etc.[133] With increase in the size and persistence of income leakage as well as the adoption of the options, the public finance architecture of the state, more often than not, is altered to combat the effect on the economy of the tax revenue shortfall occasioned by the inventive-induced behaviour of taxpayers therein.

4.6 CONCLUDING REMARKS

As would have been noted, there is no analysis of the legal provisions in the manner for which legal scholarship is renowned or discussion on the effectiveness of the incentives. This a consequence of the research objectives and design. Stretching the former which are (1) an investigation into the relationship between CITA incentives and the tax compliance behaviour of Nigerian MSCs, and (2) an examination of the relationship between the role of tax intermediaries and taxpayer compliance behaviour within the context of the extant CITA incentives to accommodate an analysis or discussion focused on efficacy of the incentives would have entailed reaching conclusion(s) that is/are not part of the research

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132 Material misstatement is accidental or intentional untrue financial statements or information in the financial statement that influences (or props up) a company's value or stock price. The materiality of misstatement in the financial statement of an entity is determined by the nature of the entity, the industry it operates in and what items in the financial statement are of relevance to users of the information contained in the financial statement. See Reddy, RJ, *Dictionary of Accounting* (New Delhi: APH Publishing Corp., 2010) 187; ICAEW, *Materiality in the Audit of Financial* Statements (2017), 7. Available at https://www.icaew.com/-/media/corporate/files/technical/iaa/materiality-in-the-audit-of-financial-statements.ashx (accessed 13 April 2019)

133 These options are not without attendant disadvantages. On a theoretically level, patronage of the domestic financial market has the potential to partially or completely crowd out private investment while loans are associated with conditionalities. See Ekpo, A, 'Financing Government Programmes in Economic Downturn: Theoretical Issues and Perspectives' (2015) Vol. 53/4 *Central Bank of Nigeria Economic and Financial Review* 9-30. Also see Ako, RT, *et al* 'Optimising the Development Options in Third World Countries: Looking Beyond Foreign Aid' (2014) Vol. 2 No.1 *Ife Journal of international and Comparative Law* 240, 241-244 where the author drew attention to the fact that external loans and aids are underpinned by issues and conditionalities which make their utility suspect from a socio-economic standpoint

objective. However, this research is not oblivious of the viewpoints on the subject of the effectiveness of tax incentives.[134]

Also, the absence of analysis of the legal provisions in the manner for which legal scholarship is renowned is further premised on the fact that the provisions reviewed in the course of the chapter are not open to analysis or interrogation. This is because the words are clear and unambiguous. Consequently, it is considered that adjudicating or indulging in a legal analysis would amount to importing extraneous matter into the provisions. Hence, the chapter adopted a literal restatement of the relevant provisions without any gloss instead of what they might mean as would have been the case had a legal analysis the same provisions been embarked upon.[135]

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134 See chapter two (specifically paragraph 2.3) which highlights generally the effect of tax incentives

135 A plethora of Nigerian case law supports this position, In *NNPC v CNOOC* (2015) 19 TRLN 32 it was held that extraneous matter or words should not be imported into statutory interpretation where the words are clear and unambiguous provisions. Also, in *Gazprom Oil & Gas Nig. Ltd v FIRS* (2015) 19 TRLN 66, 96 it was stated that a tax legislation is to be construed in a manner that upholds the ordinary meaning of the words used therein without adding to any gloss on them

CHAPTER FIVE: TAX INTERMEDIAIRIES, THEIR ROLE AND MANAGEMENT

5.1 INTRODUCTION

In chapter two a tax intermediary (TI) was defined as a person or entity (i.e. law, accounting and other professional firms) who acts as a go-between or provides services (e.g. tax compliance, accounting, risk management, audit, dispute resolution support, etc.) to the taxpayer in the course of its (i.e. the taxpayer) interaction with the tax authority and/or the tax system.[1] There also, attention was drawn to the fact that TIs are one of the major actors, a force to reckon with in any contemporary tax system and that they exist amidst some regulations.

This chapter expands on the above. To this end it reviews the role of TIs from the perspective of literature and reality (herein refered to as theory and fact) forms the focus of part two of this chapter. A review of the framework for the regulation and management of TIs in Nigeria is undertaken in part three. This review is the product of the conviction that there exists a nexus between regulation (and management) of TIs and the utility derivable from the tax system by taxpayer and the state. Furthemore, the same review is replicated using Kenya and South Africa in part four so as to provide an opportunity for a comparative analysis and the derivation of methodologies that could be adapted for the management of tax intermediaries within the Nigerian tax system. Part five concludes the chapter by providing a summary of the enterprise in preceding parts.

5.2 TAX INTERMEDIARIES' ROLE

5.2.1 Theory and Fact

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1 For definition of tax intermediaries, see OECD, *Study into the Role of Tax Intermediaries* (Paris: OECD, 2008) 14. Available at http://www.oecd.org/tax/administration/39882938.pdf (accessed 13 March 2018)

The presence and role of TIs is a function of the tax system. In some jurisdictions, tax and related legislation create and maintain the function of tax intermediaries. Some of these provisions exist as a means of providing assurance within the tax system and the larger economic systems. For example, the rule that a chartered accountant must certifiy a financial statement/report provides assurance to the tax authority (and other users of an audit report) that the preparation of the financial statement was done in accordance with accounting standards.[2] In other places, the famed complexity of the tax system,[3] the frequency of changes therein and the administrative processes associated with compliance make the tax system convoluated as well as creates the niche occupied by tax intermediaries. This is because by virtue of their training they posses the expertise required to decipher and understand the tax sytem.[4] TIs, thus, play a vital role and the OECD captured the importance of their role thus:

> Tax service providers operate in many jurisdictions, conducting a range of tasks that aid the functioning of the tax system. These include providing taxpayers with advice on the application of tax laws, assisting them in the preparation of returns, and representing them in their dealings with the tax administration, often involving tax audit and disputes. While it is generally taxpayers who initiate and make the arrangements for tax services from providers, the providers remain an important potential partner that can assist administrations in improving compliance rates, meeting service demands, and lowering the administrative burden and cost of tax administration.[5]

Thus, it can be deduced that TIs are indispensable within the tax system[6] and can be referred to as co-administrators with the tax authority of the tax system and with regard to tax compliance. In this capacity, they (i.e. TIs) ought to function as 'gate-keepers' who protect the tax system and the state from fictitious and adverse claims. This obligation, according to Addison and Mueller, is a corollary of the state-sanctioned oligopolistic position and

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2 See rule 2 of the *Financial Reporting Council of Nigeria Rules 1-8.* Available from http://financialreportingcouncil.gov.ng/new/ (accessed 15 March 2018); section 44-47 of the *Financial Reporting Council of Nigeria Act 2011 (FRCNA).* Also see South African Auditing Practice Statement 2 (Revised 2018), *Financial Reporting Frameworks and the Auditor's Report*, 7. Available at https://www.irba.co.za/upload/SAAPS%202%20(Revised%202018)_approved%20by%20CFAS%201%20March%202018_IM.PDF (accessed 15 March 2018)

3 Complexity of tax systems has been attributed to factors like 'desirability of taking account of individual circumstances, the complexities of economic life, promoting certainty and countering tax avoidance'. See Budak, T, *et al*, 'The Complexity of Tax Simplification: Experiences from Around the World', in James, S, *et al* (eds.), *The Complexity of Tax Simplification: Experiences from Around the World* (UK: Palgrave Macmillan, 2016) 3

4 See OECD, T*ax Administration 2013: Comparative Information on OECD and Other Advanced and Emerging Economies* (Paris: OECD, 2013) 254-255

5 See OECD, supra note 4, 68

6 See Walpole, M & Salter, D, 'Regulation of Tax Agents in Australia' (2014) Vol. 12 (No.2) *eJournal of Tax Research* 335, 337-338 and the literature referred therein which highlights the critical role played by tax intermediaries in relation to the compliance culture of taxpayers and the compliance process

insider knowledge or privileged market arrangement which TIs enjoy.[7] With regard to legal practitioners who provide tax intermediary services, Lavoie is of the opinion that, while discharging their 'duty to provide zealous representation of clients' and complying with 'the law of lawyering',[8] the legal practitioners are obligated to create, nurture and promote a fair tax system.[9] This is the role of professionals who assume the role of a TI. In this capacity, the legal practitioner and all other TIs an provide important public service and facilitate the creation of what Schobel described as '"a more constructive relationship" between all three.'[10] Thus, they ought to see themselves and be seen as serving in the public interest.[11]

The pertinent question in today's terms is whether tax intermediaries can actually be said to be functoning in the above capapcity. On the basis of the facts which underpin the discourse to come, the answer is that tax intermediaries are definitely acting otherwise. The reason for this variation of reality from theory is not far fetched. It is because taxation involves money and represent different things to the parties interracting within the tax system. To the state, it is the source of funds for public expenditure and must be pursued vigorously. From the perspective of the taxpayer/business, it is a cost which negatively impacts on market forces, its profit or disposable income and like any operationl cost, it is in the best interest of the business that it is decreased.[12] These perspectives underpins the dynamics of the taxpayer-tax authority relationship. On the part of the tax authority, it is the justification for the design, adoption and/or inplementation strategies geared towards

7 Addison, S & Mueller, F, 'The Dark Side of Professionals: The Big Four and Tax Avoidance' (2015) Vol. 28 (Issue 8) *Accounting, Auditing & Accountability Journal* 1263, 1264

8 According to Bobette Wolski, 'the law of lawyering' refers to the body of law which regulates the behaviour of members of the legal profession. It consists of relevant portions of the law of contract, torts, equity, adjectival law, general legislation, legislation governing the practice of the law and the rules of professional conduct promulgated by the regulatory bodies to which lawyers belong' See Wolski, B, 'An Evaluation of the Current Rules of Professional Conduct Governing Legal Representatives in Mediation in Australia and the United Stated and of Range of Proposed Alternative 'Non-Adversarial' Ethics Systems for Lawyers', PhD thesis submitted to Faculty of Law, Bond University, Australia August 2011. Available at http://epublications.bond.edu.au/cgi/viewcontent.cgi?article=1099&context=theses (accessed 17 March 2017)

9 Lavoie, R, 'Am I My Brother 's Keeper? A Tax Law Perspective on the Challenge of Balancing Gatekeeping Obligations and Zealous Advocacy in the Legal Profession' (2013) Vol. 44 (1) *Loyola University Chicago Law Journal* 813, 816

10 Schobel, E, 'Self-Regulated Markets for Professional Legal Services: The Case of Tax Intermediaries' (2010) Vol. XLIV (No. 2) *Journal of Economic Issues* 497, 503

11 IFAC, 'Regulation of the Accountancy Profession' (Sept. 2011) *IFAC Policy Position 1*, 1. Available at http://www.javeriana.edu.co/personales/hbermude/Audire/IFAC.pdf (accessed 3 June 2018)

12 Mgammal, MH & Izah Ku Ismail, K, 'Corporate Tax Planning Activities: Overview of Concepts, Theories, Restrictions, Motivations and Approaches' (2015) Vol. 6 (No.6) *Mediterranean Journal of Social Science* 350-358

protecting the tax base. For taxpayers, it is one of the reasons[13] why taxpayers gravitate towards the ever-diversifying alchemy of tax minimisation or avoidance schemes provided by TIs.[14] The reality is that, today, TIs unabashedly and with little or no thought of their obligation to the state and the impact of their action on the tax system side with taxpayer.[15] Of late, it seems that they prefer to avoid situations where they could be bound to act as gatekeeper between the taxpayer and the state (represented by the tax authority).[16]

The (in)actions of taxpayers with regard to taxpayer compliance behaviour has come to the fore of collective consciousness. This awareness has been heightened by the recent spate of media leaks which have illuminated tax avoidance schemes and arrangements employed by multinational corporations, HNWIs and government functionaries around the world.[17] Furthemore, the fact that tax intermediaries were always at the centre of each of the controversies[18] has not helped matters. This state of affairs has catalysed varied reactions

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13 Others are factors like the rule of law, fairness (or equity), certainty, justice and policy decisions in the tax system catalyse the decision to patronise the tax intermediaries who practice and/or sell tax avoidance alchemy. See OECD, supra note 1, 13

14 See Sikka, P & Willmott, H, 'The Tax Avoidance Industry: Accountancy Firms on the Make' (2013) Vol.9 (Issue 4) *Critical Perspective on International Business* 414-443; Phua, S, 'Convergence in Global Tax Compliance' (2015) *Singapore Journal of Legal Studies* 77, 97-100 where the role of tax intermediaries as suppliers of tax avoidance schemes and the UK combative strategy of reportage obligation was examined. Also see Jones, C, *et al,* 'Tax Haven Networks and the Role of the Big4 Accountancy Firms' (2018) Vol. 53 (Issue 2) *Journal of World Business* 177-193 where the authors established a correlation and causal link between size of the taxpayer and its consumption of tax avoidance services and products as well as concluded that the bigger the size of an MNE, the greater its propensity to use of the Big 4 in setting up its tax avoidance (or evasion) arrangement

15 See Perkins, RH, 'The Tax Lawyer as Gatekeeper' (2010) Vol. 49 (No. 2) *University of Louisville Law Review* 185, 189 where the author argued that for balance to exist in the tax system, the tax advisor should occupy a gatekeeper position

16 Such a situation exists in South Africa where pursuant to section 246 of the *Tax Administration Act* (No. 28 of 2011) (TAA), a tax practitioner resident in South Africa is appointed as 'a public officer' of or by a company who carries on business or acquires office within the Republic. In this capacity the tax intermediary is the representative taxpayer in terms of the TAA (as well as other tax legislation) and under section 155, TAA is explicitly made liable for all unpaid tax. See Kamdar, M, 'Should Tax Practitioners also be Public Officers' (2016) Issue 28 *Tax Professional* 8-9, where the author recommends that tax practitioners should not act in a 'representative' capacity for the client as the Public Officer

17 These include Wikileaks (2010); Offshore leaks (2013); Luxembourg leaks (2014); Swiss leaks (2015); Panama papers (2016), Paradise papers (2017) and the Gupta leaks (June 2017). For an exposition of focused on Nigerians mentioned in the Panama and Paradise papers, see PTCIJ, *Nigeria in the Panama and Paradise Papers: Investigation, Reporting and Reflections* (Abuja: Premium Times Books, 2018)

18 *Gupta leaks: KPMG* – one of the Big 4. *Paradise papers*: *Appleby* – a law firm. *Panama papers*: *Mossack Fonseca* – a law firm and corporate service provider. *Swiss leaks: HSBC* – a bank and financial service provider. *Luxembourg leaks: PwC* – one of the Big 4. There is also the role played by KPMG in Stanbic IBTC Holdings Plc misreporting in its financial statement for 2013 and 2014. See Financial Reporting Council of Nigeria, 'Regulatory Decision: In the matter of Financial Statements of Stanbic IBTC Holdings Plc for Years ended 31st December 2013 and 2014' (2015). Available from http://financialreportingcouncil.gov.ng/new/index.php/component/content/article/9-uncategorised/133-regulatorydecisionon-ibtc-holding (accessed 15 November 2018) and 'Stanbic IBTC Holdings Plc has met the disclosure requirements of International Financial Reporting Standards – A Rejoinder' *The Guardian,* Thursday October 29, 2015, 67 (Nigeria). Available from http://financialreportingcouncil.gov.ng/new/index.php/component/content/article/9-uncategorised/133-regulatorydecisionon-ibtc-holding (accessed 15 November 2018). See also,

to tax noncompliance[19] as well as the formulation of diverse standards geared towards limiting the space for noncompliance and pushing tax reform.[20]

5.2.2 Assuming the role in Nigeria

The presence and role of TIs is a function of the tax system, whether directly or indirectly. It is direct where extant tax and related legislation create and maintain the function of TIs[21] and indirect where the mechanics and/or pecularity of the tax system make them indipensible. Examples of the latter includes the now famous complexity of the tax system and the desire of taxpayers to minimise tax so as to improve profit after tax and disposable income.

The situation in Nigeri is that to assume the role of a TI, qualification as a chartered accountant or tax practitioner or legal practitioner is a condition precedent. Qualification as a chartered accountant in Nigeria is subject to the provisions of the *Association of National Accountants of Nigeria Act*[22] (ANANA) or the *Institute of Chartered Accountants of Nigeria Act*[23] (ICANA) which established the Association of National Accountants of Nigeria (ANAN) and the Institute of Chartered Accountants of Nigeria (ICAN).[24] Although

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Mitchell, A & Sikka, P, *The Pin-Stripe Mafia: How Accountancy Firms Destroy Societies* (UK: Association for Accountancy & Business Affairs, 2011) 9 where the authors conclude that there is no 'financial scandal or a tax dodge where the visible hand of major accountancy firms is not highly evident'

19 See generally Sikka, P, 'As HSBC shows, we've been timid and pathetic in dealing with tax dodgers' *The Guardian (International Edition)* 12 February 2015. Available at https://www.theguardian.com/commentisfree/2015/feb/12/hsbc-pathetic-dealing-tax-dodgers-evaders-barely-punished (accessed 16 March 2018); Walpole & Salter, supra note 6.

20 The prominent from which all current endeavour takes their origin is the OECD/G20 Base Erosion and Profit Shifting (BEPS) Project which culminated in 15 reports detailing reform recommendations to tackle tax avoidance. See generally, OECD, *Explanatory Statement, OECD/G20 Base Erosion and Profit Shifting Project* (2015). Available at www.oecd.org/tax/beps-explanatory-statement-2015.pdf (accessed 16 July 2018). Also see Montes, MF & Rangaprasad, 'Collaboration or Co-optation? A Review of the Platform for Collaboration on Tax' (2018) No. 48 *South Centre Policy Brief* 1 where the author opined that the global financial crisis of 2008 brought about an acceleration of tax reform efforts

21 For example: (1) in Nigeria, pursuant to section 55 (6), CITA only a tax practitioner or a chartered accountant or legal practitioner knowledgeable in the field of taxation or possessing a requisite qualification is the only suitable candidate to be designated a representative by the taxpayer to answer any query relating to its tax matters posed by FIRS; (2) in Australia, the combined effect of sections 20-10 and 90-5 of the *Tax Agent Service Act 2009 (Cth)* (TASA) is that only an entity registered in terms of the TASA can provide services on the basis of which another can satisfy liabilities, obligations or claim entitlement that arise or could arise under a taxation law or the Business Activity Statement (BAS) regime. Further see paragraph 5.3 INTERMEDIARIES MANAGEMENT: NIGERIA and Paragraph 5.4 INTERMEDIARIES MANAGEMENT: OTHERS for a discussion which highlights the statutorily delineated functions of TIs in Nigeria, Kenya and South Africa

22 Cap. A26 LFN 2004

23 Cap. I11 LFN 2004

24 The provisions of both Acts are substantially similar although the latter predates the former by 28 years and they establish two parallel professional groupings of chartered accountants in Nigeria. Both Acts have sections with similar titles. The ANANA has 21 sections, one more than the ICANA and 4 Schedules; one more than the ICANA. Other peculiarities of the ANANA are (1) reference in section 20 to the Nigerian College of Accountancy as the institution established as the training arm of ANAN

the criteria for qualification and roles of ANAN and ICAN members are similar,[25] they are subject to separate but similar professional regulations under the respective legislation.[26] Furthermore, the ANAN and ICAN qualification is a condition precedent to practising as a professional accountant[27] and/or auditor[28] in Nigeria.

The qualification and role of a tax practitioner is also a product of legislation. The *Chartered Institute of Taxation of Nigeria Act*[29] (CITNA), pursuant to which the Chartered Institute of Taxation of Nigeria (CITN) was established[30] vests the latter with the responsibility of determining the standard of knowledge and skill that is to be attained by persons seeking to be registered as members of the taxation profession in Nigeria.[31] A tax practitioner is, thus, subject to the professional regulatory regime established pursuant to the CITNA.[32] The case of a legal practitioner is no different. Such a person is one who has been called to the Nigerian Bar after undertaking a course of legal study approved by the Council of Legal Education established under the *Legal Education (Consolidation, etc.) Act*[33] (LEA) and/or entitled to practise in Nigeria pursuant to the provisions of the *Legal Practitioners Act* (LPA).[34]

Based on the above, it is beyond conjecture that the qualification and entrance into the role of a TI in Nigeria is a function of law. The respective legislation established the first level

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while there is no provision expressly establishing it; (2) pursuant to section 8(a), the Fourth Schedule does not list the ICAN qualification as one of those which entitles an applicant to membership of ANAN

25 See sections 14 of both the ANANA and ICANA with regard to when a person is deemed to practice as a chartered accountant

26 See sections 11 (establishment of Disciplinary Tribunal and Investigating Panel) and 12 (Penalties for unprofessional conduct, etc.) of both the ANANA and ICANA

27 Section 77 of the *Financial Reporting Council of Nigeria Act 2011* (FRCNA) defines 'professional accountant' as a person who is a member of a body of professional Accountancy body established by an Act of National Assembly and registered with the Council

28 Note that in the context of section 19 ICANA, there is no distinction between an accountant and auditor. Also, section 77 FRCNA defines 'auditor' as 'a professionally qualified Accountant or firm of Accountants appointed to conduct an examination of the records of an enterprise and to form an opinion as to whether the accounts have been prepared in accordance with generally accepted accounting principles'. Thus, it is on the basis of the same academic and/or professional qualification that one becomes an accountant or auditor. Difference however, exists in terms of their roles vis-à-vis their client. The role of auditor in the context of tax intermediation would be highlighted in paragraph 5.3.1.2 Book keeping *infra*

29 Cap. C10 LFN 2004

30 Section 1(1) CITNA

31 Section 1((1)(a) CITNA. Also see section 1(1)(c) CITNA which states unequivocally that CITN shall be responsible for regulating and controlling the practice of taxation in Nigeria in all ramification.

32 See section 13 (establishment of Disciplinary Tribunal and Investigating Panel); section 14 (Penalties for unprofessional conduct, etc.); section 16 (when a person is deemed to practice as a tax practitioner). Also, see the Statement of Taxation Standard (1-8) issued by CITN pursuant to section 1, CITNA to raise, maintain and regulate the standard of taxation practice amongst its CITN members

33 Cap. L10 LFN 2004. See sections 1 and 5 LEA

34 Cap. L11 LFN 2004. See specifically section 1, 2 and 4 LPA which respectively creates the General Council of the Bar and charged it with the general management of the affairs of the Nigerian Bar Association (NBA) and specifies the qualification which entitles a person to practice as legal practitioner in Nigeria

of the regulatory and management regime of these professionals in their role as tax intermediaries. The conduct of these tax intermediaries is subject to the aforementioned legislation. For example, by belonging to ANAN, ICAN and NBA the respective professionals are subject to the respective disciplinary tribunals and investigating panels and in a situation of unprofessional conduct, are liable to the prescribed penalties under the respective legislation.[35] Furthermore, the CITNA provides that to qualify for registration as member, the applicant must *inter alia* pass the qualifying examination and complete the practical training prescribed, be of good character and not have been convicted in Nigeria or elsewhere of any offence involving fraud or dishonesty.[36] Pursuant to the powers vested in it by the LPA, on its part, the Legal Practitioners Disciplinary Committee (LPDC), pursuant to the LPA, shall consider and determine any case where it is alleged that a legal practitioner is liable for infamous conduct.[37]

Noteworthy is the fact that, with regard to an accountant or auditor, another layer of regulation is added. Section 41(2) of FRCNA[38] stipulates that a person shall not practice as an auditor or professional accountant for a public interest entity unless it is registered under with FRCN.[39] Where the consumer is a public interest entity (which section 77 of FRCNA defines as 'governments, government organizations, quoted and unquoted companies and all other organizations which are required by law to file returns with regulatory authorities'), the auditor and/or accountant must register with the FRCN before he/she can undertake professional practice, which would in the circumstance of this study,

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35 See sections 8 and 11 ANANA; section 8 and 11 ICANA; section 13 and 14 CITNA; and section 10 and 11 LPA

36 Section 10 CITNA. Also, see section 8 ANANA and section 8 ICANA for provisions detailing condition precedent for registration as member of ANAN and ICAN respectively

37 Section 10 LPA. In the exercise of this power, the LPDC prosecuted 83 complaints against legal practitioners between January 2013 and 14 May 2014. During the same period, 12 legal practitioners had their names struct of the roll for infamous conduct in professional respect; 5 were suspended for a period of 5 years each. See Okutepa, JS, 'Professional Ethics and Discipline at the Bar: The Role of Nigerian Bar Association' being a paper delivered at the inauguration of the NBA Keffi Branch on 14 May 2015. Available from http://www.jsokutepa.com/wp-content/uploads/2016/04/PROFESSIONAL-ETHICS-AND-DISCIPLINE-AT-THE-BAR-THE-ROLE-OF-NIGERIAN-BAR-ASSOCIATION.pdf (accessed 27 May 2018). Also note that the decision in. Also see *Nigerian Bar Association v Akintola* [2006] 13 NWLR (Pt. 996) 167 where the defendant was sanctioned by the LPDC for unprofessional conduct

38 The Financial Reporting Council of Nigeria (FRCN) was established by the FRCNA and made responsible pursuant to section 5 for the development and enforcement of accounting and financial reporting standards, advising the federal government on accounting and financial reporting standards, maintaining a register of professional accountants and other professionals engaged in the financial reporting process, monitoring compliance with the code of corporate governance, promotion of compliance as well as the monitoring and promotion of education, research and training in the fields of accounting, auditing, financial reporting and corporate governance

39 See rule 2 of the *Financial Reporting Council of Nigeria Rules 1-8,* supra note 2 which relates to FRCN's reaffirms the regulatory requirement that professionals engaged in financial reporting process must register with FRCN to qualify to certify and issue assurance opinion relating to financial statements, accounts and other documents of finance nature

amount to the provision of tax intermediary service. This is because every company in Nigeria and non-resident companies, irrespective of size, quoted or not, is obligated to file returns with the Corporate Affairs Commission and FIRS annually, whether quoted or not. In addition, sections 44-47 of the FRNCA which relates to the nature of the auditor's report and opinion, action to be taken by auditor on discovery of material irregularity in course of audit, independence of auditors and conflict of interest respectively provide further regulatory guides which the auditor must follow in the discharge of his/her professional obligation to the client.

Furthermore, once members of ANAN, CITN, ICAN and NBA assume the role of a tax intermediary they become subject to the general rules of professional conduct that is expected of a member of the particular profession. For the legal practitoner, the *Rules of Professional Conduct for Legal Practitioners 2007*, made pursuant to section 12(4) of the LPA becomes applicable and for the tax practitioner, the Statement of Taxation Standard (STS) issued by CITN pursuant to section 1 of the CITNA with the objective of raising, maintaining and regulating the standard of taxation practice amongst its members, becomes applicable. On their part, ANAN and ICAN members becomes subject to the Statement of Accounting Standard issued or approved by the FRCN.[40]

5.3 INTERMEDIARIES MANAGEMENT: NIGERIA

The previous analysis puts beyond conjecture the fact that TI practice in Nigeria is regulated and statutorily recognised.[41] There exists regulatory frameworks which guide qualification to practice and/or assumption of the role of a tax intermediary in Nigeria. This part builds on the former as it reviews Nigeria's management regime of tax intermediaries. To this end, the objective is the determination of whether the provision of incorporaton, book keeping and advisory services by tax intermediaries is subject to professional regulation and/or government oversight.

5.3.1 Relevant Professional Service

5.3.1.1 Incorporation

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40 See section 8(a) and (h), FRNCA which vests FRCN with the powers to develop and publish accounting and financial reporting standards as well as promote compliance with the standards issued by the International Federation of Accountants and International Accounting Standards Board. Pursuant to the latter, FRCN issuance regulatory filters to guide the adoption of the International Financial Reporting Standard (IFRS) in Nigeria

41 Section 69, FIRSEA refers to them as consultants

In Nigeria a minimum of two and a maximum of twenty persons may form and/or incorporate a company under the *Companies and Allied Matters Act*[42] for the purpose of carrying on any business for profit or gain. Size or share capital, quoted status or otherwise are not determinants of the number of persons that can incorporate a company in Nigeria. However, only legal practitioners, chartered accountants and chartered secretaries[43] who have been accredited by the Corporate Affairs Commission[44] (CAC) can bring an application for the incorporation of a company.[45] This regime was put in place by the CAC pursuant to section 7(1) of CAMA which specifies that:

> (1) The functions of the Commission shall be to:
> (a) subject to section 541 of this Act, administer this Act including the regulation and supervision of the formation, incorporation, registration, management, and winding-up of companies under or pursuant of this Act;
> …
> (e) undertake such other activities as are necessary or expedient for giving full effect to the provisions of this Act.

The preceding notwithstanding, the legal practitioner plays a pivotal role with regard to incorporation. Section 35(3) of CAMA mandates that a legal practitioner must make a declaration on oath in the prescribed form to the effect that the requirements for the incorporation of a company have been complied with. By this, it means that it is the responsibility of the legal practitioner to give assurance. Consequently, in a situation where the incorporation requirements are not met and the legal practitioner makes the declaration, he/she would be guilty of lying under oath[46] if found out. Also, an application brought by

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42 Cap. C20 LFN 2004 (CAMA). See sections 18 and 19(1). Note that on 15 May 2018, the Nigerian Senate passed the *Companies and Allied Matters Act 2004 (Repeal and Re-enactment) Bill 2018* into law. The Bill which seeks to repeal and re-enact the existing CAMA and when assented to by the President, is expected to promote the ease of doing business in Nigeria. Key features of the Bill include:

1. It makes it possible for a single person to form a company thereby paving the way for the coming into being of singe-shareholder/director companies
2. It defines a small company as private company with turnover (i.e. gross sale) of less than NGN120million as against the N2million turnover threshold under section 351 CAMA
3. The introduction of limited liability partnership and limited partnership as two additional business forms

See generally, Uju, I, *et al*, 'The Repeal and Re-Enactment of the Companies and Allied Matters Act- A Bold Step Towards Business Reform' (May 2018) *Templars Newsletter* 1-2. Available at https://www.templars-law.com/wp-content/uploads/2018/05/The-Repeal-and-Re-Enactment-of-The-Companies-and-Allied-Matters-Act-A-Bold-Step-Towards-Business-Reform.pdf (accessed 28 September 2018)

43 A chartered secretary is a person qualified to so act pursuant to the provisions of the *Institute of Chartered Secretaries and Administrators of Nigeria Act* Cap. I13 LFN 2004

44 CAC was established pursuant to section 1, CAMA

45 CAC, *CAC Customer Guide* (2011). Available at http://www.cacnigeria.org/downloads/Customer_Guide-2011.pdf (23 May 2018). See section 21(1) CAMA for the types of companies known to law in Nigeria

46 Prior to 31 March 2017, this declaration was done using Form CAC 7. It is now Section E of Form CAC 1.1 which is available at http://new.cac.gov.ng/home/wp-content/uploads/2017/02/CAC1.11-1.pdf (accessed 24 May 2018)

an accountant or chartered secretary for the incorporation of a company under CAMA would be incomplete without the statutory declaration of an accredited legal practitioner.

Furthermore, with an additional statement in its memorandum to that effect, a company can further classify itself as a private or public company.[47] Whatever the type and/or classification of the company, it becomes a juristic or legal personality upon incorporation with rights and duties distinct from those of its shareholders or members.[48] In *Marina Nominees Ltd v Federal Board of Inland Revenue*,[49] it was held that a company registered under CAMA and having full legal status as enunciated in *Salmon* is mandatorily subject to all the consequences of incorporation. The relevant consequence to this investigation is that the company becomes subject to the legal framework regimenting the administration of CIT in Nigeria.[50] The company must, *inter alia*, file its tax returns within eighteen months from the date of its incorporation or not later than six months after the end of its first accounting period, whichever is earlier[51] notwithstanding its share capital, nature/line of business whether or not it makes a profit[52] in that first accounting year.

5.3.1.2 Book keeping

In the context of CIT administration, book keeping encompasses the preparation of all financial records or books (hereafter referred to as financial statement) necessary for the ascertainment of the financial and consequential tax position of a company. In the context

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47 See sections 21(2), 22(1) and 24 CAMA

48 See *Salomon v Salomon* (1897) AC 22 at 51. Also see *Union Bank Nigeria Ltd. v Penny-Mart Ltd* [1992] 5 NWLR (Pt. 240) 228, 237. The significance of the legal personality granted a company via incorporation is described by Joubert AJA in *Ngcwase v Terblanche* 1977 (3) SA 796 (A), 803-804 thus: '*a statutory juristic person (persona juris) ... in law considered to be an abstract legal entity which exists as a juristic reality in the contemplation of law despite the fact that it lacks physical existence.* It is in law through its representatives or agents (per *acotores syndicosque*) capable of knowing, intending, willing, acting, acquiring rights or obligations, possessing proprietary rights and of committing delicts (civil wrongs) and even crimes' (italics mine for emphasis). In *Abacha v A-G Federation* [2014] 18 NWLR (Pt. 1438) 31, 35 it was held that from the moment of incorporation, pursuant to section 37 CAMA the legal personality with which the company is clothed separates it from those that laboured to birth it

49 [1986] 2 NWLR (Pt 20) 61

50 For more discussion on the legal framework of CIT administration in Nigeria, see Chapter 4: paragraph 4.2: Legal Regime for Company Income Taxation

51 See section 55(2)(b) CITA. Non-compliance makes the company liable to late return filing penalty as specified in section 55(3) CITA. See section 57 CITA pursuant to which a company operating in a Nigerian stock exchange as a capital market operator is obligated to file a tax return not later than seven days after the end of each calendar month, in the prescribed form of its transactions during the preceding calendar month. CITA does not state the penalty for late filling or non-filing as is the case with section 55. The taxpayer could, however, be held liable to a fine of N420000 pursuant to section 92 which stipulates the punishment for offence against, contravention of or non-compliance with any provision of CITA for which no penalty is specifically provided

52 See chapter 4 (paragraph 4.3: CITA Incentives) for a discussion which focuses on the extent to which the nature/line of business and whether or not the company makes profit affects it tax burden and disposal income

of this research, it encompasses the preparation of the financial statement,[53] the tax return[54] and the actual filing of the latter with FIRS for every year of assessment. For a company to be deemed compliant, (1) the book keeping process must be embarked upon in a way that ensures that the financial statement is prepared in a manner that guarantees that the appropriate tax is payable, and (2) the financial statement along with other documents that constitute the tax return should be filed on or before the due date.

At this juncture, the conclusion is that the preparation of a financial statement is pivotal to financial reporting, business and investment decision-making of shareholders and other stakeholders (like creditors, suppliers, employees, etc.) in an economy. It provides the tax authority (i.e. FIRS) with the information necessary for the determination of the tax due from companies which when paid becomes revenue for public expenditure financing. Thus, the filing of inaccurate financial statements impacts negatively on economic actors. The ripple effect of this state of affairs (i.e. the preparation of inaccurate financial statement), especially where it is widespread within the state, is huge as the economy is also negatively affected.[55] It is consequently surmised that the importance of a financial statement is the

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53 Section 334(2) CAMA provides that a financial statement is made up of: (1) statement of accounting policies; (2) the balance sheet as at the last day of the year; (3) a profit and loss account or in the case of company not trading for profit, an income and expenditure account for the year; (4) notes on the accounts' (5) the auditors' reports; (6) the directors' report; (7) a statement of the source and application of fund; (8) a value added statement for the year; (9) a five-year financial summary; and (10) group financial statements in the case of a holding company. Note that pursuant to section 334(3) CAMA items (1), (7), (8) and (9) are not mandatory components of the financial statement of private companies. Further note that items (7) and (10) are not mandatory components of the financial statement for tax purposes, but the others must be accompanied with the chairman's statement for the tax return to be complete. See also section 77 FRCNA which states that a financial statement 'means the balance sheet, income statements or profit and loss account, statement of changes in equity, statement of cash flow, notes, statements and explanatory materials thereon and other documents to be included in a financial statement as required under Companies and Allied Matters Act, 2004 whether interim or final, and any other relevant accounting standards'

54 A complete tax return is made up of: (1) duly completed self-assessment form; (2) statement of tax computation (including the minimum tax computation); (3) capital allowance computation schedule; (4) evidence of tax payment (whether part or full); and (5) audited financial statement. See section 55 (1) CITA. Also see FIRS, *Guidelines for Examination of Accounts and Returns for Tax Purposes* (Nigeria: FIRS, 2010) 6

55 Two examples of inaccurate financial statement come to mind. They are:

1. *Enron*: The demise of Enron was primarily as a result of serial overstatement of earnings executed with the aid of an accounting firm was the immediate cause of (a) loss of 4500 jobs, (b) loss of about USD 60 million in days, (c) loss by 12, 000 employees of retirement fund valued at over USD 1 billion, etc. See *The Enron Collapse and Financial Markets: Joint Hearing Before the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises and the Subcommittee on Oversight and Investigations of the Committee on Financial Services, US House of Representatives 107th Congress (First Session) Seral No. 107-51, Part 1 (12 December 2001).* Available at https://www.govinfo.gov/content/pkg/CHRG-107hhrg76958/pdf/CHRG-107hhrg76958.pdf (accessed 10 April 2019). For a chronicle of the milestone events relating to the Enron scandal see, von Frentz, C, 'ENRON – Chronicle of a Record Bankruptcy', *Manager Magazine* 25/06/2003. Available at https://www.global-ethic-now.de/gen-eng/0d_weltethos-und-wirtschaft/0d-pdf/01-globale-wirtschaft/ENRON_Chronik.pdf (accessed 10 April 2019)

reason for the existence of the multitude of legislation and agencies which form the regulatory framework for financial reporting and the preparation of financial statements in Nigeria. For example:

1. Under the CAMA:
    a. Section 334 mandates the directors of a company to prepare a financial statement on an annual basis and further stipulates the content of a financial statement;[56]
    b. Section 343(1) and (4) mandates that two directors must sign the balance sheet (i.e. the statement of financial position) as well as the profit and loss account of the company on behalf of the board of the company;
    c. Section 357 specifies the procedure for the appointment and tenure of an auditor; while section 358 cedes the determination of the qualification for appointment of an auditor to the ANANA and ICANA; and
    d. Section 359 mandates the establishment of an audit committee of the Board of Directors which is the statutory recipient of the auditor's report and is saddled with the oversight responsibility of financial reporting by ensuring checks and balance in the financial reporting system of a company.
2. Under the FRCNA:
    a. Section 44 provides that, sequel to an audit (which typically includes the review of the auditee's financial statement), the accountant acting in the role of an auditor must express an opinion as to: (i) whether the financial statement gives a true and fair view of the state of affairs of the auditee; and (ii) if the financial statement complies with the provisions of the FRNCA or other relevant enactments;
    b. Section 45 mandates the accountant acting in the capacity of an auditor to communicate - in writing - findings of material irregularity as well as proposed remedial/counter action: (i) immediately to the Chief Executive Officer as well as all the members of the Board of the auditee; and (ii) within 30 days of

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2. *WorldCom:* This is another example of the consequences of the preparation of inaccurate financial statement. The cost of WorldCom's conduct has been put at approximately USD35 billion or .34 percent of the US GDP for 2002. See generally, Ashraf, J, 'The Accounting Fraud @ Worldcom: The Causes, The Characteristics, The Consequences, and The Lessons Learned' (2011) unpublished Honors thesis, University of Central Florida Orlando, Florida. Available at http://etd.fcla.edu/CF/CFH0003811/Ashraf_Javiriyah_201105_BSBA.pdf (accessed 12 April 2019). See also Graham, C, *et al*, 'Cooking the Books: The Cost to the Economy' (2002) No. 106 *The Brookings Institution Policy Brief.* Available at https://www.brookings.edu/wp-content/uploads/2016/06/pb106.pdf (accessed 12 April 2019)

[56] See footnote 53 above

discharging its obligation in terms of (i) above, notify the FRCN of the material irregularity as well as any other relevant information;

c. Section 46 mandates the auditor to carry out his function independently and without: (i) acting in any manner contrary to the Code of Conduct and Ethics of the FRCN or any made under any enactment in force; or (ii) engage in any activity with capacity to impair his/her independence as a professional; and

d. Section 47 recommends that an auditor should disclose the nature of a real or perceived conflict of interest in relation to an auditee to the latter and the FRCN also to enable the auditee determine the extent of the conflict and decide whether or not to continue with the retainership.

Hence it is beyond conjecture that book keeping service is the sole preserve of the accountant (whether ANAN or ICAN member). It is also indicative of the fact that this area of the practice of Nigerian accountants is highly regulated. With regard to the provisions of the same service to MSCs who are not public or quoted entities, the accountant is less regulated. This conclusion is premised on the long title of the FRCNA which states:

> An Act to repeal the Nigerian Accounting Standards Board Act, No.22 of 2003 and enact the Financial Reporting Council of Nigeria charged with the responsibility for, *among other things, developing and publishing accounting and financial reporting standards to be observed in the preparation of financial statement of public entities in Nigeria*; and for related matters.[57]

The above words convey the purpose which underpins the FRCNA as well as its scope as is expected of the long title of a legislation.[58] The words of Moulton, LJ in *Vacher v London Society of Compositors,*[59] resonates with the above. According to the Law Lord:

> The title of an Act is undoubtedly part of the Act itself, and it is legitimate to use it for the purpose of interpreting the Act as a whole and ascertaining its scope. This is not the case with the short title … That is a title given to the Act solely for the purpose of facility of reference. If I may use the phrase, it is a statutory nickname to obviate the necessity of always referring to the Act under its full and descriptive title. It is not legitimate, in my opinion, to use it to ascertain the scope of the Act. Its object is identification and not description.[60]

Furthermore, the solo reference to 'public entities' in the long title is tantamount to the exclusion of the provision of book keeping services to private entities (like unquoted

57 Italics are mine for emphasis
58 See Xanthaki, H, *Thornton's Legislative Drafting* (5th ed.) (London: Bloomsbury Professional. 2013) 229. Also see *Bello and Ors v AG Oyo State* (1986) 5 NWLR 828, 871
59 (1913) AC 107
60 *Ibid*, 128-129

MSCs) from the scope of the FRCNA and regulation of FRCN, - *expressio unius est exclusion alterius*.[61]

5.3.1.3 Advisory

Tax advisory entails the provision of service to clients by an accountant, legal practitioner or tax practitioner that has the effect of maximising the profit after tax or the disposable income of the latter. In the context of this research, it encompasses every service that does not come within the ambit of incorporation and book keeping provided by the tax intermediary. Advisory, thus, includes tax risk management, tax planning and representation.

Tax advisory services are also a creation of law and the product of circumstances. Section 55(6) of CITA creates the former situation as it mandates that every company should designate a representative who shall be knowledgeable in the field of taxation to answer every query relating to the tax matters of the company. Thus, a tax practitioner[62] or someone knowledgeable in the field of taxation is the ideal candidate to be designated a representative by the taxpayer to answer any query relating to the taxpayer's compliance with section 55 (and other sections) of CITA posed by FIRS. Also, FIRSEA provides that a complainant or appellant shall be entitled to representation by a legal practitioner or accountant of choice at any hearing of before the TAT.[63]

However, there is a time when the demand for tax advisory service arises from the prevailing circumstances in the tax system. The complexity of the tax system[64] as well as the quest (or need) for understanding of the underpinnings and mechanics of the tax system by taxpayers - businesses inclusive - creates this situation. Nonetheless, in comparison to incorporation and book keeping, there seems to a dearth of regulatory provisions targeted at advisory. What exists are provisions which are generally applicable to the professional conduct of the tax intermediary. For example, Rule 14 of the *Rules of Professional Conduct for Legal Practitioners 2007* states that:

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61 For an exposition on the utility of the maxim in statutory interpretation, see *Commissioner for Local Government and Chieftaincy Affairs & Anor v Onakade* (2016) LPELR-41133(CA); *Ojukwu v Yaradua* (2008) 4 NWLR (Pt.1078) 435, 467; *Buhari v Yusuf* (2003]) 14 NWLR (Pt.841) 446, 499; *Udo v Orthopaedic Hospitals Management Board* (1993) 7 NWLR (Pt.304) 139, 148

62 Section 22 CITNA defines 'tax practitioner' as '… any person who is registered or entitled to be registered under this Act in any of the categories of membership'. This includes an accountant, legal practitioner or any other person possessing any of the categories of CITN membership under section 2(1) CITNA

63 Paragraph 18 of the Fifth Schedule, FIRSEA

64 For a multi-faceted discussion of the issue of tax complexity and the associated concept of tax simplification, see, James, S, et al, (eds.) *The Complexity of Tax Simplification: Experiences from Around the World* (UK: Palgrave Macmillan, 2016); Evans, C, *et al* (eds.) *Tax Simplification* (The Netherlands: Kluwer Law Intl., 2015)

1. It is the duty of a lawyer to devote his attention, energy and expertise to the service of his client and subject to any rule of law, to act in manner consistent with the best interest of the client.
2. Without prejudice to the generality of paragraph (1) of this rule, a lawyer shall:
   a. consult with his client in all questions of doubt which do not fall within his discretion;
   b. keep the client informed of the progress and any important development in the cause or matter as may be reasonably necessary;
   c. warn his client against any particular risk which is likely to occur in the course of the matter;
   d. respond as promptly as reasonably possible to request for information by the client, and
   e. where he considers the client's claim or defence to be hopeless, inform him accordingly.
3. When representing a client, a lawyer may, where permissible, exercise his independent professional judgment to waive or fail to assert a right or position of his client.
4. It is the duty of lawyer employed in respect of a Court case to be personally present or be properly represented throughout the proceedings in Court.
5. Negligence in handling of a client's affairs may be of such a nature as to amount to professional misconduct.

The STS issued by CITN is another example. Part I of STS 1 recommends that:

i. When acting for a client, a member of the Institute places his professional expertise at the disposal of that client and, in so doing, the member assumes a duty of care towards the client. A member must, therefore, exercise reasonable skill and care when acting for a client. Failure to exercise such reasonable skill and care may cause a member to be liable for negligence in the discharge of his professional duties.

In Part II, the STS 1 goes further to state that:

2.1. A member has a duty of care to the taxpayer both in contract and tort when he accepts instructions from his clients. The duty of care in contract will exist whether or not an engagement letter is issued. If a member fails to properly exercise his duty of care he may be held to be negligent and liable to the taxpayer for the damage or harm he has caused as a result of the negligence.

5.4 INTERMEDIARIES MANAGEMENT: OTHERS

In this part the analysis involves a comparison of different legal systems of the world.[65] This choice is adopted because a comparative analysis provides a much richer variety of solutions and the opportunity for contrasting associated with it gives form to, as well as

[65] Calboli, I, 'A Call for Strengthening the Role of Comparative Legal Analysis in the United States' (2017) Vol. 90 (3) *Saint John's Law Review* 609, 614

expands the boundaries of law and legal research.[66] In summary, it is of immense value.[67] For comparators, the tax intermediaries management regimes of Kenya and South Africa are the options of choice.[68]

5.4.1 Kenya

5.4.1.1 Assuming the Role of Tax Intermediary

In the context of Kenya, an accountant, a certified public secretary and a legal practitioner qualify to practice as a TI. An accountant in Kenya is a person registered under section 24 of the *Accountants Act*[69] (AAK). The practice of an accountant in terms of the AAK includes: (1) the practice of accountancy; (2) auditing or verification of financial transactions, etc.; and (3) the verification or certification of financial accounts and related statements; etc. It does not include the provision of tax consultancy/advisory service by a legal practitioner, a certified public secretary or a person authorised to do so by or under any written law.[70]

The practice of an accountant in Kenya is subject to the jurisdiction of the:

a. Kenya Accountants and Secretaries National Examinations Board (KASNEB) which is saddled with *inter alia* the responsibility of the design and administration of the relevant syllabi and examinations for persons intending to qualify for registration as accountants and company secretaries.[71]
b. Institute of Certified Public Accountants of Kenya (ICPAK) which is responsible, *inter alia,* for: the promotion of standards of professional competence and practice amongst members;[72] the issuance of standards of professional practice (including accounting and auditing standards) to be used by members in the preparation, verification and auditing of financial statements;[73] the registration of persons desirous of practising as accountants, issuance of practice certificate and annual licence to practice to qualified persons;[74] the investigation of every claim of

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66 Bhat PI, 'Comparative Method of Legal Research: Nature, Process and Potentiality' (2015) Vo; 57 (No. 2) *Journal of the Indian law Institute* 147, 151

67 Chianu described legal research without a comparative aspect as insipid and compared it to an attempt at spending a one-sided currency or a coin without an obverse side. See Chianu, E, 'The Horse and Ass Yoked: Legal Principles to Aid the Weak in a World of Unequals' (2007) *University of Benin Inaugural Lecture Series 91,* 9. Available at http://www.profchianu.com.ng/books.html (accessed 10 May 2018)

68 See chapter 1: paragraph 1.4.5 Methodology the reason for the selection of jurisdictions for comparison

69 (No. 15 of 2008) Laws of Kenya

70 See section 19 AAK

71 See section 17 AAK

72 See section 8 AAK

73 See section 9(3) AAK. Note that eligibility for membership is sequel to the applicant passing the examination administered by the KASNEB and registration by the Registration and Quality Assurance Committee (RQAC) of the Institute. See section 4, 24 and 26 AAK

74 These functions are that of the RQAC. See sections 13, 20, 22 and 24 AAK

professional misconduct against members;[75] and the registration as accountant by Registration and Quality Assurance Committee (RQAC).[76]

A certified public secretary is a person who, in terms of the *Certified Public Secretaries of Kenya Act 1990*[77] (CPSKA), in consideration of remuneration or other benefits received or to be received by himself or in partnership with any other person offers to perform or performs services involving the submission of official and statutory returns of companies and trading organisations or the certification of statutory returns or records related to statements.[78] Worthy of note is the fact that the CPSKA provides that a person is qualified to be registered as a certified public secretary (CPS) if, *inter alia*, (a) he has been awarded the requisite certificate by the KASNEB, or (b) at the commencement of the Act is registered as accountant under the AAK, or (c) he is on the 30 June 2002 an advocate of the High Court of Kenya.[79] And, once registered, the CPS becomes a member of the Institute of Certified Public Secretaries of Kenya[80] (ICPSK) which has, amongst others, the responsibility of promoting standards of professional competence and practice amongst members of the Institute.[81]

In Kenya, a legal practitioner is a person who, in terms of the *Advocates Act*[82] (AdAK), has been admitted as an advocate in Kenya, has his/her name on the roll of advocates,[83] and possesses a valid practising certificate issued by the Registrar of the High Court of Kenya.[84] The condition precedent to admittance to practice is as specified in section 13 of the AdAK which includes possessing credentials approved by the Council of Legal Education.[85] Once admitted, the legal practitioner becomes subject to the *Law Society of Kenya Act*[86] (LSKA) and a member of the Law Society of Kenya (LSK).[87] The LSK is saddled with the responsibility of (1) ensuring that all persons who practise law or provide legal services in

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75 This falls within the purview of the Disciplinary Committee of the Council of ICPAK. See section 31-33 AAK

76 See section 4, 24 and 26 AAK. Note that membership of ICPAK is not a condition precedent to the right to practice as an accountant in Kenya

77 Cap. 534 Laws of Kenya 2012

78 See section 15 (1) (b) and (c) CPSKA

79 See section 20 (1) (a), (e) and (f) CPSKA

80 See section 3 CPSKA

81 See section 7 CPSKA

82 Cap. 16 Laws of Kenya

83 The roll of advocates is kept by the Registrar of the High Court of Kenya pursuant to section 16 and 18 AdAK

84 This is mandatory pursuant to section 21 AdAK

85 The Council of Legal Education (Kenya) was established by section 4 of the *Legal Education Act* (No. 27 of 2012) Laws of Kenya and its functions include the regulation of legal education and training in Kenya offered by legal education providers and the administration of such professional examinations as may be prescribed under section 13 of the AdAK

86 (No. 21 of 2014) Laws of Kenya

87 The LSK is established under section 3 of the LSKA

Kenya meet the standards of learning, professional competence and professional conduct that are appropriate for the services they provide; and (2) protect and assist the members of the public in Kenya in matters relating to or ancillary or incidental to the law.[88]

5.4.1.2 Incorporation

With regard to incorporation service, no tax intermediary has a monopoly. Pursuant to section 48 of the CAK, the registration of a company in Kenya is commenced by a written application to the Registrar of Companies to reserve a desired name. Non-professionals (i.e. individuals) can bring the application.[89] Once the application for name reservation is approved, the person(s) desirous of incorporating the company must prepare the requisite statutory documents[90] and forward same, along with the statutory application to the Registrar of Companies for consideration. Note that a tax intermediary with the requisite skill may however be procured for the drafting or preparation of the Memorandum and Article of Association as well as the Statement of Nominal Capital where the applicant does not adopt the models provided by the CAK.

5.4.1.3 Book keeping

Once registered, the company becomes incorporated and the book keeping obligation commences. The company is obligated to keep proper financial records,[91] prepare financial statements[92] and reports for each relevant year as well as file the documents along with its annual returns with the Registrar as per their respective statutory filing deadline or date.[93] In the above context, the accountant and CPS can function. Noteworthy is the fact that the preparation of the statutory documents requires the service of an accountant.[94] This is because it is only a person so qualified that can perform the task which the standards of accounting and auditing practice require in relation to the preparation, verification and auditing of financial statements. More so, the services of such a professional are statutorily

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88 See section 4 LSKA

89 See section 11 of the *Companies Act 2015* (Act No. 17 of 2015) Laws of Kenya. Hereafter referred to as CAK

90 This includes: (1) memorandum of association in the prescribed form (i.e. FORM CR2 (for company with share capital), FORM CR3 (is for company limited by guarantee) and FORM CR4 (for company whose liability is unlimited); (2) statement of capital and initial shareholdings; (3) statement of guarantee if the company is to be a company limited by guarantee; (4) statement of proposed officers; (5) articles of association in the prescribed form. See generally section 11-17, CAK; Parts I, II and First Schedule of the *Companies (General) Regulations 2015* (CGRK) issued by the Attorney General of Kenya pursuant to section 1022, CAK

91 See section 628-629 CAK

92 See section 638 CAK for the components of a complete financial statement. Also see section 639 *et seq* for other rules that regiment company financial statement preparation

93 See section 683-694 CAK (rules for filing of financial statements); section 705-708 CAK (rules regarding the content and filing of annual reports)

94 An accountant in Kenya is a person registered pursuant to section 24 AAK

required to ensure compliance. For example, section 717-718 and 721 of the CAK mandates that private and public companies must appoint an auditor to audit the company's annual financial statements for every relevant financial year.[95] However, in terms of complying with the filing obligation, a CPS can be procured. This is because, first, sections 705-708 of the CAK which relates to the filing obligation of companies in Kenya are silent on the qualification of the person who is to make the filing or lodgement of the returns. Secondly, pursuant to section 15(1) (b) of the *Certified Public Secretaries of Kenya Act 1990*, the functions of a CPS include the submission (which is analogous to filing) of official and statutory returns of companies and trading organisations.

Another consequence of the registration is that the company becomes subject to the *Income Tax Act*[96] (ITAK). Section 3 of the ITAK provides that:

> 1. Subject to, and in accordance with this Act, a tax to be known as income tax shall be charged for each year of income upon all the income of a person, whether resident or non-resident, which accrued in or was derived from Kenya.
> 2. Subject to this Act, income upon which tax is chargeable under this Act is income in respect of:
>   a. gains or profits from:
>   i. a business, for whatever period of time carried on;
>   ii. …

In compliance with its tax obligation, the company must file a tax return within six months of the end its accounting period with the Kenya Revenue Authority (KRA). A prominent constituent of the tax return is the audited financial statement of the company which contains the company account, a document that must be prepared or examined by an authorised tax agent. Section 2(1)(b) ITAK defines 'authorised tax agent' as:

> any person who prepares or advises for remuneration, or who employs one or more persons to prepare for remuneration, any return, statement or other document with respect to a tax under this Act; and for the purposes of this Act, the preparation of a substantial portion of a return, statement or other document shall be deemed to be the preparation of the return, statement or other document

This means that only the holder of a practising certificate or authority to practice issued in accordance with the AAK qualifies as an authorised tax agent pursuant to section 19 of the AAK. Pursuant to the *Tax Procedures Act 2015*[97] (TPAK) not all accountants can, in the provision of tax intermediary services, prepare tax return, etc. or relate with the KRA on behalf of a taxpayer (i.e. the company). This is because to qualify for this (i.e. to prepare

95 See generally Part XXVII CAK with regard to requirement for appointment of auditor, the appointment, function and cessation of office of auditor as well as the liability of the auditor
96 Cap. 470 Laws of Kenya
97 (No. 29 of 2015) Laws of Kenya

tax returns, notices of objection or otherwise transact business with the KRA under a tax law on behalf of a taxpayer) an authorised tax agent (i.e. the accountant) must apply for a licence in the prescribed form (accompanied by the prescribed fee) to the Commissioner, KRA (C-KRA) who shall issue the licence if the applicant is a fit and proper person to prepare tax return, notices of objection or otherwise transact business on behalf of taxpayer with the C-KRA.[98]

That said, it should be noted that the TPAK also provides that non-licenced persons, except legal practitioners acting in the ordinary course of their profession, cannot act as a tax agent or aid another for reward/fee with regard to any matter connected to a tax law or interface with the KRA (i.e. act as tax intermediary) on behalf of a Kenyan taxpayer.[99] Furthermore, a query which arises relates to the status of the CPS in the context of licencing as a tax agent. The consequential questions include whether a CPS can be licenced as a tax agent in view of the fact that the functions of person so qualified consist of the filing of official and statutory returns of companies and trading organisations?[100] Or, would 'qualification' for licensing be determined in the context of section 21 of the TPAK as whole or only in the context of the applicant being a 'fit and proper person to prepare tax returns'?

5.4.1.4 Advisory

Legal practitioners and accountants also provide services which are, in the context of this investigation, considered advisory. As stated hitherto, tax advisory encompasses every service provided by the tax intermediary that does not come within the ambit of incorporation and book keeping. It, therefore, includes tax risk identification and mitigation, tax planning and representation. From the tenor of the legislation (i.e. the CAK, AAK, AdAK and TPAK), it seems that the advisory function in Kenya is the preserve of the legal practitioners and accountants. Again, a consideration of the provision of section 15 of the CPSKA and section 19-20 of the TPAK gives the impetus for the conclusion that CPS are not exclude from this role or function. Worthy of note is the fact that no legislation exists which delineates what is acceptable or the minimum standard of conduct in relation to the provision of advisory service. Thus, it is concluded that tax intermediaries who provides such service must function within the ambit of the rules of professional conduct put in place by the ICPSK, LSK and ICPAK as well as the respective legislation under which the respective professional associations were established.

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98 See section 19-20, TPAK. Note section 20(4) which provides that licence issued a tax agent shall be valid until it is cancelled pursuant to section 22 TPAK

99 Section 21 TPAK

100 See section 15(1) (b) CPSAK

With regard to the representation of companies before the KRA, there is an added layer of regulation which varies the rules applicable to accountants. This is primarily the consequence of sections 19-21 of the TPAK. Specifically, section 19(1) of the TPAK requires a tax intermediary to apply to the C-KRA for the grant of a licence to practise as a tax agent; section 20(1) of the TPK states that the licence shall be issued to an applicant under section 19 if the latter is a fit and proper person to prepare tax returns, notices of objection, or otherwise to transact business with the C-KRA under a tax law on behalf of a taxpayer and section 21(2) excludes legal practitioners from the requirement of licensing as a tax agent. The variation is further heightened by sections 2 and 25 of the *Tax Appeal Tribunal Act.*[101] The latter provides that, for any hearing before the Tribunal, an appellant has the option of appearing in person or being represented by a tax agent or by a legal practitioner of its choice; while the latter defines 'tax agent' as 'a person acting on behalf of another person on matters relating to tax and is registered as such by the Commissioner' (i.e. the C-KRA).

Noteworthy is section 81 of the TPAK under which a person who fails to apply for registration, deregistration or cancellation of registration as required without reasonable excuse shall be liable to a penalty equal to KSH100,000 for every month or part of a month[102] for the period commencing from the month the person became qualified for the registration, deregistration or cancellation of registration and ending on the month immediately preceding the month the person submits the requisite application or is registered, deregistered or has his/her registration cancelled by the C-KRA pursuant to section 22(3) of the TPAK.

5.4.1.5 Comparison with Nigerian Situation

Tax intermediary management in Kenya shares some similarity with that of Nigeria. This is primarily because the persons who qualify to become tax intermediaries in both jurisdictions are members of professions and entities created and/or recognised by law. The respective entities are by law empowered to, *inter alia*: determine and implement relevant as well as effective minimum qualifications and experience requirements for aspiring TIs, formulate and implement continuing professional regimes, codes of conduct, professional practice standards and disciplinary codes for the regulation of the persons who hold membership. This creates a system of self-regulation by the profession. This form of regulation (and the consequential form of management) derives its strength from the fact

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101 (No. 40 of 2013) Laws of Kenya

102 This is subject to section 81(3) of the TAA which limits the fine that could be imposed to KSH1 million notwithstanding the tenure of the noncompliance

that the regulator (i.e. the ICPAK, LSK and ICPSK) is comprised of persons who are part of the profession and are aware of the idiosyncrasies of the environment (i.e. the market) in which members of the relevant profession operate. This provides the regulator with a better sense of how regulations might affect the services of the TIs and influence their behaviour. In addition, since the regulators can easily access market information, they can draw upon the skills and experience of their members to regulate the profession. Furthermore, the access to market information provides the regulator with the ability to respond and act quickly in light of changing circumstances.[103] This, however, is where the similarity ends.

The review of the Kenyan situation reveals that there is an additional level of regulation by virtue of the licencing of qualified person as tax agent by the C-KRA. This is lacking in Nigeria. Licensing (which is effectively the registration of TIs) vests KRA with oversight functions with regard to the practice of TIs in Kenya. It provides it with the ability to identify tax intermediaries as well as the opportunity of understanding and effectively managing the role of TIs within the Kenyan tax system.[104] Due to this additional level of regulation of TIs, a system of self-regulation with public oversight is what actually exists in Kenya. This form of regulation is an improvement on self-regulation by the profession as it fuses the strengths of the latter with the associated reporting requirement imposed on the professional bodies and the oversight function of the KRA.[105] Furthermore, as a result of this form of regulation, Kenyan TIs have been made accountable to the KRA (a party other than their employer the taxpayer).

Another peculiarity of the Kenya system is the fact that TIs seem to have no statutorily reserved role to play with regard to company incorporation. This is unlike their Nigerian counterparts who have the exclusive preserve of interacting with the Corporate Affairs Commission, the Nigerian agency saddled with *inter alia* the responsibility of receiving and approving all application for incorporation, throughout the incorporation process. Although the direct effect of this is on the cost or ease of doing business, it is bound to have an impact on the tax compliance behaviour of companies. This is because, the absence of the cost associated with the procurement of incorporation service improves the disposable income of Kenyan companies. In the circumstances, the absence of the

[103] See IFAC, supra note 11, 4
[104] See OECD, supra note 4, 256 where this was identified as a benefit of registration of tax intermediaries
[105] IFAC, supra note 11, 4

associated cost reduces the list of referents with the capacity to influence or actuate tax compliance behaviour.

5.4.2 South Africa

5.4.2.1 Assuming the Role of Tax Intermediary

The primary qualification for the assumption of the role and capacity to function as a tax intermediary in South Africa is registration in terms of section 240 of the *Tax Administration Act* (TAA)[106] with the South Africa Revenue Service (SARS). Section 240 states that:

> 1. Every natural person who:
>   a. provides advice to another person with respect to the application of a tax Act; or
>   b. completes or assists in completing a return by another person, must:
>   i. register with or fall under the jurisdiction of a 'recognised controlling body' by the later of 1 July 2013 or 21 business days after the date on which that person for the first time provides the advice or completes or assists in completing the return; and
>   ii. register with SARS as a tax practitioner in the prescribed form and manner, within 21 business days after the date on which that person for the first time provides the advice or completes or assists in completing the return.

On the basis of the above, the individual must first be a member of a recognised controlling body (RCB). A review of section 240A reveals that RCBs are professional associations like ANAN, ICAN and NBA in Nigeria and LSK and ICPAK in Kenya. Pursuant to section 240A of the TAA, there are two categorises of RCBs: (a) those automatically recognised by the TAA; and (b) those that are entitled to apply to the Commissioner of SARS (C-SARS) for recognition as an RCB subject to their meeting the criteria set out in the TAA.[107] A

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[106] (No. 28 of 2011)

[107] See section 240A(2) stipulates that the Commissioner may recognise a controlling body, if the body: (1) maintains relevant and effective minimum qualifications and experience requirements; continuing professional education requirements; codes of ethics and conduct; and disciplinary codes and procedures; (2) is approved in terms of section 30B of the *Income Tax Act 1962* for purposes of section 10 (1)(d)(iv) of that Act; and (3) has at least 1000 members when applying for registration or reasonable prospects of having 1000 members within a year of applying. Also, pursuant to section 240A(6) of the TAA, if an RCB no longer meets the statutory requirements, the Commissioner is statutorily obligated to notify it that if corrective steps are not taken within the period specified in the notice, its recognition will be withdrawn at the end of the period. The current RCBs are the Chartered Institute of Management Accountants (CIMA), Chartered Secretaries Southern Africa (CSSA), Financial Planning Institute (FPI), Institute of Accounting and Commerce (IAC), SA Institute of Chartered Accountants (SAICA), SA Institute of Professional Accountants (SAIPA), SA Institute of Tax Practitioners (SAIT), The Association of Chartered Certified Accountants (ACCA), Association of Accounting Technicians Southern Africa (AAT(SA)). See SARS, *Controlling Bodies for Tax Practitioners* (27 March 2018).

distinct feature of the latter group is that they are not creations of legislation, but essentially different groupings of professionals in the organised private sector who routinely provide the service contemplated in section 240 for consideration.[108] The former group is however constituted by creations of legislation namely: the Independent Regulatory Board for Auditors (IRBA);[109] a law society established in terms of chapter 3 of the *Attorneys Act 1979*;[110] the General Council of the Bar of South Africa, a Bar Council and a Society of Advocates referred to in section 7 of the *Admission of Advocates Act 1964;*[111] and any statutory body that the Minister of Finance deems similar to any of the aforementioned statutory bodies.

The consideration of tax intermediary management in South Africa would take the same pattern as was adopted with the review of the Nigerian and Kenyan situations, i.e. a review of the nature or form of management to which tax itermediaries in South Africa are subject to in the course of the provision of incorporaton, book keeping and advisory services.

5.4.2.2 Incorporation

Company incorporation in South Africa is under the *Companies Act 2008*[112] (CA) which affirms the notion that a company is a vehicle for the achievement of economic and social benefits.[113] Companies incorporated under the CA are either profit or non-profit companies.[114] Under the CA regime, a company can be incorporated by an individual.[115] The incorporation process commences with the reservation of name[116] followed by the mandatory lodgement of the Notice of Incorporation and a copy of the Memorandum of Incorporation of the proposed company with the Companies and Intellectual Property Commission[117] (CIPC). Where the documents are adjudged proper and fit for purpose in terms of the CA, the company becomes incorporated and vested with juristic personality.

5.4.2.3 Book keeping

Available at http://www.sars.gov.za/ClientSegments/Tax-Practitioners/Pages/Controlling-Bodies-for-Tax-Practitioners.aspx (accessed 6 June 2018)

108 See section 240 (2) and (3) TAA which delineates the category of those who are to register as tax practitioners with SARS

109 Established pursuant to section 3 of the *Auditing Professions Act 2005* (Act No. 26 of 2005)

110 (Act No. 53 of 1979)

111 (Act No. 74 of 1964)

112 (Act No. 71 of 2008). It replaced the *Companies Act 1973* (Act No. 61 of 1973) and came into effect on 1 May 2011

113 See generally section 7 CA (purpose of the Act)

114 Section 8(1) CA

115 Section 13(1)(a) CA

116 Section 12(1) CA

117 The CIPC administers the CA and other legislation which relate to corporate and intellectual property regulation in South Africa. It is established pursuant to section 185 of the CA and its mandate can be traced to sections 186-188 of the CA

The service of book keeping in South Africa is statutorily reserved for registered tax practitioners. This is pursuant to section 240 of the TAA which makes it mandatory for every natural person who completes or assists another with the completion of a tax return to first register with any of RCBs and thereafter with SARS not later than 21 business days after the provision of the service. Upon registration with SARS, the tax practitioner is issued a personal identification number (PIN) which is always required of him/her when accessing the SARS eFiling portal for the purpose of completing and submitting returns on behalf of clients.

Without this double registration tax practitioners' capabilities vis-a-vis clients would be limited as any lacking double registration would not be able to provide the full spectrum of book keeping service. Another consequence of the double registration is that it makes tax practitioners subject to two regulatory regimes: (i) that of the RCB to which they belong; and (ii) that administered by SARS under the TAA. Although both regulatory regimes are interconnected, it seems the latter is superior by virtue of the fact that SARS has the capacity to:

1. Recognise the professional body before its members can qualify as tax practitioners in terms of the TAA as well as de-recognise in appropriate circumstances;[118]
2. Initiate and/or takeover the disciplinary process of a tax intermediary where it is dissatisfied with that of the RCB;[119] and
3. Lodge complaints against tax practitioners with their RCB for acts and omissions in their professional and personal capacity which could impact negatively on the activities of SARS and the administration of the South African tax system.[120]

The above should not be taken to mean that the RCB plays little or no role in the regulation of the practice of tax practitioners in South Africa. Pursuant to section 240, it is the responsibility of RCBs to:

1. Manage compliance of members registered as tax practitioners;
2. Act on complaints submitted by the public and SARS concerning members;
3. Report non-compliance of members to SARS and the public; and
4. Furnish SARS with bi-annual reports of actions taken on complaints from both SARS and the public.[121]

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118 Section 240A (1) – (3) and (6) TAA
119 See section 240A (4) and (5) TAA
120 See section 241 TAA. This is however subject to section 232 TAA
121 See SARS, 'Guide for Tax Practitioners on eFiling' (Revision 4), 3. Available at http://www.sars.gov.za/AllDocs/OpsDocs/Guides/GEN-ELEC-10-G01%20-

It should be noted that the SARS-administered regulatory regime expands the management framework within which tax intermediaries in South Africa operate beyond the confines of the statements of professional standards and rules of conduct of the respective professional units or RCBs. For example, pursuant to Part B of chapter 4 of the TAA,[122] a tax intermediary who in the course of providing book keeping services acts as a promoter [123] of a reportable arrangement[124] is obligated under section 37 of the same Act to disclose to SARS the information specified in section 38 of the TAA.

5.4.2.4 Advisory

The provision of advisory service by tax practitioners is subject to the same regulatory regime as is the provision of book keeping services discussed above. Section 240(1) of the TAA provides that every natural person who provides advice to another person with respect to the application of a tax Act must be registered. Where the qualified person is unregistered, s/he will not be able to practise as a tax practitioner or qualify for the receipt of assistance from SARS.[125] Furthermore, such an individual is guilty of an offence under the TAA, and on conviction, is liable to a fine or imprisonment for a period not exceeding two years.[126]

5.4.2.5 Comparison with Nigerian Situation

Like Kenya, South Africa has in place a system of self-regulation with public oversight. In addition, since individuals can bring an application for company incorporation in South Africa, tax intermediaries are denied the exclusive preserve of being the only persons qualified to so do as is the case in Nigeria. This is similar to the situation in Kenya.[127] Despite the this, compared to the Nigerian situation, the state through SARS, has a higher level of oversight over the practice of tax intermediaries. The TAA vests SARS with the responsibility of recognising and derecognising controlling bodies of natural persons (other than the RCBs created by law and referred to in section 240A (1) of the TAA) who provide tax intermediary services. Thus, the others (i.e. CIMA, CSSA, FPI, SAIT, IAC, SAICA, SAIPA, ACCA, AAT(SA)) enjoy the privilege associated with being an RCB for as long as they meet the qualifying criteria set out in section 240A.[128] The foregoing is lacking in

%20Guide%20for%20Tax%20Practitioners%20on%20eFiling%20-%20External%20Guide.pdf (accessed 9 June 2018). Hereafter referred to as eFiling Guide

122 This is the legal premise of South Africa's reportable arrangement regime

123 A promoter is defined as 'a person who is principally responsible for organising, designing, selling, financing or managing the reportable 'arrangement'' in section 34 of the TAA

124 See sections 35 and 36 of the TAA respectively for what is and is not a reportable arrangement

125 eFiling Guide, 28

126 Section 243(c) TAA

127 See section 48 CAK

128 See section 240A(6) TAA

Nigeria. ANAN, CITN, ICAN and NBA cannot be stripped of their status by FIRS. They can lose their status only upon the repeal of their respective establishment Act by the National Assembly.[129] The case of the NBA is, however, unclear by virtue of its status.[130]

Furthermore, under section 240A(4) of the TAA, the Minister of Finance has the power to interfere in the disciplinary process of an RCB if s/he is satisfied that the RCB's disciplinary process is ineffective. This s/he can do by appointing a panel to decide on behalf of the RCB complaints lodged against its member(s).[131] In Nigeria, no Minister has a statutory right to interfere. The role of the Minister vis-a-vis ANAN, CITN, ICAN and NBA are clear and does not include the direct interference with disciplinary matters of the aforementioned.[132] For example, paragraph 2 of the Second Schedule of the CITNA, however, vests the Attorney General of the Federation (who is also the Minister of Justice) with the power to make: (1) rules as to the selection of members of the Disciplinary Tribunal of CITN; and (2) the rules of procedure to be followed and observed in proceedings before the Disciplinary Tribunal does not extend to power to interfere.[133]

The South African system is further distinguished by the existence of the reportable arrangement regime (RAR).[134] The RAR contains rules which are similar to the mandatory disclosure rules (MDR) recommended by the OECD Base Erosion and Profit Shifting (BEPS) project for the management of tax intermediary practice.[135] Action 12 of the BEPS project recommends the legislation of MDR by countries to facilitate the disclosure and receipt of timely information regarding potentially aggressive tax planning schemes and to identify the promoters/users of the schemes so as to provide the state with an opportunity

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129 Section 4 of the *Constitution of the Federal Republic of Nigeria 1999* (CFRN) vests the National Assembly (NA) with the power to legislate in terms of Item 49 of the Part 1 of the Second Schedule of the CFRN. The latter bestows on the NA the power to designate an occupation as professional. Thus, the NA can repeal the ANANA, CITNA and ICANA through which accountancy and taxation were designated professional occupations. The case of the NBA and the legal profession is different

130 The NBA is not a creation of statute, nor is it a trade union or a registered trade union. In addition, it is pursuant to Part 1 of the Second Schedule of the CFRN designated by law as a professional body. See *Fawehinmi v The NBA & 4 Others* (No.2) (1989) 2 NWLR (Pt.105) 2 where the Supreme Court considered the status of the NBA

131 *Ibid*

132 For example, 'Minister' appears 12 and 13 times respectively in the ANANA (with regard to the Minister of Finance) and the ICANA (with regard to the Minister of Education). Noteworthy is the fact that none of the mentions vests the respective Ministers with power to interfere in the disciplinary matters of ANAN and ICAN

133 See also paragraph 2 of the Second Schedule of the ANANA for a similar provision

134 South Africa's RAR has its origin in the *Income Tax Act* (No. 58 of 1962) (ITA). See Steenkamp, L & Cramer, P, 'Reportable Arrangements: Tax Partner Perceptions of Some Problematic Terminology' (2014) Vol. 7 (Issue 1) *Journal of Economic and Financial Sciences* 145 where the authors conclude that some terminology in the RAR require clarification

135 OECD, *Mandatory Disclosure Rules, Action 12 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project* (Paris: OECD Publishing, 2015)

for the early identification of emerging policy issues.[136] While the objectives of Action 12 are the increase of transparency and deterrence,[137] in relation to tax intermediary management, Action 12 specifically recommends that a disclosure obligation be imposed on both the promoter (i.e. the tax intermediary) and the taxpayer or either the promoter or the taxpayer where the transaction or arrangement possesses any of the predetermined hallmarks of a reportable transaction.

Section 35 and 36 of the TAA embodies the current reportable arrangement regime in South Africa. These provisions are however subject to *SARS Notice 140*[138] which delineates what is and is not a reportable arrangement in South Africa. The reportable arrangement regime is a tool which enables the Commissioner of SARS to evaluate relevant arrangements 'from an anti-avoidance point of view at an early stage of the implementation thereof'.[139] Currently, arrangements in the form of hybrid equity instruments, share subscription and buy-back arrangements, foreign trusts, assessed loss companies, foreign insurance and foreign services are on the reportable arrangement list, while those that yield or would yield aggregate tax benefit of less than R5 million to all participants or have tax benefit that is not the main or one of the main benefits of the arrangement are listed as excluded arrangements in terms of section 36 of the TAA.[140]

Where a transaction is reportable in terms of section 35 of the TAA and *SARS Notice 140*, the tax intermediary bears the disclosure burden except where the intermediary is not a resident of South Africa. In that case, the disclosure obligation is on the participant (i.e. the taxpayer).[141] Although the South African RAR predates BEPS Action 12, it specifies, as was recommended in the latter, what has to be reported,[142] when the report has to be

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136 *Ibid*, 9 and 18. Also see Kujinga, BT, 'A Comparative Analysis of the Efficacy of the General Anti-Avoidance Rule as a Measure Against Impermissible Income Tax Avoidance in South Africa' (2014) (Unpublished LLD thesis submitted to The University of Pretoria, South Africa) 57

137 Supra note 135

138 *SARS Notice 140: Public Notice Listing Arrangements for Purposes of Sections 35(2) and 36(4) of the Tax Administration Act 2011 (Act No. 28 of 2011)* (hereafter referred to as SARS Notice 140)

139 SARS, 'Reportable Arrangement Guide' (1 March 2005). Available at http://www.sars.gov.za/AllDocs/OpsDocs/Guides/LAPD-IT-G15%20-%20Reportable%20Arrangement%20Guide%20-%20External%20Guide.pdf (accessed 8 June 2018) (hereafter referred to as RAG) for an exposé on the predecessor of the RAR but relevant to the RAR under section 35-36 TAA

140 See PwC, 'Reportable Arrangements and Excluded Arrangements' (9 February 2016) *Tax Alert*. Available at https://www.pwc.co.za/en/assets/pdf/taxalert/tax-alert-reportable-arrangements.pdf (accessed 8 June 2018) for a review of the content of the SARS Notice 140

141 Section 37 TAA

142 See section 38 TAA for a list of the information that has been submitted by the tax intermediary or taxpayer

made,[143] consequences of non-compliance[144] and disclosure. Other jurisdictions with MDR include the United Kingdom,[145] the United States,[146] Canada,[147] Portugal[148] and Ireland.[149] The European Union is on the verge of joing jurisdictions with MDR as it is about to, via enactment, compel TIs who provide clients with complex cross-border financial schemes to make a report of the same to the relevant tax authority.[150] Where an MDR is legislated, TIs (and/or taxpayers in some circumstances) would be statutorily obligated to provide information to the relevant tax authority at an early stage of the implementation of a tax planning scheme which has any of the hallmarks specified in the MDR.

5.5 CONCLUDING REMARKS

This section has had two objectives: (1) the review of the role of TIs from a theoretical and factual perspective; and (2) the determination of the level (and/or form) of management of tax intermedairy practice in Nigeria as well as that in Kenya and South Africa. The latter two jurisdictions were reviewed so as to identify and highlight features pecular to them that could be adapted by Nigeria. With regard to the first objective, the conclusion is that there is a variation between the role of tax intermediaries from a theoretically perspective and the role they actually play vis-à-vis the services provided to taxpayers. This has brought about a role dysfunction.With regard to the second objective, it was highlighted that the practice areas of interest (i.e. the provision of incorporaton, book keeping and advisory services by tax intermediaries) are basically subject to professional regulation and/or government oversight. In the case of Nigeria, however, the favoured option is a mix of self-regulation through ANAN, CITN, ICAN or NBA statements of professional standard and codes of conduct to which members are expected to comply and uphold. External

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143 Section 37(4) of the TAA states that 'the 'arrangement' must be disclosed within 45 business days after an amount is first received by or has accrued to a 'participant' or is first paid or actually incurred by a 'participant' in terms of the 'arrangement''

144 Section 212 TAA provides that non-disclosure of a reportable arrangement within 45 days attracts the imposition of monthly penalties (for a period of 12 months) of ZAR50 000 for the participant and ZAR100 000 for the promoter. These penalties doubles where the anticipated tax benefit exceeds ZAR5million and triples where the anticipated benefit exceeds ZAR10million

145 See section 306-319, *Finance Act 2004(c.12)* and the *Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2016* SI 2016/No. 99

146 See CFR S. 1.6011-4 - *Requirement of Statement Disclosing Participation in Certain Transactions by Taxpayers*

147 See section 237.3, *Income Tax Action 1972*

148 See Decree-Law No. 29/2008 of 25 February 2008

149 See Chapter 3 in Part 33, *Taxes Consolidation Act 1997* (as amended by subsequent Acts up to and including the *Finance Act 2017)*

150 See 'Advisers set for tighter EU scrutiny over tax schemes' *EU Business* (14 March 2018). Available at https://www.eubusiness.com/news-eu/tax-advisers.13ca (accessed 15 March 2018). See the draft directive at http://data.consilium.europa.eu/doc/document/ST-6804-2018-INIT/en/pdf (accessed 15 March 2018). The origin of this document can be traced to the OECD BEPS Action 12

regulation (or government oversight)[151] is almost lacking as the tax intermediaries have no reporting obligation to any agency of government (e.g the FIRS or FRCN). The role of the government is limited to the recognition of the professions that vests capacity in persons to act in the role of a tax intermediary. In addiiton, the intermediaries are not subject to any further licensing regime specific to tax intermediation service or practice. Furthermre, the examination reveals that registration and licencing of tax intermediaires (favoured by Kenya and South Africa) and institutionalisation of a reporting regime (favoured by South Africa and recommended by the BEPS Action 12) are methodologies that could be adopted by Nigeria for the management of tax intermediary practice.

[151] See IFAC, supra note 11, 4-6 for a review for the various options for the regulation of tax intermediaries

CHAPTER SIX: DATA COLLECTION METHODS, PRESENTATION, ANALYSIS AND FINDINGS

6.1 INTRODUCTION

The fact that this research was carried out using a multi-stage mixed methods framework to facilitate the collection and analysis of data using a blend of methodologies (i.e. the qualitative and quantitative) was made known in chapter three. In chapter three, foundational and related issues (e.g. method, sampling scheme and sample size) were discussed. This makes it a forerunner to this chapter. In this chapter, the study proceeds further by describing the mechanics of the utilised data collection methods, presents the data collected as well as its analysis and findings, and presents the data analysis. Noteworthy is the fact that for the analysis, descriptive statistics were utilised and conclusions were subsequently drawn from the results.

6.2 DATA COLLECTION METHODS

6.2.1 Research Tools

As stated previously, the research design fused together qualitative and quantitative methods.[1] This fusion extended to the research tools as a combination of qualitative and quantitative research tools were used for collection of data. In addition to the document analysis which featured prominently throughout the entire research process, the initial design had the following:

1. A survey targeted at the taxpayer group. The intention was to reach the group through their respective tax office. In addition to the gatekeeper consent sought from the Executive Chairman of FIRS (ECFIRS) to enable the researcher access and recruit FIRS personnel as research participants, permission was also sought to enable the researcher have access to tax offices where the researcher would meet taxpayers. This was granted but because of the dynamics within the tax offices, interviews and overt

[1] See chapter 3 (paragraph 3.4 METHODOLOGICAL FRAMEWORK) *ante*

recruitment of research participants became impossible. As a result, the researcher subsequently resorted to observation and participant observations in the tax offices

2. A focus group discussion (FGD) and/or key informant interview (KII) targeted at tax intermediaries and government personnel who are associated with taxation and tax incentive administration. To facilitate access to these groups, the researcher again sought gatekeeper consent from the chief executive officers (CEOs) of the professional groups to which the tax intermediaries belong.[2] Furthermore, permission to conduct FGDs and/or KIIs at the mandatory professional development programmes of the respective professional groups was also sought from the CEOs of CITN, ICAN and NBA. These permissions were sought as it was envisioned that at these events the researcher could easily access a substantial number of research participants. Permission was, however, not granted by any of the CEOs. Again, the dynamics within the research field made it impossible for the researcher to be able to recruit participants for FGDs.

Notwithstanding the changes to the research design brought about by the dynamics of the research field, the initial decision to use FDGs and/or KIIs was influenced by the fact that they could be used for further exploration and validation of the findings of the survey.[3] The ease with which the research method and tools were changed in the course of the field work is a consequence of the multi-stage mixed methods framework (MMMF) utilised for the research. The MMMF is a melting pot for the epistemological divides (at the level of methods, approaches, concepts, tools and language) for the purpose of this research.[4]

That being said, a combination of document analysis, observation and participant observation, questionnaire as well as KIIs were eventually utilised as research tools to gather data. The aforementioned is reviewed subsequently.

a. Document Analysis

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2 See *Appendix 6.1* for a sample application for gatekeeper's consent. Also see *Appendix 1.1* for total number of gatekeepers' consent sought and gotten

3 On the utility of this tool, see Kumar, K, 'Conducting Key Informant Interviews in Developing Countries' (1989) *AID Program Design and Evaluation Methodology Report No. 13*. Available at http://pdf.usaid.gov/pdf_docs/PNAAX226.PDF (accessed 31 December 2015). It was resolved that the determinant of which of the two to utilise per time would be factors such as the willingness of the participants to provide information in a one-to-one situation and convenience. For further comparison of both, see Given, LM, (ed), *The SAGE Encyclopaedia of Qualitative Research Methods Vols. (1 & 2)* (2008) 352-353

4 See Tashakkori, A & Creswell, JW, 'Editorial: The New Era of Mixed Methods' (2007) Vol. 1(1) *Journal of Mixed Methods Research*, 3-7

Bowen described document analysis as a process which encompasses the evaluation of documents for content and/or themes[5] in a manner that would produce empirical knowledge and understanding of the area or subject of interest.[6] Hence it is a data collection method that involves the review and evaluation of documents for the purpose of gathering data that would be examined and interpreted in order to elicit meaning, gain understanding and develop knowledge.[7] Vis-à-vis this research, this involved the review of relevant literature, legislation, etc. with the intention of finding, assessing and extracting relevant data and themes from these documents. The data and themes derived were subsequently validated or corroborated using other data collection tools. The process of document analysis, however, turned out to be iterative as it was deployed at the onset and resorted to repeatedly in the course of the investigation.

b. Observation and Participant Observation

Observation is the systematic description of events and behaviours in the social setting chosen for the study.[8] As a research tool, its use requires the researcher/observer to be in the same environment or location as the research subject(s) but without participation in the activity(ies) therein. While in location, the researcher sensually observes the research subjects, records events as they unfold and subsequently reaches conclusions based on the observations.

Participant observation varies slightly from observation and this Edgerton captured thus:

> Participant Observation calls for "an investigator to enter the lives of the persons being studied as fully and naturally as possible. *It requires long-term involvement with these people* so that the investigator's presence becomes more or less natural. *The participant observer* listens to what people say, observes what they do, asks questions when it is appropriate to do so, and *participates in activities when that is acceptable.* In time - usually at least a year and at times much longer - the Participant Observer is usually able to describe most aspects of people's life activities, including some that occur rarely or are ordinarily hidden from view, and will be able to provide some sense of how these people think and feel about their lives.[9]

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5 O'Leary, Z, *The Essential Guide to Doing Research* (London: SAGE Publications, 2004) 10

6 Bowen, GA, 'Document Analysis as a Qualitative Research Method' (2009) Vol. 9 (No. 2) *Qualitative Research Journal* 27, 33-34

7 Bowen, supra note 6, 27

8 Marshall C & Rossman, GB, *Designing Qualitative Research* (CA: SAGE, 1989) 79

9 Edgerton, RB, 'The Participant-Observer Approach to Research in Mental Retardation' (1984) Vol. 88 (5) *American Journal of Mental Deficiency* 498-505, 498 cited in Kolesar, R, 'Participant Observation:

From the foregoing, it can be deduced that the distinct feature of participant observation is the fact that the observer takes part in the activities associated with the research subject(s) and his/her experience is considered a legitimate as well as important source of data.[10] The similarity between both tools is the fact that access to the target sample or population is achieved by the researcher immersing him/herself amidst them.[11]

The use of both tools for data collection was made possible by the fact that the research was carried out as a case study with the researcher in location in Nigeria for more than two-third of the research period. This period provided an opportunity for prolonged and iterative interactions with the research population and sample in diverse fora. Appendix 6.3 records interactions with research participants and the outcomes.[12]

c. Questionnaire

A questionnaire was used to solicit information from the 'directing mind and will' (i.e. alter egos) of taxpayers with regard to issues that had been pre-identified as indictors of their perceptions of themes of interest. Structurally, the questionnaire was divided into four sections (A-D). Section A introduced the researcher as well as the questionnaire to the respondent and provided an opportunity for the latter to confirm voluntary participation. Section B (i.e. questions 1-6) was designed for the collection of socio-demographic data, while section C (i.e. question 7-18) collected information on the taxpayer's past behaviour in relation to compliance, its use of TIs and the role played by the latter in relation to its (i.e. the taxpayer) compliance behaviour. In the collection of the aforementioned information both parts used nominal scales.[13]

A Research and Assessment Approach for Multiply Disabled Populations' (1998) Vol. 33 No. 3 *McGill Journal of Education* 253, 256-257

10 Waddington, D, 'Participant Observation' in Cassell, C & Symon, G (eds.), *Essential Guide to Qualitative Methods in Organizational Research* (London: SAGE, 2004) 155

11 Creswell, JW, *Qualitative Inquiry and Research Design: Choosing Among Five Approaches* (2nd ed.) (California: Sage Pub., 2007) 143

12 This and other facts associated with the research design (e.g. recognition of gatekeepers) gives the research an ethnographic tint. See Leedy, PD & Ormrod, JE, *Practical Research: Planning and Design* (10th Ed) (New Jersey: Pearson, 2013) 142-144; Creswell, supra note 11, 68-72 a discussion on the traits and hallmarks of an ethnographic research

13 With nominal scales there is no ordering or direction as it is a measurement scale with no inherent numerical value or magnitude but with which variables ae labelled or assigned values

Section D (i.e. question 19-47) was designed using the Ajzen's TPB questionnaire template as guide.[14] The use of the Ajzen's TPB questionnaire template was a logical progression from the adoption of the TPB as the theoretical framework of the research. It provided a guide to the amalgamation of themes (and questions) that are indicative of considerations[15] that actuate and/or influence human behaviour into a survey instrument. Thus, questions 19-27 focused on behavioural beliefs (i.e. the beliefs or perception of the respondents with regard to the likely consequences of specific courses of action or choices vis-à-vis tax compliance behaviour and the continuity of the business). Questions 28-37 focused on normative beliefs (i.e. the respondents' consideration of social/subjective norms and/or pressure as well as how the latter catalyse or influence their reaction to perceived social/subjective norms and/or pressure). Questions 38-47 focused on control beliefs (i.e. the determination of whether pre-identified variables impede or facilitate the manifestation of tax compliance behaviour).

Furthermore, section D used a seven-point Likert-type scale[16] for the rating of the responses to the comments/question. The use of the Likert-type rating scale allowed the researcher to ask respondents (as well as provided the latter with the opportunity to indicate) how strongly they agree or disagree with the statements or comments in the questionnaire.[17] It also created room within which respondents freely expressed their opinion, as respondents were not forced to implicitly express opinion in a particular direction which would have been the case if an even number of points had been used. Also, neutral (and not 'I don't know') was used as the midpoint on the Likert scale to provide respondents with a non-judgmental value to indicate a situation where they chose not to express an opinion with regard to a particular comment or statement.

d. Key Informant Interviews

KII is a form of interview.[18] It is however targeted at persons with the capacity to provide crucial information about the subject or object of interest to the researcher-

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14 See Ajzen, I, Constructing a Theory of Planned Behaviour Questionnaire. Available at https://people.umass.edu/aizen/pdf/tpb.measurement.pdf (accessed 31 March 2018)

15 These considerations are behavioural, normative and control beliefs. See paragraph 3.2.1 The Theory of Planned Behaviour above for a discussion of these considerations

16 See Appendix 6.2 for a sample of the questionnaire

17 Sanders, M, *et al*, *Research Methods for Business Students* (5th ed) (England: Pearson, 2009) 378

18 There seems to be a debate on the nature of interviews. Creswell suggests that interviews are one of the methods of collecting quantitative data. Denzin and Lincoln are of the opposite school of thought as they view interview as a qualitative method of data collection. See Creswell, JW, *Educational Research:*

interviewer.[19] Thus not everybody is the subject of a KII as interviewees are recruited because of the position they occupy or the role they play gives them specialist knowledge about the subject of interest to the researcher-interviewer.[20]

KII was used for the extraction of information from FIRS staff who have been or stationed in tax offices (i.e. the business units of FIRS), interact with taxpayers and/or their intermediaries in the course of the execution of their schedule of duties. Thus, FIRS personnel in support services like facility management, finance and administration security and safety were not interviewed. KII was also used to extract information from the tax intermediaries who by virtue of their role are repositories of information relevant to the research.

For the KIIs, an interview tool which contained questions was designed and used to guide both the researcher and the interviewees.[21] A mix of face-to-face and telephone techniques was adopted for the execution of the interviews. The choice of technique utilised per interview depended largely on overall logistical feasibility and the interviewee's availability. The face-to-face interview sessions were audio-recorded after obtaining express permission from the participants. This allowed the researcher to conduct the interviews more quickly as well as provided complete documentation. With the telephone interview, the researcher was only able to make notes.

6.3 DATA PRESENTATION, ANALYSIS AND FINDINGS

As stated previously, multiple data collection tools were utilised in the course of the field work. In this section, the data extracted with the varied methods in the course of the workflows, which constitute the MMMF, will be presented and analysed.

6.3.1 Workflow 1

Workflow 1 involved the use of a combination of document analysis, observation, participant observation and interviews. This mix of research tools allowed for triangulation

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Planning, Conducting and Evaluating Quantitative and Qualitative Research (4th ed.) (Boston, MA: Pearson, 2012) 376; Denzin, NK, & Lincoln, YS, 'Introduction: The Discipline and Practice of Qualitative Research' in Denzin, NK, & Lincoln, YS, (eds.), *The SAGE Handbook of Qualitative Research* (3rd ed) (California: Sage Publ. Inc., 2005), 23. Vis-s-vis this research,, it is considered qualitative because it was used as tool to get the interviewee to express their opinion or perception without any valuation or quantisation of the information given and regimentation other the interview guide

19 Edwards, R & Holland, J, *What is Qualitative Interviewing* (UK/USA: Bloomsbury Publ. Inc., 2013) 31

20 *Ibid*

21 See Appendix 6.3 for the interview tool

to validate the data (or information) as will be shown later. Furthermore, it was exploratory sequential in approach. This meant that qualitative data was first collected, then analysed and the finding(s) therefrom subsequently used to drive quantitative data collection

6.3.1.1 Document Analysis

The document analysis was iteratively utilised throughout the research process. In addition to providing the information which went into every chapter, it specifically provided the investigation with a few themes that had to be explored further especially as they relate to the peculiarities of the research (i.e. Nigeria as the research context and MSCs as the research population). One of such is the nature of the relationship between the role of a TI and taxpayer compliance behaviour.[22] On the basis of the document analysis, it was assumed that, because of the complexity of the tax system, TIs occupy a pivotal position from which they influence taxpayers' tax compliance behaviour. The foundation for this assumption includes the view that, by virtue of their training, TIs are better informed with regard to exploring the tax system as well as identifying tax minimisation/reduction provisions and opportunities therein.[23] This assumption was further fuelled by the thesis that no tax dodge (whether avoidance or evasion) is executed without the professional input or expertise of a TI. An example of the foregoing is the opinion of Tax Justice Network (TJN) that:

> these intermediaries are not just passive facilitators of illicit financial flows and other abusive activities. They are often active, and sometimes aggressive purveyors of these facilities. … Meanwhile, large-scale abusive tax avoidance schemes by multinational corporations are usually not requested by them originally, but are pushed onto them by high-pressure sales tactics from the Big Four accountancy firms and others.[24]

A fallout of the foregoing is the rather simplistic and stylised conclusion that the relationship between the role of TIs and taxpayer compliance behaviour (TpB) was causal.

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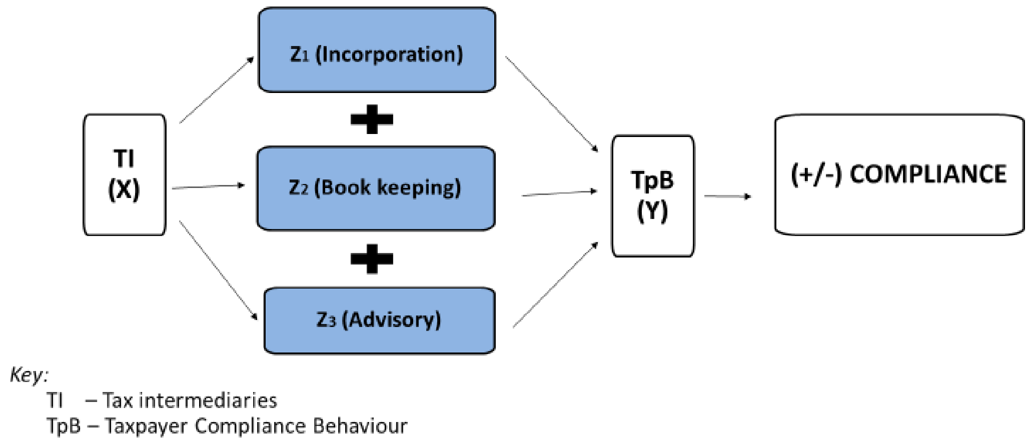
22 This theme relates to the second research question of the research. See chapter 1 (paragraph 1.4.3: Research Questions)

23 Kamau, CG, *et al*, 'Tax Avoidance and Evasion as a Factor Influencing 'Creative Accounting Practice' Among Companies in Kenya' (2012) Vol. 4 (No. 2) *Journal of Business Studies Quarterly* 77, 78 where it was argued that he complex nature of taxation makes the services of skilled intermediaries a necessity

24 TJN, *Enablers and Intermediaries.* Available at https://www.taxjustice.net/topics/finance-sector/enablers-and-intermediaries/ (accessed 22 August 2018). For other examples of opinions and conclusions which propagate this thesis, see Addison, S & Mueller, F, 'The Dark Side of Professionals: The Big Four and Tax Avoidance' (2015) Vol. 28 (Issue 8) *Accounting, Auditing & Accountability Journal* 1263 where literature which portray accountants as being at the forefront of tax avoidance and evasion was reviewed. Also see Sikka, P & Willmott, H, 'The Tax Avoidance Industry: Accountancy Firms on the Make' (2013) 9 (4) *Critical Perspectives on International Business* 415-443 where it was argued that it has become the 'business culture' of big accounting firms to construct and promote elaborate tax avoidance schemes. Further see Mitchell, A & Sikka, P, *The Pin-Stripe Mafia: How Accountancy Firms Destroy Societies* (UK: Association for Accountancy & Business Affairs, 2011)

Figure 6.1 below is a schema built on data gathered in the course of the document review and reflects the relationship that was assumed to exist between the role of the TI and TpB.

Figure 6.1: Causal Pathway



Source: Author

Within the precinct of the above assumption, TIs and TpB were respectively conceived as *X* (i.e. cause) and *Y* (i.e. effect) variables. At the core of the assumption was the conviction that, in the course of the provision of incorporation, book keeping and advisory services (i.e. Z_1, Z_2 and Z_3 respectively) TIs influence TpB and the location of the taxpayer on the compliance continuum.[25] On the basis of the foregoing, it was initially thought that there exists a cause and effect (causality) relationship between TI and TpB. This conclusion did not take into cognisance or contemplate the existence of intervening factors (B-factors). These and their possible effect will be discussed subsequently. In terms of the schema, the conclusion is that a pro-tax compliance TI would actuate the same tax compliance orientation in the taxpayer as well as bring about a similar TpB and vice versa.

6.3.1.2 Observation and Participant Observation

The dominant theme emerging from the document analysis (i.e. that TIs play a significant role in the shaping of and direct TpB) was subsequently validated using the data gathered

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25 In relation to taxation, compliance is conceived as a continuum which has at opposite ends compliant and non-compliant taxpayers. See chapter two for a discussion centred on the tax compliance continuum. For a treatise on tax compliance continuum, see James, S & Alley, C, 'Tax Compliance, Self-Assessment and Tax Administration' (2002) Vol. 2 (No.2) *Journal of Finance and Management in Public Service* 27, 29 and Erard, B & Ho, C, 'Mapping the US Tax Compliance Continuum' (2004) Vol. 268 *Contributions to Economic Analysis* 167-186

with observation and participant observation. Observation and participant observation provided data from which it was deduced that the influence of TIs on TpB is marginal. Firstly, with participant observation (in the form of informal discussions undertaken with the alter egos of MSCs at diverse fora) information was gathered from which it was inferred that:

1. The decision to incorporate a company or formalise an existing business by incorporation is actuated by a variety of reasons which includes:
    a. The nature or peculiarity of the trade or business;
    b. The cost and implication of the business incorporation;
    c. The ease of doing business with the chosen type or form; and
    d. The advice received.
2. Although the existence and capture of any advantage existing within and outside the tax system was not a factor taken into consideration at the point where the decision to incorporate a company or to formalise an existing business by incorporation was made, it subsequently became a prominent variable in the decision-making process.
3. Decisions regarding tax (i.e. what to pay and when to pay) are like any other business decision and within the purview of the owner of the business.
4. The decision to procure a TI is a consequence of the fact that the legal framework of CIT administration creates the role of the TI and is not one which the alter egos reach of their own volition. If there was the option of not recruiting TIs, therefore, it is surmised that would have been chosen and they would not feature in the scheme of things. This is because their presence increases the cost of compliance borne by the MSCs in the tax system.

Furthermore, during onsite observation at tax offices, it was commonplace to hear TIs in the course of interfacing with personnel of FIRS make statements that points to the existence of a disclosed principal-agent relationship between the TI and the taxpayer. In the context of the foregoing, the business-owner (i.e. the alter ego of the MSC) is principal and sole determiner of the direction which the company takes in relation to tax compliance. This further points to the existence of a coercive power relationship between the taxpayer and TIs, with the former being the wielder of the power and the TI the target of the exercise of the power. A person wields coercive power when there is an expectation on the part of another that punishment would be meted out by the former for his/her his non-compliance or non-conformity. In this situation, the target of the exercise of the power is influenced into compliance by the real or anticipated punishment. Note that the punishment need not be physical as it includes rejection or disapproval. In the context of the taxpayer-TI relationship, the withdrawal of patronage is akin to disapproval/rejection which is effectively a manifestation of coercive power.[26]

6.3.1.3 Questionnaire

Hitherto it was stated that findings of the document analysis, observation and participant observation would go into the creation of a questionnaire that would be used to elicit information on the dimensions of the issues of interest to the research from the alter egos of the MSCs.[27] With the Ajzen template, a questionnaire which had four sections and consisted of 47 questions was constructed and utilised in conducting a survey. A total of 12 response was received out of the 100 questionnaires that were administered between October 2017 and January 2018 in five cities in Nigeria chosen on the basis of convenience. The majority of the targeted research participants refused outright to participate in the research. Those who agreed were initially hesitant about responding to the questionnaire, and the researcher had to repeatedly assure them of confidentiality. To this end, for some of the research participants, a face-to-face administration of the questionnaire was adopted. Also, the recall window for the research and the fact that for an alter ego to participate, the company to which it is connected ought to have been incorporated not later than 2012[28] further reduced the population from which the research sample could be drawn.

The self-reported data collected with the questionnaire were subsequently analysed descriptively using the Statistics Package for Social Science (SPSS). That said, the focus shifts to the presentation and an exposition of the descriptive analysis of the data collected.

A. Section B: Socio-Demographic Characteristics

Frequency analysis was undertaken for the data relating to the role/position of the respondent in the company (i.e. question 1), the educational qualification of the respondent (i.e. question 2), the religious affiliation of the respondent (i.e. question 3), the form of the taxpayer (i.e. question 4) and the reason for the choice or form of the taxpayer (i.e. question 5). This was undertaken to determine mode. That is, to collate the response of the 12 respondents for each of the above questions.

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26 For a discourse on power, See French, RP & Raven, B, 'The Bases of Social Power', in Cartwright, D (ed), *Studies in Social Power* (Ann Arbor, Mich.: Institute for Social Research, 1959) 259-269; Raven, BH, 'The Bases of Power: Origins and Recent Developments' (1993) Vol. 49 (4) *Journal of Social Issues* 227-251; Raven, BH, 'Kurt Lewin Address: Influence, Power, Religion, and the Mechanisms of Social Control' (1999) Vol. 55 (1) *Journal of Social Issues* 161

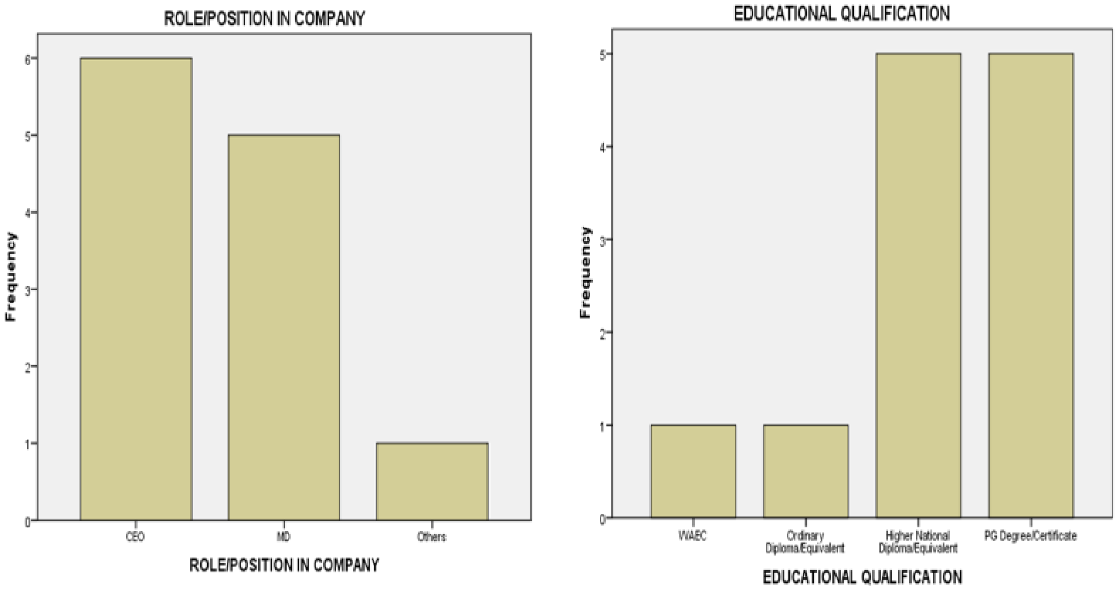
27 See chapter 3 (paragraph 3.4.1)

28 See chapter three (paragraph 3.4.3: sample size) for discourse on this aspect of the research design

i. Role/position in company and educational qualification

Figure 6.3: Socio-Demographic Characteristics (1) below presents the result of the analysis of questions 1 and 2. It shows that 11 of the 12 respondents have roles or positions that makes them alter egos of the taxpayer. The significance of this is that the respondents are by their roles and/or functions individuals whose acts and commissions, as well as, perceptions qualify to be deemed proxies for that of the taxpayer. Also evident from the *figure 6.2* is the fact that 10 of the 12 alter egos have at least a first degree or its equivalent and 5 of the 10 hold post graduate degrees or certification. This is the basis for the conclusion that the sample was constituted of educated persons who ought to be aware of taxes as well as having some knowledge of the mechanics of tax administration by virtue of being alter egos of the taxpayers.

Figure 6.3: Socio-demographic characteristics (1)



Source: Survey Data

ii. Religion and business form

The importance of question 2 stems from the fact that religion is a referent with power to actuate and influence behaviour.[29] *Figure 6.4: Socio-Demographic Charateristics (2)*

[29] See Raven, supra note 26, 169–178 for an incisive discourse on the capacity of religion to bring about social evolution/coordination. Also see, Mohdali, R & Pope, J, 'The Influence of Religiosity on Taxpayers' Compliance Attitudes: Empirical Evidence from a Mixed-Methods Study in Malaysia' (2014) Vol. 27 (Issue 1) *Accounting Research Journal* 71-91 (where it was concluded that religiosity had a statistically significant impact on voluntary tax compliance among Malaysians); Benk, S, *et al*, 'The Impact of Religiosity on Tax Compliance among Turkish Self-Employed Taxpayers' (2016) 7, 37 *Religions* 1-10 (where it was demonstrated that intrapersonal religiosity has a significant impact on voluntary tax compliance

reveals that the sample is evenly split between Christianity and Islam.[30] With regard to question 3, *figure 6.3* shows that 11 of the 12 respondents were associated with, or represented, a limited liability company, while one respondent did not respond to the question. This is in line with the focus of the investiagtion which business entities that come within the framewrok for CIT administration in Nigeria (specifically MSCs). Hence, unincorporated limited entities like business enterprises and partnerships were purposively excluded from participation.

Figure 6.3: Socio-demographic charactersitics (2)

***Sample size (n)* = 12**

Variable		**Frequency**
Religion	Christian	6
	Muslim	6
	Others	-
	Total	*12*
Business form	Limited liability company	11
	Public limited company	-
	Total	*11*

Source: Survey Data

iii. Form of business

In question 5, respondents were required to indicate, on a nominal scale having ‘yes’ and ‘no’ as categories, the variables which influenced the form and/or nature of the taxpayer. *Figure 6.4: Reason for form of business* summarises the results of the frequency analysis of the responses and it reveals that:

a. For the 12 respondents, the reduced cost associated with incorporating a private limited liability company relative to that associated with a public limited liability company, as well as the existence and the desire to capture advantage(s) accruable to the company by virtue of its incorporation, were not variables taken into consideration in the course of the decision-making process leading up to the choice of incorporation the Corporate Affairs Commission.

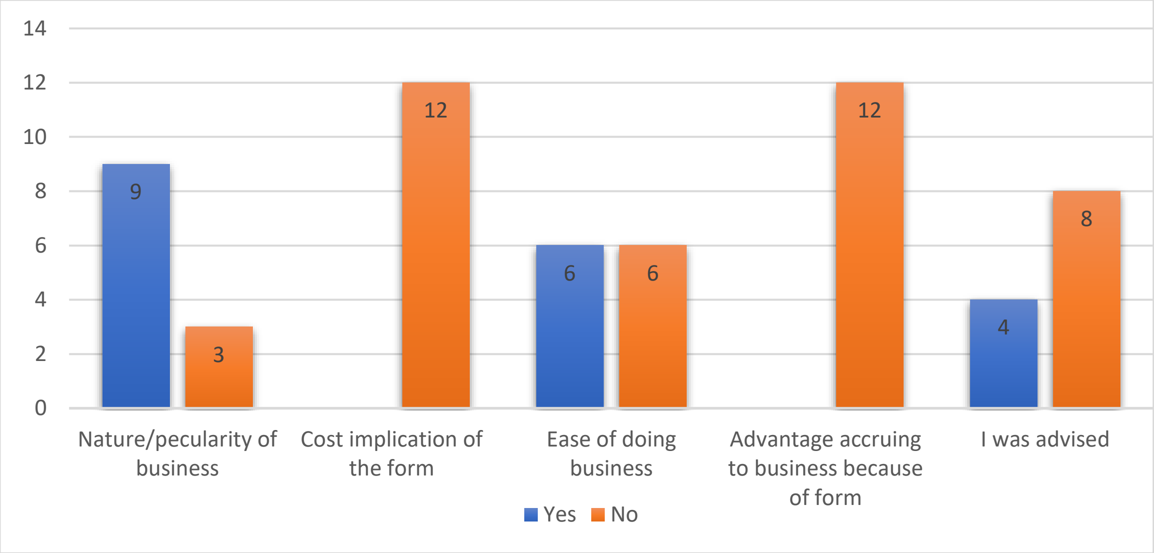
b. The ratio of respondents who identified the nature/peculiarity of the business venture as a variable taken into consideration in the decision-making process

30 It should be noted that this frequency was not achieved purposively but it is surmised that it is the product of the fact that the researcher relied heavily on referrals (which is the key feature of the snowballing) for the recruitment of research participants

leading up to the form of business incorporation is 8 of 12, while the ratio for those who attributed the choice to advice received is 4 of 12.

c. With regard to ease of doing business the response was evenly distributed. This means that while 6 of the 12 did take it into consideration, the other 6 did not.

Figure 6.4: Reason for form of business



B. Section C: Tax History

This section of the questionnaire sought to extract information relating to the compliance history of taxpayer from the alter egos. The majority of the questions in this section yielded categorical data (i.e. data or variables which are mutually exclusive). The analysis of the data was by cross tabulation on SPSS so as to bring to the fore the relationship between the categories or variables.[31]

The output of a cross tabulation analysis is often in pairs. The first (i.e. the case processing summary) presents the quantum of missing and valid values for the variables analysed, and the second table presents the cross tabulation. Since the same information is found in the cross-tabulation table, for this analysis only the cross-tabulation analysis is presented. Subsequent observations would also be derived with regard to the interaction of the two variables from the cross-tabulation table.

[31] See Williams, Y, *Cross Tabulation: Definition & Examples*. Available at https://study.com/academy/lesson/cross-tabulation-definition-examples-quiz.html (accessed 6 October 2018)

Table 6. 1: File tax return - Year of last filing Cross tabulation

		Year of last filing			Total
		2017	2016	2015	
File tax return	Yes	3	4	2	9
	No	1	0	0	1
Total		4	4	2	10

1. Table 6.1 presents the result of the comparison between the questions 7 and 8 respectively (i.e. whether the respondents file tax return and the year of last filing). From Table 6.1 the following is observed:
   a. The total of respondents was 10 of a sample of 12. This is indicative of 2 of the 12 having missing value.
   b. In 2015, 2016 and 2017 respectively, 2, 4 and 3 taxpayers filed their tax return. There is however no data for 2013 and 2014.
   c. One respondent however gave a negative answer to question 7 and then went on to indicate that 2017 was the year the company last filed return in Nigeria. This relationship is impossible as a negative answer in question 7 makes question 8 inapplicable. This effectively reduces the value for question 7 by one.

   Table 6.1 is indicative of a low compliance rate amongst the sample. This is because, by virtue of the research design, the taxpayers (i.e. the respondents) must have been in existence prior to the 2013 year of assessment. Hence, the response that would merit the sample being referred to as compliant would have been where the Table 6.1(b) showed that all the respondents filed tax return for 2013 year of assessment as mandated by CITA.

2. The cross-tabulation analysis for questions 10 (whether the business had paid interest and penalty before) and 11 (if yes, the year to which the penalty paid relates) is presented as Table 6.2

   Table 6.2: Payment of interest and penalty - Year of last payment of interest and penalty Cross tabulation

		Year of last payment of interest and penalty					Total
		2017	2016	2015	2014	2013	
Payment of interest and penalty	Yes	0	2	2	1	1	6
	No	1	0	0	0	0	1
Total		1	2	2	1	1	7

   Table 6.2 is premise for the following conclusions:

a. 7 of the sample responded to these questions. This is indicative of 5 of the 12 having missing value. Missing value means that the 5 did not select any of the variables (i.e. yes or no).

b. One respondent gave a negative answer to question 10 and then went on to indicate that 2017 was the year the company last paid interest and penalty. This relationship is impossible as a negative answer in question 10 makes question 11 inapplicable. This makes the value for 2017 an error value.

c. 2 respondents each paid interest and penalty for 2016 and 2015, while one respondent paid interest and penalty for 2014 and 2013.

Table 6.2 like Table 6.1 is indicative of a low compliance rate amongst the sample.

3. Table 6.3 presents the cross-tabulation analysis for questions 15 and 17. The former required the respondent to indicate the year the company last year paid tax and the latter required the respondent to state whether the tax payment was made before due date or after due date in the year of last payment.

Table 6.3: Year company last paid CIT - Payment made before/after due date cross tabulation

		Payment made before/after due date		Total
		Before	After	
Year company last paid CIT	2017	2	0	2
	2016	4	0	4
	2015	2	2	4
Total		8	2	10

The following conclusions are premised on the Table:

a. There were 10 valid responses. This is indicative of 2 of the 12 having missing value.

b. There are similarities between Table 6.1 and this Table. There is, however, a mismatch between both tables with regard to 2017 and 2015. Owing to the fact that there cannot be return filing without payment in Nigeria,[32] the data for filing and payment ought to match. Furthermore, there cannot be payment after due date without a corresponding tax return being due as is suggested by the data for filing and payment for 2015.

C. Section D: Perception of Tax and Income Tax Incentive

[32] See section 52 and 55 CITA

Before reacting to this section, the respondents were asked to consider each statement in relation to the taxpayer they represent. The section was designed to elicit a reaction from which deductions could be made with regard to the behavioural, normative and control beliefs of the respondents. Frequency analysis was done for the data collected. The outputs were tables which had five columns. From left to right, the first column contains the categories of variables on the Likert scale which the respondents chose and any missing value (i.e. situations where there was no response to the question) and this is indicated in the column by 'system'. The second shows frequency (i.e. the number of responses within each category of variables). The third and fourth are percentage values. The difference between them, however, is that the third column (i.e. percent) presents the actual percentage of the total sample (missing value inclusive) while the fourth column (i.e. valid percent) presents the percentage response (less missing value). The difference between both percentages is, thus, the missing values which arises when a respondent does not respond to a particular question. The fifth column presents the cumulative percentage. With it as reference point, deductions can be made with regard to the direction on the compliance continuum to which the responses gravitate.

That having been said, the following sections presents the data and consequential analysis. Note that the presentation follows the grouping of the questions in the survey instrument.

i. *Behavioural Beliefs*

a. *Table 6.4* below relates to question 19 which sought to determine whether the claiming of CIT incentives for which a company does not qualify amounts to not paying the right taxes. It reveals that 83.3 percent of the 12 respondents were of the opinion that it does amount to not paying the right taxes. This is indicative of a positive behavioural belief that places them in a pro-compliance direction.

Table 6.4: Claim of unqualified CIT incentive

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	1	8.3	8.3	8.3
	Slightly agree	4	33.3	33.3	41.7
	Somewhat agree	5	41.7	41.7	83.3
	Strongly disagree	2	16.7	16.7	100.0
	Total	12	100.0	100.0	

b. *Table 6.5* below relates to question 20 which sought to determine whether the payment of right tax and/or claiming of CIT incentives which the business qualifies for is tax compliance. It shows that there is a missing value and one respondent chose to be neutral. Notwithstanding the foregoing, it reveals that 81.8 percent of the respondents agree with the claim that the payment of right tax and/or claiming of CIT incentives which the business qualifies for is tax compliance.

Table 6.5: Payment of right tax and/or claiming incentives qualifies for compliance with the law

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	4	33.3	36.4	36.4
	Slightly agree	1	8.3	9.1	45.5
	Somewhat agree	4	33.3	36.4	81.8
	Neutral	1	8.3	9.1	90.9
	Strongly disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

c. *Table 6.6* relates to question 21. Although a missing value exists amidst this data set, it reveals that 54.5 percent of the respondents are of the opinion that payment of the right tax on or before due date can negatively impact on the business capital of the taxpayer. This is indicative of a negative behavioural belief with similar effect on compliance.

Table 6.6: Payment of right tax on or before due date can negatively affect my business capital

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	5	41.7	45.5	45.5
	Slightly agree	1	8.3	9.1	54.5
	Somewhat disagree	2	16.7	18.2	72.7
	Strongly disagree	3	25.0	27.3	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

d. *Table 6.7* relates to question 22. It reveals that the majority of responses (i.e. 54.6 percent) claimed that payment of right taxes after dues date is not a breach of the law. It also shows that 27.3 percent of the respondents chose to be neutral while the minority (i.e. 18.2 percent) agreed that payment of right taxes after dues date is a breach of the law. The response from the sample with regard to question 22 is thought provoking when juxtaposed with the response to question 19 and 20. With the latter pair as background, one would have expected the answer to question 22 to be that payment of right taxes after dues date is a breach of the law. That, however, is not the case. It is, thus, surmised that the response is indicative of a negative behavioural belief.

Table 6.7: Payment of taxes after due date is breach of the law

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	2	16.7	18.2	18.2
	Neutral	3	25.0	27.3	45.5
	Somewhat disagree	4	33.3	36.4	81.8
	Strongly disagree	2	16.7	18.2	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

e. *Table 6.8* relates to question 23 and it reveals that two respondents abstained thereby introducing missing value into the analysis. Furthermore, it reveals that of the valid responses: (1) 50 percent do not consider the claiming by taxpayers of CIT incentives for which they do not qualify and the payment of tax after due date contrary to law; (2) another 40 percent hold a contrary opinion; and (3) 10 percent chose to be neutral. On the basis of the foregoing, the overall response of the sample puts the sample on the positive side of the compliance continuum.

Table 6.8: Claiming income tax incentives not qualified for is breach of law

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	3	25.0	30.0	30.0
	Somewhat agree	1	8.3	10.0	40.0
	Neutral	1	8.3	10.0	50.0
	Somewhat disagree	3	25.0	30.0	80.0
	Strongly disagree	2	16.7	20.0	100.0
	Total	10	83.3	100.0	
Missing	System	2	16.7		
Total		12	100.0		

f. *Table 6.9* relates to question 24. Despite the presence of missing values occasioned by the abstention of two respondents, an overwhelming 90 percent of the valid responses was to the effect that the need for business capital would precipitate delay in tax payment. This is indicative of a negative behavioural belief.

Table 6.9: Need for business capital would bring about delay in tax payment

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	7	58.3	70.0	70.0
	Slightly agree	2	16.7	20.0	90.0
	Neutral	1	8.3	10.0	100.0
	Total	10	83.3	100.0	
Missing	System	2	16.7		
Total		12	100.0		

g. *Table 6.10* summarises the responses to question 25 which relates to the assertion that the claim of unqualified CIT incentive provides extra income for the taxpayer. 54.5 percent of the opinion expressed was an affirmation of the assertion, 36.4 percent expressed a contrary opinion and 9.1 percent (i.e. one respondent) abstained from expressing an opinion. The result is indicative of a negative behavioural belief.

Table 6.10: Claim of unqualified CIT incentive is source of extra income

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	4	33.3	36.4	36.4
	Slightly agree	1	8.3	9.1	45.5
	Somewhat agree	1	8.3	9.1	54.5
	Neutral	1	8.3	9.1	63.6
	Slightly disagree	1	8.3	9.1	72.7
	Strongly disagree	3	25.0	27.3	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

h. *Table 6.11* relates to question 26 which seeks to gauge the reaction to the assertion that when taxpayers claim CIT incentives they qualify for and/or pay tax on or before due date they are being compliant. 90.9 percent affirmed the assertion, while one respondent abstained and another chose to remain neutral. This is indicative of a positive behavioural belief.

Table 6.11: Claim of qualified CIT incentive and tax payment on or before due date equals being tax compliant

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	8	66.7	72.7	72.7
	Somewhat agree	2	16.7	18.2	90.9
	Neutral	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

i. Table 6.12 relates to question 27 which asserts that tax provisions influence business decisions It shows the highest missing value for behavioural belief and also that all respondents agree with the assertion that tax provisions influence business decision-making. There is, however, no comfort in this as the direction in which the tax provision influences business decision-making is the product of varied circumstantial variables. Hence the compliance could be negative or positive at various times.

Table 6.12: Tax provisions influence business decision

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	4	33.3	50.0	50.0
	Slightly agree	1	8.3	12.5	62.5
	Somewhat agree	3	25.0	37.5	100.0
	Total	8	66.7	100.0	
Missing	System	4	33.3		
Total		12	100.0		

ii. *Normative Beliefs*

a. *Table 6.13* relates to question 28. It shows that there is a missing value, and that 63.6 percent of the responses were in the affirmative while the neutral and negative responses with regard to the statement where 18.2 percent respectively. The data brings to the fore the fact that associates and competitors are a strong referent for the formation of normative beliefs. In this circumstance, the conclusion is that the role of associates and competitors actuates a negative normative belief towards compliance.

Table 6.13: Associates/competitors approve the claiming by the business of unqualified CIT incentives

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	1	8.3	9.1	9.1
	Slightly agree	5	41.7	45.5	54.5
	Somewhat agree	1	8.3	9.1	63.6
	Neutral	2	16.7	18.2	81.8
	Somewhat disagree	1	8.3	9.1	90.9
	Strongly disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

b. *Table 6.14* relates to question 29. In addition to the fact that there is a missing value amongst the data collected, it reveals that 54.5 percent of the responses were neutral while 36.4 percent agree that their religion disapproves of the claiming by taxpayers of CIT incentives for which they are unqualified. Although the high neutral response creates room for conjecture, the number of those who agree and the lack of any response to the contrary, is premise for the conclusion that, in the context of tax compliance, religion is a potentially strong referent for the formation of normative beliefs. However, because of the quantum of neutral response, a conclusion cannot be reached with regard to the compliance orientation of the sample.

Table 6.14: Religion disapproves of taxpayer claiming unqualified CIT incentives

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	3	25.0	27.3	27.3
	Slightly agree	1	8.3	9.1	36.4
	Neutral	6	50.0	54.5	90.9
	Slightly disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

c. *Table 6.15* relates to question 30 and its reveals that all but one respondent who chose not to respond and two others who chose to be neutral disagree with the assertion that it is right for a company to claim CIT incentive that it does not qualify for. The deduction from this is that 81.9 percent of the respondents have positive subjective norms which catalysed the negative response to the statement. Thus, the conclusion is that, in the context of tax compliance the consequential behaviour is pro-compliance.

Table 6.15: Right for business to lay claim to unqualified CIT incentives

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Neutral	2	16.7	18.2	18.2
	Somewhat disagree	5	41.7	45.5	63.6
	Strongly disagree	4	33.3	36.4	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

d. *Table 6.16* relates to question 31 which sought to determine whether the inability of FIRS to enforce the tax provisions (real or perceived) effectively is a normative referent in terms of the tax compliance behaviour orientation of the taxpayer. It reveals that, while there was a 27.3 percent neutral response and one missing value, the other respondents were split evenly on either side of the divide. A closer look, however, reveals that for those who agree, 27.3 and 9.1 percent agree strongly and somewhat agreed respectively as against the 27.3 and 9.1 percent who respectively somewhat and slightly agreed. From the foregoing, it is surmised that those who agree showed more conviction compared to those who disagreed. Hence, it is concluded that notwithstanding the seeming equal split, the respondents manifested a negative normative belief with a potentially negative impact on compliance behaviour.

Table 6.16: Company claim unqualified CIT incentive because tax authority would never find out

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	3	25.0	27.3	27.3
	Somewhat agree	1	8.3	9.1	36.4
	Neutral	3	25.0	27.3	63.6
	Somewhat disagree	3	25.0	27.3	90.9
	Slightly disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

e. *Table 6.17* relates to question 32 which sought to determine whether procured tax intermediaries insist that patrons pay the right taxes on or before the due date. It shows that 63.7 percent of the respondents disagreed with the comment. This response is a confirmation of the go-between or provider of service status of the tax intermediary[33] and suggests that this status does not extend to the making of business or associated decision for the company. In this circumstance, the conclusion is that tax intermediaries are negative normative referents with the potential of negatively influencing compliance.

[33] See chapters two (paragraph 2.5) and four for discourse focused on the nature, role/function of tax intermediaries

Table 6.17: Tax intermediaries insist company pay right tax

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	1	8.3	9.1	9.1
	Slightly agree	3	25.0	27.3	36.4
	Somewhat disagree	4	33.3	36.4	72.7
	Strongly disagree	3	25.0	27.3	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

f. *Table 6.18* relates to question 33. It reveals that although 63.6 percent of the respondents chose to be neutral, there is an even split between the responses as the affirmative and negative are 18.2 percent each. A closer look, however, reveals that the 'agree response' is constituted of 'strongly agree' and 'slightly agree' while the 'disagree response' is constituted of 'strongly disagree' and 'somewhat disagree'. From the foregoing, it was surmised that those who agree showed more conviction compared to those who disagreed. Hence, it is concluded that, notwithstanding the seeming equal split. Religion in this circumstance is a positive normative referent with a potentially positive impact on compliance behaviour.

Table 6.18: My religious belief influences the service requested of tax intermediaries

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	1	8.3	9.1	9.1
	Slightly agree	1	8.3	9.1	18.2
	Neutral	7	58.3	63.6	81.8
	Somewhat disagree	1	8.3	9.1	90.9
	Strongly disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

g. *Table 6.19* relates to question 34. It presents responses to the assertion that the prevailing socio-economic realities within Nigeria encourage the payment of the right taxes on or before the due date. It reveals that the majority of the respondents (81.8 percent) disagreed with the assertion. This means that the prevailing socio-economic realities within Nigeria are a negative referent for the formation of normative belief and possesses the capacity to influence taxpayer compliance in the negative direction.

Table 6.19: Socio-economic realities encourage payment of right taxes on or before due date

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	1	8.3	9.1	9.1
	Somewhat agree	1	8.3	9.1	18.2
	Somewhat disagree	3	25.0	27.3	45.5
	Strongly disagree	6	50.0	54.5	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

h. *Table 6.20* relates to question 35 and it reveals that 72.8 percent of the response allude to the fact that FIRS personnel expect that companies would not pay the right tax on or before due date and/or that the companies would claim CIT incentives which they did not qualify for notwithstanding the fact(s) or evidence to the contrary. Depending on the circumstances, this has the potential of being either a negative or positive referent. For example, where the taxpayer is not risk adverse or the penalty for noncompliance is minimal compared to the gain therefrom, there is a high probability that this would result in a negative orientation. In that situation, the taxpayer would most likely choose the path of noncompliance. The reverse is the case where the taxpayer orders its affairs in a manner that would disprove the suspicion.

Table 6.20: Tax officers expect company not to pay the right taxes on or before due date and/or to claim unqualified CIT incentive

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	3	25.0	27.3	27.3
	Slightly agree	2	16.7	18.2	45.5
	Somewhat agree	3	25.0	27.3	72.7
	Neutral	1	8.3	9.1	81.8
	Slightly disagree	1	8.3	9.1	90.9
	Strongly disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

i. *Table 6.21* relates to question 36 which is similar to question 29 and 32 as they relate to religion. It seeks to determine the nature of religion as a referent for the formation of normative belief. Similar to question 29, there was a high neutral response to the question (45.5 percent), while another 45.5 percent affirmed that their religion required that they be tax compliant. This time, it is argued that religion is a positive referent for the formation of normative belief with the potential to influence positive compliance.

Table 6.21: My religion requires that I am compliant

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	4	33.3	36.4	36.4
	Slightly agree	1	8.3	9.1	45.5
	Neutral	5	41.7	45.5	90.9
	Somewhat disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

j. Table 6.22 relates to question 37. The question focused on determining whether the need for business growth/protection of business capital would make the company not pay the right tax on or before due date and/or make it claim CIT incentives for which it is not qualified. It reveals that 90.9 percent of the respondents affirmed that their tax compliance decision is influenced by the need for business growth/protection of business capital. This makes the need for business growth/protection of business capital a negative referent in terms of the formation of normative belief as well as it having the potential to actuate negative compliance behaviour.

Table 6.22: Need for growth/protection of capital make company not pay right tax on or before due date and/or claim unqualified tax incentive

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	6	50.0	54.5	54.5
	Slightly agree	3	25.0	27.3	81.8
	Somewhat agree	1	8.3	9.1	90.9
	Slightly disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

iii. *Control Beliefs*

a. *Table 6.23* relates to question 38 which asserts that the presence of CIT incentives promotes compliance amongst taxpayers. On the basis of a 36.4 percent affirmative and a 63.7 negative response provided by the sample, it is beyond conjecture that the majority of respondents are of the opinion that CIT incentives are not referents for the formation of control beliefs. Essentially, the response amounts to a statement that the CIT incentives do not facilitate or actuate a positive tax compliance behaviour.

Table 6.23: CIT incentive promotes tax compliance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	3	25.0	27.3	27.3
	Slightly agree	1	8.3	9.1	36.4
	Somewhat disagree	1	8.3	9.1	45.5
	Slightly disagree	2	16.7	18.2	63.6
	Strongly disagree	4	33.3	36.4	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

c. *Table 6.24* relates to question 39 which provided a means for determining the knowledge level of the alter egos vis-à-vis available CIT incentives. 36.4 percent of the respondents agreed they lacked knowledge of the available CIT incentives, while 45.5 percent disagreed. On the basis of the foregoing, it is surmised that amongst the sample, lack/absence of knowledge of available CIT incentives is not an impediment. The direction in which it influences or actuates compliance behaviour is, however, not certain.

Table 6.24: Lack knowledge of available CIT incentives

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	2	16.7	18.2	18.2
	Slightly agree	2	16.7	18.2	36.4
	Neutral	2	16.7	18.2	54.5
	Somewhat disagree	4	33.3	36.4	90.9
	Slightly disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

d. *Table 6.25* relates to question 40. All responses point to the fact that the quest for CIT incentives which the taxpayer can harness is the responsibility of the procured tax intermediary (TI). When this is considered in the light of the training of TIs, the conclusion is that the latter are referents for the formation of control beliefs. Again, the direction in which it influences or actuates compliance behaviour is not certain. Thus, it is surmised that its status as a control referent is a function of circumstances and/or influenced by other intervening variables which exists in the milieu in which the TI and taxpayer operate.

Table 6.25: TIs responsibility to seek out CIT incentives

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	8	66.7	72.7	72.7
	Slightly agree	2	16.7	18.2	90.9
	Somewhat agree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

e. *Table 6.26* relates to question 41. It reveals that there was an even split of 27.3 percent of agree and disagrees response as well as a 45.5 percent neutral response. The agree responses are all 'strongly agree' while the disagree responses cover the entire spectrum of disagree. Thus, the conclusion is that there seem to be more conviction amongst the agree responses than the disagree responses. In relation to the inquiry, it further shows that the religious beliefs of the alter ego are referents for the development of a positive control belief by the TIs. Religious beliefs are for the TIs a referent for the formation of behavioural belief.

Table 6.26: TI is restrained from claiming for company unqualified CIT incentives by my religious beliefs

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	3	25.0	27.3	27.3
	Neutral	5	41.7	45.5	72.7
	Somewhat disagree	1	8.3	9.1	81.8
	Slightly disagree	1	8.3	9.1	90.9
	Strongly disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

f. *Table 6.27* relates to question 42 which states that the possibility of detection by FIRS of non-compliant tax behaviour makes companies compliant. It reveals that 54.5 percent of the respondents agree while 27.3 disagree. Thus, the conclusion is that the possibility of detection of non-compliance is a veritable referent for the formation of control belief and that for the sample, it is influences compliance positively.

Table 6.27: Possibility of detection makes a company tax compliant

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	4	33.3	36.4	36.4
	Slightly agree	2	16.7	18.2	54.5
	Neutral	2	16.7	18.2	72.7
	Slightly disagree	1	8.3	9.1	81.8
	Strongly disagree	2	16.7	18.2	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

g. *Table 6.28* relates to question 43 which sought to determine whether in a situation where the benefit from noncompliance and the claiming of CIT incentive which the business did not qualify for outweighs the punishment is sufficient to actuate, facilitate or impede tax compliance behaviour. 63.6 percent of the responses were in the affirmative and point in the direction of it having the capacity to actuate, facilitate or impede tax compliance behaviour. This means that a situation where the benefit of noncompliance outweighs (i.e. the proceeds of the noncompliance) the consequence cost (i.e. the interest and penalty if found out) is a negative control belief referent and would actuate noncompliant behaviour.

Table 6.28: Benefit of non-payment of right tax on or before due date and/or claim unqualified CIT incentive outweighs punishment

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	4	33.3	36.4	36.4
	Slightly agree	2	16.7	18.2	54.5
	Somewhat agree	1	8.3	9.1	63.6
	Neutral	3	25.0	27.3	90.9
	Strongly disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

g. *Table 6.29* relates to question 44. It reveals that the liquidity need of the taxpayer does not make tax compliance a priority. This is because all but one of the respondents (who chose to be neutral) agreed with the comment. This result points to the fact that for the sample, liquidity need is a control belief referent with a potentially negative impact on tax compliance.

Table 6.29: Need for investable cash does not make tax compliance a priority for company

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	6	50.0	54.5	54.5
	Slightly agree	1	8.3	9.1	63.6
	Somewhat agree	3	25.0	27.3	90.9
	Neutral	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

h. *Table 6.30* relates to question 45. It reveals that for 63.6 percent of the respondents, the potential punishment for non-payment of the right tax on or before due date and/or for the claim of an unqualified CIT incentive by the taxpayer provided for in the law does not induce tax compliance. This means that the relevant statutory provision is not a positive control belief referent as it is not sufficient to make the taxpayer risk adverse and compliant.

Table 6.30: Potential punishment for non-payment of right tax on or before due date and/or claim unqualified CIT incentive does not induce tax compliance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	4	33.3	36.4	36.4
	Slightly agree	2	16.7	18.2	54.5
	Somewhat agree	1	8.3	9.1	63.6
	Neutral	1	8.3	9.1	72.7
	Somewhat disagree	1	8.3	9.1	81.8
	Strongly disagree	2	16.7	18.2	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

i. *Table 6.31* relates to question 46. It reveals that 54.5 percent of the respondents perceive that associates, competitors and the tax authority have pre-determined that the taxpayer is or would be noncompliant. This has the potential of being either a negative or positive control belief referent depending on whether the taxpayer is averse or not to the associated reputational and regulatory risk(s) that are corollaries of noncompliance.

Table 6.31: Associates/competitors & tax authority expect company to be noncompliant

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	1	8.3	9.1	9.1
	Slightly agree	3	25.0	27.3	36.4
	Somewhat agree	2	16.7	18.2	54.5
	Neutral	3	25.0	27.3	81.8
	Somewhat disagree	1	8.3	9.1	90.9
	Strongly disagree	1	8.3	9.1	100.0
	Total	11	91.7	100.0	
Missing	System	1	8.3		
Total		12	100.0		

j. *Table 6.32* relates to question 47. It reveals that the 80 percent of respondents consider the existence of a reward for compliance to be a motivator of tax compliance. In the circumstance, reward is deemed a positive control belief referent with potentially similar effect on compliance.

Table 6.32: Reward for compliance would motivate tax compliance

		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly agree	3	25.0	30.0	30.0
	Slightly agree	4	33.3	40.0	70.0
	Somewhat agree	1	8.3	10.0	80.0
	Neutral	1	8.3	10.0	90.0
	Strongly disagree	1	8.3	10.0	100.0
	Total	10	83.3	100.0	
Missing	System	2	16.7		
Total		12	100.0		

iv. Summary of Findings

Facilitating comprehension in terms of the position of the sample with regard to the issues which underpin the questions and comments in section D of the questionnaire (i.e. the sample's perception of tax and income tax incentive) is the basis for this section. Data relating to the sample's perception of tax and income tax incentive gathered in the course of Workflow 2 is summarised here. Table 6:33 below provides a summary of the perception and compliance status of the sample. In the table 'A' is indicative of the agree responses (i.e. strongly agree, slightly agree and somewhat agree) while 'D' is indicative of the disagree responses (i.e. strongly disagree, slightly disagree and somewhat disagree). In addition, a blank cell in the response column is indicative of the absence of a corresponding response.

Table 6.33: Summary of perception and compliance status

QNo.	*TNo.*	*Table Title*	*Response (%)*		*CD*
			A	*D*	
19	6.4	Claim of unqualified CIT incentive	83.3	16.7	
20	6.5	Payment of right tax and/or claiming incentives qualifies for compliance with the law	81.8	9.1	
21	6.6	Payment of right tax on or before due date can negatively affect my business capital	54.5	45.5	
22	6.7	Payment of taxes after due date is breach of the law	18.2	54.6	
23	6.8	Claiming income tax incentives not qualified for is breach of law	40	50	
24	6.9	Need for business capital would bring about delay in tax payment	90	-	
25	6.10	Claim of unqualified CIT incentive is source of extra income	54.5	36.4	
26	6.11	Claim of qualified CIT incentive and tax payment on or before due date equals being tax compliant	90.9	-	
27	6.12	Tax provisions influence business decision	100	-	
28	6.13	Associates/competitors approve the claiming by the business of unqualified CIT incentives	63.6	18.1	
29	6.14	Religion disapproves of taxpayer claiming unqualified CIT incentives	36.4	-	
30	6.15	Right for business to lay claim unqualified CIT incentives	-	81.9	
31	6.16	Company claim unqualified CIT incentive because tax authority would never find out	36.4	36.4	
32	6.17	Tax intermediaries insist company pay right tax	36.4	63.7	
33	6.18	My religious belief influences service requested of tax intermediaries	18.2	18.2	
34	6.19	Socio-economic realities encourage payment of right taxes on or before due date	18.2	81.8	
35	6.20	Tax officers expect company not to pay right taxes on or before due date and/or claim unqualified CIT incentive	72.8	18.2	
36	6.21	My religion requires that I am compliant	45.5	91	
37	6.22	Need for growth/protection of capital make company not pay right tax on or before due date and/or claim unqualified tax incentive	90.9	9.1	
38	6.23	CIT incentive promotes tax compliance	36.4	63.7	
39	6.24	Lack knowledge of available CIT incentives	36.4	45.5	
40	6.25	TIs responsibility to seek out CIT incentives	100	-	
41	6.26	TI is restrained from claiming for company unqualified CIT incentives by my religious beliefs	27.3	27.3	
42	6.27	Possibility of detection makes a company tax compliant	54.5	27.3	
43	6.28	Benefit of non-payment of right tax on or before due date and/or claim unqualified CIT incentive outweighs punishment	63.6	9.1	
44	6.29	Need for investable cash does not make tax compliance a priority for company	90.1	-	
45	6.30	Potential punishment for non-payment of right tax on or before due date and/or claim unqualified CIT incentive does not induce tax compliance	63.9	27.3	
46	6.31	Associates/competitors & tax authority expect company to be non-compliant	54.5	18.2	
47	6.32	Reward for compliance would motivate tax compliance	80	10	

Key:

QNo: *Question Number*

TNo: *Table Number*

Colour code:

Behavioural Belief	Normative Belief	Control Belief	Positive CD	Positive/ negative CD	Negative CD	Ambivalent CD

Further review of the responses shows that of the 29 question in section D (9 for behavioural belief; 10 each for normative and control beliefs):

a. A total of 14 are red (i.e. negative), 9 are green (i.e. positive) and 5 are amber (i.e. those whose direction is a function of the prevailing circumstantial variable and have the potential to be either positive or negative) while one is purple which is indicative of an ambivalent conclusion with regard to the position of response in terms of the compliance continuum (otherwise referred to as compliance direction (CD)).
b. Notwithstanding an expressed awareness and understanding of their obligation as actors within the tax system as well as the consequence of their actions, the sample place the wellbeing of the taxpayer over their tax obligation. For them, the prevailing socio-economic realities in Nigeria, the need for business continuity and value maximisation provides justification for this choice.
c. Religion appears to be a strong positive referent for the formation of tax compliance behaviour.
d. Notwithstanding (c), based on (a) and (b) above, the conclusion is that the sample is not positively oriented towards tax compliance.

6.3.2 Workflow 2

Workflow 2 was set in motion by the output of Workflow 1. It brought to the fore themes for further investigation using KIISs,[34] observation and participant observation for data gathering. These include:

a. The role of religion

The response of the sample points to the fact that religion is a strong referent for the formation of tax compliance behaviour.[35] This is corroborated by literature which points to the fact that religion (i.e. the social construct that systemises the belief and worship of divine or sacred being(s) and/or the supernatural) or religiosity (i.e. the internal and external orientation of an individual towards a religion) significantly actuates and influences the formation of values (societal and individual) as well as prevents deviant behaviour.[36] The foregoing merited further investigation in the context of this study for three reasons: (1) the fact that religion has the capacity to actuate (and influence) as well

34 See Appendix 6.4 the description of the KIIs participants and location

35 Mohdali, R, *et al*, 'A Cross-cultural Study of Religiosity and Tax Compliance Attitudes in Malaysia and Turkey' (2017) Vol. 15 (No. 3) *eJournal of Tax Research* 490, 493

36 See generally Mohdali supra note 35, where it was found that religiosity has a positive influence on taxpayers in Malaysia and Turkey

as provide insight into the understanding of the mechanics of tax compliance behaviour; (2) because it is one of the factors outside the realm of law or economics with capacity to actuate and/or influence tax compliance behaviour;[37] and (3) it is a means via which social control can be achieved.[38]

In the course of Workflow 2, attempts were made to gauge the opinion of the research participants with regard to the place of religion in the context of the research question, i.e. the determination of the research participants' perception of the place of religion vis-à-vis, tax compliance, CIT incentives and taxpayer-TI relationship. The response was that tax compliance behaviour is not actuated, influenced or driven by the religious belief or religiosity of the alter ego and/or the procured TI. Rather, it was unanimous that profit is the key factor influencing taxpayer compliance behaviour. TIL(6) responded to the question 'Does your religious belief or that of your client influence the kind of advice you give' thus:

> No, it will not influence. It does not influence; I will give according to the provisions of the law and tax policy.[39]

TAE (1)'s provided a similar (but more graphic) response to the question 'do you think religious belief influences taxpayer behaviour?' thus:

> No, I don't think so in Nigeria's own context. I think the Nigerian business man thinks first of all about his profit, first. There are no religious belief and he believes that at the end of the day God can be bribed. That is our attitude. We are religious people but not Godly people. … I think he believes in money making. I may be wrong but I believe that majority of the businesses in Nigeria, micro and small businesses, the main aim and purpose is to make profit. … God does not come in. It is the profit that is the motivating factor. It is only after we have made all the profit that we now remember that there is God. So, it does not influence taxpayer behaviour.[40]

With regard to the service of TIs, whether as it relates to CIT incentives or the entire gamut of professional service, religion is again trumped. TIA(2) credits professionalism as the source of influence thus:

> …when it comes to incentives, I don't thing religion has any place to play because in carrying out your work as a professional, you work with what the profession states…; there are ethics that the profession outlines that you should follow. We work with that, not with religious belief

37 See Togler, B, 'Speaking to Theorists and Searching for Facts: Tax Morale and Tax Compliance in Experiments' (2002) Vol. 16 (No.5) *Journal of Economic Surveys* 657, 662-669 for a review of findings of experiments which focused on some non-economic variables

38 Raven, supra note 26, 162-164

39 TIL(5) and (6) Interview Transcript (Asaba: 13 December 2017, 15:09 pm)

40 TAE(1) Interview Transcript, (Abuja: 27 September 2017, 11:31 am)

> whether of the client or my own as a tax practitioner. Professionalism is the key word. We carry out our work in a professional way, religion does not come in.[41]

For TAE(1), it is the need to earn a fee. He averred that:

> … religious belief does not influence the intermediaries. It's about earning my professional fees. It has nothing to do with religious beliefs at all. It has nothing to do. All the tax intermediary is doing is that: 'look I need to advice my client within the realm of the knowledge available to me. It is just that I need to earn a living, so whatever information that is available to me I give to the taxpayer'. It has nothing to do with his/her religious belief. None.[42]

It appears, from the above, that the TIs and non-TIs recruited for Workflow 2 have a limited opinion of the role and/or influence of religion in the context of compliance behaviour amongst MSCs. This is notwithstanding *Table 33* above wherein the compliance direction of the sample of MSCs is captured as majorly positive as well as the fact that Nigeria is a country where 89.8 percent of the public hold religion as very important in their lives[43] and are being, or have been, exposed to religious teachings which amongst other thing, recommends the payment of taxes (or similar financial impositions) to the sovereign (i.e. the state).[44]

Although, the other research tools utilised in Workflow 2 (i.e. observation and participant observation) did not provide data with which the foregoing could be refuted, the perception of the TIs and non-TIs offers a basis for triangulation. The TIs are the service providers who operate in a highly competitive market where in a bid to hold a niche or maintain their clientele, they could be motivated to attend to the demand of their client at the detriment of the state or without a thought to the dictates of regulation, law or religion. Thus, in the context of this study, the conclusion is that religion has almost no influence on the tax compliance behaviour of MSCs.

b. The taxpayer-intermediary-incentive relationship

A review of the responses of the sample and the thesis of 'no tax dodge without the input or expertise of a TI'[45] suggests that the blame for the compliance direction of taxpayers should be ascribed to TIs. In the course of Workflow 2, however, contrary facts emerged.

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41 TIA(2) Interview Transcript, (Abuja: 31 October 2017, 11:56 am)

42 Supra note 40

43 See Inglehart, RC, *et al* (eds), World Values Survey: Round Six – Country-Pooled Datafile Version (Madrid: JD Systems Institute, 2014. Available at http://www.worldvaluessurvey.org/WVSDocumentationWV6.jsp (accessed 10 October 2018)

44 See Matthew 22:21 and Romans 13:1, Holy Bible. For the Muslims, *Zakat* one of the five pillars of the Islamic faith which essentially is a wealth tax is an annual obligation

45 See note 24 supra for literature which canvasses this thesis

Firstly, three of the respondents to questions 39 (lack knowledge of available CIT incentives) and 40 (TIs responsibility to seek out CIT incentives) upon further engagement by the researcher revealed that they always request that their tax intermediaries ensure that the lowest tax is payable. This means that the TI is not always the initiator or guide for the compliance direction of the taxpayer. Often, it is the alter egos. This was corroborated by TIA(3)[46] who informed the researcher that person(s) in charge (or owners) of companies often requests that the accountant be 'creative' in the preparation of the financials to reflect what the company is 'comfortable' with insofar as paying tax in the year of assessment is concerned.[47]

From the foregoing, one gets the feeling that the role and function of the TI is complex. The complexity stems from the mix of the TI's obligation to his/her client, the profession and the state. The conclusion is that the role and function of the TI is a balancing act. It seems, however, that the obligation to the profession and the state is discounted in favour of the obligation to the client. This was affirmed by TIL(2) as well as TAE(2) and (3). For TIA(1), loyalty lies with the client and as a result professional expertise is usually deployed in ensuring that the client is satisfied. This according to TIA(1) includes ensuring that clients pay the lowest possible tax, preventing the government from putting the shovel in as much as is possible[48] and assisting the client to avoid tax where possible. TAE(3) confirmed this while responding to the question of what actuates the form/nature of CIT incentives-related advisory provided by TIs to their client thus:

> What actuates income tax incentives-related advice from tax intermediaries to taxpayers? Well, the key amongst things listed is responsibility to client. Tax as an evolving field always throws up challenges and the clients - that is the taxpayers - see it that the more you were able to save them from paying higher taxes the better tax consultant you are. So, we as tax administrators are aware that some tax consultants go out of their way to read the law and the policy and bring out these tax incentives and package it as a product and sell to their clients and in return to also make it and get a pecuniary compensation. That is it. That is the primary reason.[49]

46 TIA(3) (a chartered accountant) refused to be put on record but instead took the researcher on a 3-days 'ride along' in July 2018. The researcher accepted the offer and it provided the researcher the opportunity to observe TI-taxpayer interaction first hand

47 This is colloquially referred to as 'creative accounting' and defined to be 'the transformation of accounting figures from what they actually are to what perpetrators desire by taking advantage of the existing rules and/or ignoring some or all of them'. It is however not peculiar to Nigeria. For example, see Kamau supra note 23, 77; Stangova, N & Vighova, A, 'Possibilities of Creative Accounting Avoidance in Slovak Republic' (2016) 158(3-4(2)) *Economic Annals-XXI* 97-100

48 See *Ayrshire Pullman Motor Services & Ritchie v CIR* (1929) 14 TC 754 where Lord Clyde described taxation as the state putting shovel into the wealth of the citizen

49 TAE(2) and (3) Interview Transcript (Abuja: 27 September 2017, 09:45 am)

TIL(2), while referring to the objective of the taxpayer and its role as TI to the taxpayer, further affirmed that the obligations to the profession and the state are discounted in favour of those to the client as follows:

> They are trying to maximise their profits and minimise loss and in whatever way they can save money to expand the frontiers of the business. And if tax avoidance provides such an opportunity, I believe that they are willing to take it and we are willing to guide them in taking it properly without breaking or causing any infractions to the law.[50]

A consequence of the preceding is the conclusion that TIs manifest a higher sense of obligation to their clients than they do to the state. This sense of obligation extends to the realm of tax avoidance. TAE(1) singled out the fiduciary relationship between the TI as the cause of this state of affairs. He stated that:

> … the professional or intermediary you are dealing with owes a duty because you are paying the person fee to advice you, so he owes a duty to advice his client to the best of his abilities.

TIL(5) and TIL (6) (both legal practitioners) identified the prevailing socio-economic realities in Nigeria as the driver of the TIs' obligation to their client. When the subject was broached with TIA(3), it was repeated that the role of the tax intermediary is complex and that, within the socio-economic sphere that is Nigeria, the obligation to the client supersedes any other. By way of justification, TIA(2) stated that TIs usually bend to the will of the taxpayer so as not to lose the patronage of that taxpayer to competitors. This means that in relation to tax dodge by MSCs in Nigeria, blame is not entirely at the door of the TIs as the taxpayers often approach the TIs with a demand for a tax dodge and the latter succumbs after taking into cognisance an array of variables of which the prevailing socio-economic reality in Nigeria is one. While not countering the thesis 'no tax dodge without the input or expertise of a TI', it brings to the fore the fact that the (in)actions of TIs vis-à-vis tax compliance are guided by the dictates and/or desire of their clients, their own personal need for sustenance or a combination of both. TIs are, thus, more or less casualties of the socio-economic milieu within which they operate. This explains why TIs are not inclined to recommend or insist that their clients comply by paying the right tax at the right time.[51]

c. *Taxpayer perception of/reaction to tax*

The generality of response from the Workflow 1 (i.e. 14 and 6 in the red and amber zones respectively) points to the fact that the sample has a negative compliance orientation. This

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50 TIL(2) Interview Transcript (Benin: 12 December 2017, 12:58 pm)

51 See *Table 6.17* above which presents a negative response to the comment in question 32 of questionnaire

brought to the fore the need for an understanding of the underpinning of this perception of, and orientation towards, tax by the sample. Upon further interview of willing participants, the majority made known the fact that they had misgivings about the payment of tax and pay it only when there is a need for a tax clearance certificate (TCC).[52] It was also gathered that the prominent reasons for this attitude towards tax compliance includes: (i.) non-visibility of the use to which hitherto paid tax was put or lack of social infrastructure; (ii.) the constant media reports of funds which the respondents considers to be their 'tax-naira' looted from government treasury or misappropriated; (iii.) the need for sustenance and business continuity; and (iv) the fairness of the tax system. With regard to the latter an alter ego expressed the opinion that the absence of a simplified accounting/reporting rules for MSCs in the Nigerian tax system makes compliance difficult. In the same vein, while citing the example of having to spend about a fifth of turnover (in a bad business year) to prepare the documents that constitute a tax return, another alter ego (the 'owner' of a life style company), described the CIT system as being unfair. On the basis of the foregoing, the conclusion is that MSCs operate in an environment where they seem disadvantaged. This dilemma was confirmed by CSO (this time in the context of access to and administration of tax incentives) who stated thus:

> For medium and small enterprise, … many of the operators in the sector have been shouting, have been screaming. They come to our programmes, they come to our campaigns and state that, 'look! they are highly disadvantage because of the type of incentives that the multinationals get' … that they don't get them. Many of them have insisted they are not given those incentives and the claim by our system is that a lot of them are in the informal sector and that verifying their income is always hard. That is what they claim. So, the fact is that many of them operate here and they don't get such incentives.[53]

The conclusion is that the above is indicative of the negative perception of and orientation towards tax and everything related to tax harboured by MSCs. It can also be described as being indicative of the mood of the tax-paying population in Nigeria which seems to be moving towards general noncompliance. *Table 6.34* below which is a time series analysis of the Afrobarometer data for round 5(2011/2012), round 6 (2014/2015) and round 7 (2017/2018) surveys, shows that the willingness of Nigerians to pay tax when they are dissatisfied with government's performance is on a decline. This confirms the assertion by

[52] A TCC is evidence of the compliance position of taxpayer for a period of three years. In Nigeria CITA mandates that any government agency or bank should demand a TCC that relates to 3 years preceding the current year of assessment from any entity with which it transacts business and further specifies 21 other transactions for which the presentation of valid TCC is prerequisite. See generally section 101, CITA

[53] CSO Interview Transcript (Abuja: 29 November 2017, 12:35 pm)

other research that TpB is often influenced by priorities or variables that exist outside the realm of law and economics.[54]

Table 6.34: Relationship between government performance and tax compliance behaviour

		Round		
Category	**Total**	**R5 2011/2012**	**R6 2014/2015**	**R7 2017/2018**
No, would never do this	61.6%	69.9%	57.4%	55.4%
No, but would do if had the chance	22.7%	18.9%	25.0%	25.1%
Yes, once or twice	5.4%	3.4%	6.9%	5.9%
Yes, several times	4.9%	3.5%	4.6%	7.3%
Yes, often	3.4%	2.6%	3.1%	5.2%
Don´t know	2.0%	1.7%	3.0%	1.1%
(N)	6,396 (100%)	2,400 (100%)	2,399 (100%)	1,597 (100%)

Source: Afrobarometer[55]

6.3.3 Workflow 3

In Workflow 3 the objective was the complimentary analysis of results of Workflows 1 and 2 to derive conclusions. The synthesis of the data gathered with the aid of the KIIs, observation and participant observation brought about a redirection of the research focus to some emergent tends. These are discussed below.

1. TI-TpB relationship

The synthesis of the data gathered brought to the fore the flaw in the relationship described in *figure 6.1* which suggests that there exists a cause and effect (causality) relationship between TIs and TpB. The flaw here is the failure to take into cognisance or contemplate the existence of the trio of taxation (which encompasses all that is associated with the law, policy and administration that underpins the Nigerian tax system), value maximisation (which is the driver and defining characteristics of business and entities subject to company income tax) and the finiteness of resources (all labelled *A* and referred to as antecedent causal factors),[56] intervening factors (i.e. *B-factors*) and pathway 1 (i.e. *P1*) as components of the relationship pathway as well as their impact on the TI and TpB or their relationship. However, in the course of Workflow 2, a basis for the reconceptualisation of the TI-TpB relationship pathway was found. This gave rise to *figure 6.5* below.

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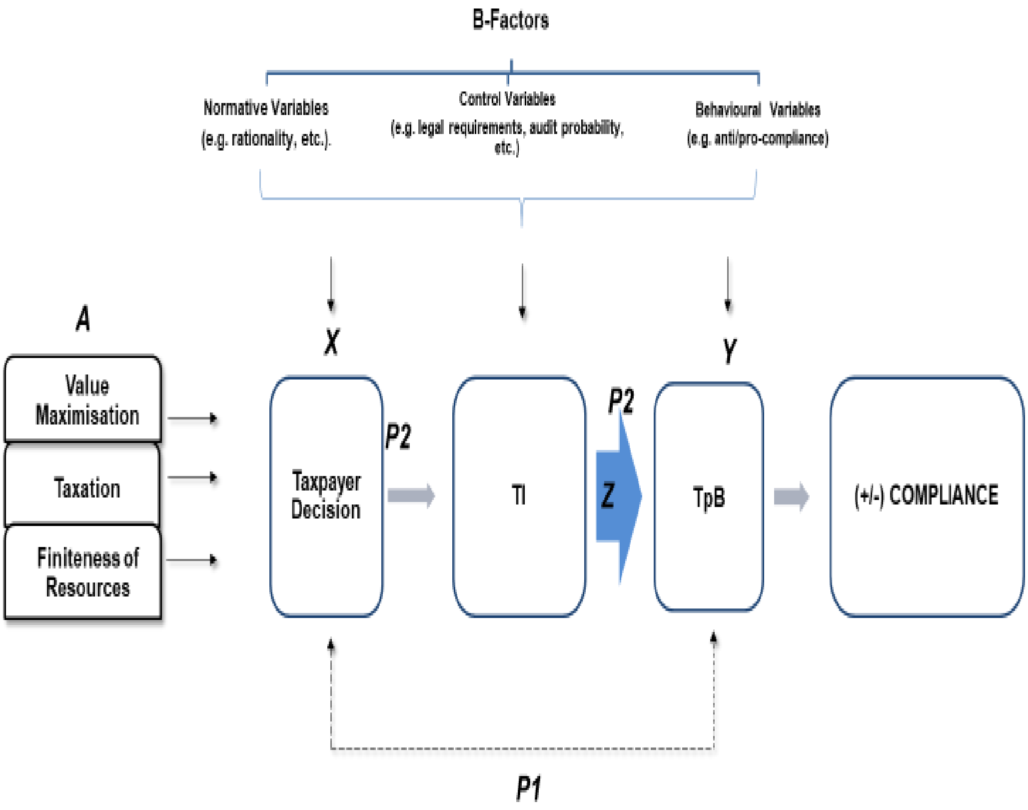
54 See generally Alm, J, *et al,* 'Economic and Noneconomic Factors in Tax Compliance' (1995) Vol. 48 *Kyklos* 1-18; Macgregor, J & Wilkinson, B, 'The Effect of Economic Patriotism on Tax Morale and Attitudes Toward Tax Compliance' (2012) Vol. 20 *Advances in Taxation* 159-180

55 See Afrobarometer, *The Online Data Analysis Tool.* Available at http://afrobarometer.org/online-data-analysis/analyse-online (accessed 24 November 2018)

56 Gerring, J, *Social Science Methodology: A Unified Framework* (2nd ed.) (Cambridge: CUP, 2012) 197-202

Figure 6.5: Modified Casual Pathway



Source: Author

A number of differences exist between the conceptualisations represented in *figure 6.1* and *figure* 6.5. First are the *A-factors*. While existing in the background and remaining constant, they have an impact on taxpayer decisions. Any one of them or a combination of them has the potential to bring about a taxpayer decision (i.e. *X* or causal factor). In this conceptualisation, the TI is an intervening variable between *X* and TpB (i.e. effect, also referred to as *Y*) in the framework. The role of the TI vis-à-vis tax compliance behaviour of MSCs, as was revealed in the course of Workflow 2, is more often than not, actuated (and/or influenced) by the taxpayer decision. They are, thus, not the causal factor. It is inferred that they are victims of taxpayers' decision and play a marginal role vis-à-vis TpB. In addition, their position on the pathway makes the relationship between *X* and *Y* distal.[57]

[57] A distal causal relationship exists when a mediating or intervening variable (in this case the tax intermediaries) is situated between the causal factor and the effect. See Gerring supra note 56, 200

Second are the *B-factors* which are essentially referents and products of normative, control and behavioural beliefs.[58] In the latter, they impact on *X*, TI and *Y*. The interview brought this to light. For example, the predisposition of TIA(2), TIL(2), TIL(5) and (6) to the provision of tax avoidance services and advisory points to the fact that TIs prioritise the socio-economic wellbeing of their clients and themselves over the *fiscus*. It is surmised that this behaviour is the product of normative referents and beliefs. This orientation is at variance with the opinion that tax intermediaries (specifically legal practitioners) are obligated to create, nurture and promote a fair tax system while discharging their duty to their clients.[59] This development is in conflict with the notion that tax intermediaries ought to function as 'gate-keepers', protecting the tax system and the state from fictitious and adverse claims.[60] It is, thus, obvious that, instead of occupying the gatekeeper position between the taxpayer and the state (represented by the tax authority), the interviewed TIs, by virtue of their conduct, have moved to the side of the taxpayer. This disrupts the balance necessary for the tax system to deliver on its mandate effectively and efficiently.[61]

The third is *P1*. *P1* is indicative of the activities of the taxpayer sequel to reaching a decision to manifest a TpB without interacting with a TI. It is also representative of the return to the point where, after failure to manifest a TpB because of intervening *B-factors* (e.g. the legal requirement that an auditor makes a comment concerning the company's financial statement), the taxpayer procures a TI who actuates and/or influences the TpB through the services *(Z)* provided to the taxpayer. In *figure 6.5*, the fact that *A* can actuate and/or influence taxpayers' decision along two paths (*P1* and *P2*) not in one direction as hitherto conceptualised in *figure 6.1* is recognised.

The fourth is that *figure 6.1* presented an oversimplified description of the relationship between the role of TIs and TpB, hence its flaws. The latter is remedied in *figure 6.5* which is the core of the conceptual framework of the investigation.[62] On the above premise, the

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58 Normative, control and behavioural beliefs are at the core of the theory of planned behaviour developed for predicting and explaining human behaviour in situations over which individuals lack or have incomplete volitional control. See generally Ajzen, I, 'The Theory of Planned Behavior' (1991) Vol. 50 (2) *Behavior and Human Decision Processes* 179, 181; Sommer, L, 'The Theory of Planned Behaviour and the Impact of Past Behaviour' (2011) Vol. 10 (No. 1) *International Business & Economics Research Journa*l 91; Barber, JS, 'The Theory of Planned Behaviour: Considering Drivers, Proximity and Dynamics' (2011) Vol. 9 *Vienna Yearbook of Population Researc*h 31-35

59 Lavoie, R, 'Am I My Brother 's Keeper? A Tax Law Perspective on the Challenge of Balancing Gatekeeping Obligations and Zealous Advocacy in the Legal Profession' (2013) Vol. 44 (1) *Loyola University Chicago Law Journal* 813, 816

60 Perkins, RH, 'The Tax Lawyer as Gatekeeper' (2010) Vol. 49 (No. 2) *University of Louisville Law Review* 185, 189

61 Perkins, *ibid*

62 See chapter 3 (paragraph 3.3) for the conceptual framework and further discussion which relates to the causal pathway/ TI-TpB relationship

conclusion is that there is no causality between the TIs and the TpB. Rather it a case of correlation as the TIs are not the sole cause of the direction of the TpB. The *A* or *B* factors could also be the cause of the TpB.

2. Complicity level of intermediary groups

Another product of the synthesis of Workflows 1 and 2 is the seeming preference for the services of accountants who also have CITN qualification. This is notwithstanding the fact that the functions of an accountant, auditor[63] and tax practitioner[64] are statutorily different and ought to be performed by different professionals. This conclusion may not have been possible if recourse had been to the questionnaire data only. With the tools utilised in Workflow 2, the underpinning reason for this conduct or preference (i.e. the why) was determined. It was observed and subsequently confirmed by a TI (i.e. TIA(3)), that the reason for this behaviour is financial. Taxpayers (especially MSCs who are lifestyle companies where all the decisions are taken by an individual) would, instead of procuring an accountant to prepare the financials, another to act as auditor and a professional qualified as tax practitioner in terms of the CITNA to handle the tax issues, procure an accountant who has CITN qualification to do all that would ensure that the statutory requirements relating to book keeping and tax advisory is met,[65] to reduce the cost of tax compliance and improve their disposable income (i.e. profit after tax).

Consequently, the conclusion that professionals with either of the accounting (i.e. ANAN or ICAN) qualification as well as that of CITN would mostly likely be at the top of a complicity scale. This is a consequence of the legal jurisprudence that creates the role of the tax intermediaries and the training received by the respective professionals. Pursuant to section 55 (6) CITA, only a chartered tax practitioner or a chartered accountant/legal practitioner knowledgeable in the field of taxation or possessing a CITN qualification is the suitable candidate to be designated a representative by the taxpayer to answer any query relating to its tax matters posed by the tax authority.

With regard to legal practitioners, their complicity level seems the lowest. All the survey respondents stated that they used a legal practitioner only for incorporation. Again, this is

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63 See sections 357-358 CAMA for the qualification, appointment and tenure of an auditor

64 For the professional regulatory regime relating to tax practice see section 13 (establishment of Disciplinary Tribunal and Investigating Panel); section 14 (Penalties for unprofessional conduct, etc.); section 16 (when a person is deemed to practice as a tax practitioner). Also, see the Statement of Taxation Standard (1-8) issued by CITN pursuant to section 1, CITNA to raise, maintain and regulate the standard of taxation practice amongst its CITN members

65 Examples of statutory provisions which creates the statutory requirement which the option meets includes sections 14 ICANA section 44(2), 77 FRCNA, section 334 CAMA and section 55 CITA

a consequence of the legal jurisprudence and the training of legal practitioners. Other than section 35(3) of CAMA, which makes it mandatory that a legal practitioner declares on oath in the prescribed form to the effect that the requirements for the registration of a company have been compiled with, there is no special role reserved for a legal practitioner in the context of this research. Furthermore, it was observed in the course of engagements with professionals qualified to act as TIs,[66] that legal practitioners generally lack the expertise needed for book keeping and advisory services not extending to legal representation. This is because the training received by the legal practitioner at the undergraduate and law school stage does not extend to non-legal tax advisory and book keeping.[67] While confirming the foregoing, TIL(4) (a legal practitioner) stated with regard to the legal training received that:

> … in my 4th year in the University I did tax law as a course. Though it was an elective I chose it and it was wonderful. It was an elective and it wasn't compulsory. [68]

With regard to the adequacy of the curriculum for of tax course, TIL(4) stated that:

> To be truthful, I think it wasn't adequate. For me to better myself on the issue of tax I think I still need to do further courses pertaining to tax related issues. … At the law school we didn't do anything pertaining to tax.[69]

6.4 CONCLUDING REMARKS

This chapter has described the mechanics of data collection utilised in the course of this research, analysed the data using descriptive statistics, presented the results and conclusions drawn from it. In the course of the forgoing, it highlighted the utility of the research design. That is, it showed that the insights derived were a consequence of the fusion of the epistemological divides and that it provided the opportunity to ask 'the why' question. Furthermore, it should be noted that, in the absence of the foregoing, triangulation to determine the validity of the findings of the survey would not have been possible. Furthermore, it made possible the clarification of the role of the TI in relation to the compliance behaviour of MSCs.

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66 See Appendix 6.5 (Engagements during the period of field work and outcome) which catalogues events attended by the researcher during the period of filed work and engagement outcomes

67 The National Universities Commission, *Benchmark Minimum Academic Standards for Undergraduate Programmes in Nigeria Universities: Law* (April 2007) lists revenue/taxation law as an optional undergraduate course. Where it is taught, the content is actually not sufficient to equip prospective legal practitioners with the knowledge to provide book keeping and tax advisory service that could influence the compliance behaviour of taxpayers

68 TIL(4) Interview Transcript (Benin: 12 December 2017, 2:57 pm)

69 *Ibid*

At the end of the investigation, a number of findings emerge. First is that which counters the thesis that seeks to suggest that, because of the complexity of the tax system and the training of TIs, guilt for the compliance behaviour of their principals should be ascribed to the TIs. The conclusion, thus, is that the TIs are instruments utilised by the MSCs for the actualisation of their predetermined objective and are not always the catalyst or influencers of the taxpayer behaviour. Another is that notwithstanding the fact that religion can potentially be an influential factor with capacity to actuate and influence tax compliance behaviour, when it comes to interaction within the Nigerian tax system, the alter egos of taxpayers and TIs are more inclined to discountenance or ignore it. This confirms the conclusion by Mohdali *et al*[70] that religion is irrelevant vis-à-vis consideration of tax compliance behaviour.

[70] Mohdali *et al* supra note 35

CHAPTER SEVEN: CONCLUSION

7.1 INTRODUCTION

The relationship between taxes and business, as well as the corollaries and consequence(s) of their interface on the businesses, investors and the economy in which the trade or business is undertaken, has been an issue of interest to a spectrum of entities. This preoccupation has also led to numerous and varied conclusions.[1] This has also brought about a variety of contending discourse with regard to the role of tax and the use of tax incentives by states, the direction of the tax compliance behaviour of businesses in the context of the existence of tax incentives, etc.[2] This study, *inter alia*, has provided an opportunity for the consideration of some of the aforementioned issues from a Nigerian perspective.

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1 One of which is the consequence of taxes on export and capital flow which in relation to Keen and Syed after examining panel data from 1967 to 2003 of corporate taxes and VAT on export performance and capital flow in OECD countries found that while increased reliance on VAT revenue tends to have no noticeable effect on net exports thereby giving voice to the proposition that VAT is inherently trade neutral. With regard to capital flow, they also found that short-term increase in corporate tax leads to capital flight. See Keen, M & Syed, M, 'Domestic Taxes and International Trade: Some Evidence' (2006) *IMF Working Paper No. 47*. Available at https://www.imf.org/external/pubs/ft/wp/2006/wp0647.pdf (accessed 19 April 2016). Note that the inherent trade-neutrality of VAT is a function of the fact that VAT ordinarily is a destination-based consumption tax as exports are zero-rated, thus allowing for recoup of full input credit and there having the propensity to provide a competitive advantage for the implementing state. On the foregoing issue see Bird, RM & Gendron, P, *The VAT in Developing and Transitional Countries* (NY: CUP, 2011) 48-69. With regard to business location and organisational structure, there is sufficient literature pointing to the fact that the tax structure and policy of a state affects business decisions, impacts on the business opportunities and return on investment within the state as well as the revenue accruable to the state. See generally, Luna, L & Murray, MN, 'Effects of State Tax Structure and Business Organisational Form' 63 (1 Part 2) (2010) *National Tax Journal* 995-1022. Available at http://www.ntanet.org/NTJ/63/4/ntj-v63n04p995-1021-effects-state-tax-structure.pdf (accessed 18 April, 2016). See also Legwaila, T, 'Tax Reasons for Establishing a Headquarter Company' (2011) *Obiter* 126-142; Boskin, MJ & Gale WG, 'New Results on the Effects of Tax Policy on the International Location of Investment (1986) NBER Working Paper 1862. And in relation to foreign direct investment (FDI) inflow, Arbatli referred to taxes as 'country-specific pull factors' which have direct effect on the returns realisable by investors in host countries. See Arbatli, E, *Economic Policies and FDI Inflows to Emerging Market Economies* (2011) IMF Working Paper No. 192. Available at https://www.imf.org/external/pubs/ft/wp/2011/wp11192.pdf (accessed 19 April 2016)

2 See chapter one and two respectively

To facilitate the foregoing, research questions which provided points of orientation for the researcher were formulated.[3] They also formed the pivot around which the entire research process revolved.[4] In addition to highlighting which research question relates to which previous chapter, the concluding remarks in previous chapters are brought together here. Furthermore, in this chapter, recommendations with reform implications for law and policy will be made, the limitations of the research, the contribution of the study to scholarship and suggestions for further research will be highlighted.

7.2 SUMMARY OF CHAPTERS

Chapter one set the tone of this study. Its utility stems from the fact that it provided a locale to which subsequent discussion was tied and described the tax environment in which MSCs operate in Nigeria. Specifically, it highlighted the multi-jurisdictional/tiered structure of the Nigerian tax system and drew attention to the fact the structure had the potential to have an impact on the compliance behaviour of taxpayers. It also gave an overview of the study. To this end, it introduced the frameworks which subsequently provided the foundation of the study. A takeaway from chapter one was the fact that the study was not going to be the usual in terms of the prevailing tradition of legal scholarship.

Within the general framework of the research design, chapter two served one major purpose and that was the provision of the opportunity for concept formation. It commenced with a review of the literature on the impact of taxes from which it was distilled that there are two perspectives of the impact of taxes on the economy or aspects of it. From this point, the analysis and focus of the study moved to a review of the concepts central to the objective of the study. First, the concept of tax incentives was considered. Sequel to a review of the literature on its nature, use and effect, it was argued that even in the face of conventional wisdom, the global prevalence is a testament to the fact that its existence in jurisdictions is the product of a variety of governemnt policies. Notwithstanding the tone of the literature with regard to the nature of tax incentives, it was highlighted that there are benefits to be derived from the existence and use of tax incentives as a fiscal instrument in a tax system. Hence, it was recommended there that a 'purpose-driven' orientation be adopted for the provision of tax incentives and their grant if benefits are to be derived from their presence. To achieve the foregoing, it was recommended that within a tax system, their existence should be the product of the matching of pre-determined policy objective(s) to appropriate

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3 See chapter one (paragraph 1.4.3) for the research questions

4 See Leedy, PD & Ormrod, JE, *Practical Research: Planning and Design* (10th Ed) (New Jersey: Pearson, 2013) 27

tax incentive(s).[5] Thus, for example, where the intention is spatial development, it was averred that the best option of incentive would be incentives accruing to taxpayers because there are situated or located within the region targeted for development by the state.

In addition, chapter two introduced tax complaince, a concept which has generated opposing discourse since the levying of the first tax and one which will continue to so do as long as taxes exist.[6] Here, it was argued that tax compliance is a derivative of the prevailing tax jurisprudence. To this end, tax compliance was defined in the chapter (and in the course of the entire research process) in terms of the taxpayer being on the right side of the tax compliance continuum or manifesting a positive TpB. It was, thus, argued that a taxpayer is compliant when it (a) registers with the tax authority; (b) correctly and truly reports on its activities, income and expenditure; (c) where there is a self-assessment regime in place, correctly and truly computes its tax liability, files its tax returns on or before the due date; and (d) pays the tax due on or before the date or time set in law for the payment of tax in a year of assessment. Secondly, the chapter introduced the tax intermediaries. With regard to them, it was acknowledged that they played an important role within the tax system notwithstanding the seeming negative publicity they ccurrently enjoy. Hence, it was recommended in the chapter that for tax systems to deliver on their mandate, serious attention should be focused on tax intermediaries.

In terms of the questions which underpinned the study, chapter two relates to SRQ 1 and 2 of PRQ1 (i.e. who are the tax intermediaries in the tax system and what is the role of the tax intermediaries in relation to taxpayer compliance?) by virtue of its focus.

While chapter three did not particularly address a research question, it provided an exposition of the research design. The peculairity of the design was that it took the research beyond the regime of law into the realm of the social science using a bespoke MMMF. In retrospect, the MMMF is considered the source of the introduction of pragmaticism into the study and research process. Without it, the research could possibly have come to a premature end a few times. However, this was the not the case because with the MMMF a 'what works' mentality and tactics informed the choice of approach, method and tools

5 See UNCTAD, *Tax Incentives and Foreign Direct Investment: A Global Survey* (2000) ASIT Advisory Studies No. 16. Available at *http://unctad.org/en/Docs/iteipcmisc3_en.pdf* (accessed 5 January 2017) 15-17

6 See generally, Torgler, B, 'Speaking to Theorists and Searching for Facts: Tax Morale and Tax Compliance in Experiments' (2002) 16 (5) *Journal of Economic Surveys* 657

utilised in the course of the study and research process.[7] Furthermore, in the chapter, the opportunity for the use of multiple research tools for a structured and in-depth interrogation of the issues and subtleties associated with the variables of interest to the study as well as the multidisciplinary nature of taxation was put forward as the reason for the research design adopted for the study.

Another feature of the design is its leaning towards being idiographic. In chapter three it was argued that this was a consequence of the existence of a multiplicity of compelling theoretical reasons to understand the compliance discourse, the multiplicity of theoretical prisms through which it is conceptualised as well as the quest for understanding and resolution of the issues associated with TpB (which essentially is a behavioural problem).[8] It was further argued in the chapter that the choice of the frameworks encapsulated in the research design was as a result of the fact that they provided the opportunity to: (1) study/observe issues and subtleties of interest with a view to deriving understanding of the behaviour of specific subjects in the natural world and not to derive averages of the population; and (2) to allow for repeated interrogation of the same issues and subtleties of interest from different perspectives in a manner that is focused on establishing the internal validity of the research process.

Furthermore, from chapter three (as well as chapter six) it was garnered that the exposition of the research design, process and findings in chapter six are derivatives of the fact that the research was a small *n-study.* This provided the opportunity for the observation of taxpayers in their natural environment and the repeated interrogation of the issues of interest from different perspectives.

Chapter four built on chapter two by virtue of its scope and the fact that it provided answers to SRQ1 of PRQ2. Its focus was the regime for CIT administration in Nigeria, the identification and review of CIT incentives available to companies and their administration within the Nigerian tax system. Part of the findings of chapter four was that CIT incentives are available within and outside of CITA. Another finding is the fact that the majority of

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7 This is an approach which holds that purpose determines procedure. Creswell refers to it as a world view and argues that it shapes research approach. Johnson and Onwuegbuzie argue that pragmatism is an approach to research where the choice of epistemology or philosophical world view is a function of contingency as determined by the researcher. See Johnson, RB & Onwuegbuzie, AJ, ‘Mixed Methods Research: A Research Paradigm Whose Time Has Come’ (2004) Vol. 33 (No. 7) *Educational Researcher*, 12, 22-23. Also see Creswell, JW, *Research Design: Qualitative, Quantitative and Mixed Methods Approaches (4th ed)* (London: Sage, 2014) (chapter 1)

8 Barnett, SD, *et al*, ‘Small *N* Designs for Rehabilitation Research’ (2012) Vol. 49 (No. 1) *Journal of Rehabilitation Research and Development* 175-186, 176

the incentives identified are in the context of the literature essentially in the form of CIT holidays and investment allowances. Furthermore, the lack of guideline or regulation to direct the grant as well as the interactions of the various CITA incentive provisions were identified as a potential source of uncertainty in the chapter.

Again, it should be noted that the review in chapter four did not extend to an analysis or discussion of effectiveness of the CIT incentives. In addition to the reason in stated therein, it should be noted that, that would have been the case if an analysis of the policy underpinning the CIT incentives was part of the research objectives. As the study sought to determine the behavioural response of taxpayers to CIT incentives, the analysis situated the legal provisions in a social space to facilitate the appreciation of the dynamics between the tax incentives, MSCs, tax intermediaries and compliance as well as the behavioural responses of the taxpayers.

For chapter five, the focus was the provision of answers to SRQ1 of PRQ2. Therein, it was argued that there is a variance between the role of tax intermediaries from a theoretical perspective and the role they actually play in the course of service provision to taxpayers. This, it was argued, is the catalyst of a role dysfucntion that characterisies the tax systems in general. Furthermore, in order to evaluate the management *cum* regulation of tax intermediaries in Nigeria, a comparative assessment of the tax intermediary management regime of Nigeria against that of Kenya and South Africa was undertaken in chapter five. And, consequently, it was concluded that in terms of the realities of today, the intermediary management system in Nigeria is inadequate. This, it was determined, is due to the fact that in the course of practice, Nigerian tax intermediaries are subject to a mix of self-regulation through ANAN, CITN, ICAN or NBA statements of professional standard and codes of conduct which members are expected to comply with. Government regulation, it was further revealed, is limited to the recognition of the professions that vests capacity in persons to act in the role of a tax intermediary. The chapter also highlighed features distinct to the Kenyan and South African tax systems (i.e. the existence of a licensing regime specific to tax intermediation service or practice as well as the existence of a mandotory reporting regime) that could be adapted by Nigeria for the improvement of its tax intermediary management system.

In chapter three, it was stated that the research process would blend the epistemological divides. Chapter six presented the mechanics of this process. It detailed the data collection and analysis process utilised in the course of this research, presented the analysis of the data, and the results and conclusions drawn therefrom. In the course of the forgoing, the utility of the research design, which includes: (1) the fact that it provided the opportunity for the 'why' question to be asked; and (2) facilitated the gathering of data using multiple tools and their analysis was highlighted. Furthermore, it was highlighted that the research design provided the opportunity for understanding of the motivation and orientation of MSCs in relation to TpB as well as the relationship of the former with the TIs in the context of the available CITA incentives.

In addition, in chapter six it was argued that there is a correlation between the role of TIs and TpB. The basis of this conclusion is the existence of other factors (or variables) with the capacity to influence tax compliance behaviour. This finding, while not countering the thesis 'no tax dodge without the input or expertise of a TI', brought to the fore the fact that the (in)actions of Nigerian TIs (with MSCs as clients) vis-à-vis tax compliance are actuated, guided or influenced by the dictates and/or desire of the clients, their own personal need for sustenance or a combination of both. Hence, it was concluded in chapter six that guilt for TpB should not be entirely ascribed to the TIs as they are instruments utilised by the MSCs for the actualisation of their predetermined objectives or causalities of their socio-economic milieu. The analysis leading to this conclusion and the latter provided answer to SRQ3 and PRQ2.

Another plank of the findings in chapter six is that when it comes to interaction within the Nigerian tax system, the alter egos of MSCs and TIs are more inclined to discountenance religion despite the fact that religion is a potential influential factor with the capacity to actuate and influence TpB. This confirms the conclusion that the influence of religion is either minimal[9] or irrelevant[10] in the context of the consideration of tax compliance behaviour.

7.3 RECOMMENDATIONS

The result of the investigation undertaken in the course of this study, amongst other things, points to the fact that, in the context of CITA incentives (1) the TpB of the research participants (i.e. the MSC sample) is actuated and/or influenced by the CITA incentives; and (2) the TIs do not provide leadership in the relationship between them and their clients

9 Mohdali, R & Pope, J, 'The Influence of Religiosity on Taxpayers' Compliance Attitudes: Empirical Evidence from a Mixed-Methods Study in Malaysia' (2014) Vol. 27 (Issue 1) *Accounting Research Journal* 71

10 Mohdali, R, *et al*, 'A Cross-cultural Study of Religiosity and Tax Compliance Attitudes in Malaysia and Turkey' (2017) Vol. 15 (No. 3) *eJournal of Tax Research* 490

who are MSCs. What is evident from the surveys and interviews, therefore, is that the Allingham-Sandmo-Yitzhaki (ASY) economic deterrence model,[11] which drives the majority of tax compliance improvement strategies, cannot entirely provide a theoretical premise for the prevailing realities in the space where TIs and MSCs interact in Nigeria. This flaw is primarily because the prism from which the concept of tax compliance and the relationship between the role of TIs and TpB is considered does not take into cognisance the influence of referents outside the realm of economics on taxpayer compliance behaviour. It is against this background and with the understanding that for tax administration to be effective, it must entrench a system that facilitates taxpayer compliance,[12] that the following recommendations with reform implications for law and policy are made:

1. Re-conceptualisation of tax compliance

There is a need for reorientation in the conceptualisation of tax compliance. This is because the prevailing theoretical premise (i.e. the ASY model and other derivatives) for the extant tax law and policy does not take into cognisance the entire spectrum of the taxpayer's cognitive process which informs compliance behaviour. It does not contemplate the fact that non-economic factors (e.g. the social dynamics of the taxpayers and TIs) or variables and referents outside the realm of taxation are capable of influencing tax compliance behaviour. A reorientation that looks beyond the narrow confines of utility maximisation and the economics of crime, and recognises the existence of referents as well as their role vis-à-vis tax compliance behaviour would actuate the design of similarly oriented strategies.

Hence it is recommended that efforts are made to tackle the socio-economic variables which actuate and influence the formation of behavioural referents. Furthermore, since it seems that deterrence capacity of the tax system is low, it is recommended that more tax and civic education, which is focused on the taxation-development-social justice nexus, be employed to bring about a reorientation of the taxpayers and society in general. With regard to noncompliant taxpayers, it is recommended that, instead of the automatic imposition of interest and penalties for noncompliance, a system be put in place where complicit alter

[11] See chapter three (paragraph 3.2.2: Alternatives and paragraph 3.2.3: Assessment of the Alternatives) for review of the economic deterrence model

[12] As a matter of fact, this is the first obligation of tax administration with the enforcement of compliance and the improvement of internal governance as second and third. See Bird, R, 'Smart Tax Administration', *Economic Premise,* No. 36, October 2010, 1, 2. Available at http://siteresources.worldbank.org/INTPREMNET/Resources/EP36.pdf (accessed 30 September 2018)

ego(s) of first-time offenders are made to go through compulsory supervised tax (re)education programmes that brings to the fore the nexus between tax compliance, social justice, nation building and socio-economic development. Where this fails to bring about a change (i.e. there is a repeat noncompliance or recidivism) then punitive sanctions should be meted out in addition to further tax (re)education programme(s). It is further recommended that the cost of the tax (re)education programme(s) which a recidivist had previously undertaken should be incorporated into the penalty to further act as a deterrent.

2. Incentives Guidelines

The fact that there is an absence of clear guidelines for the administration of CITA incentives was brought to the fore in chapter four. Furthermore, it was highlighted that a consequence of this is the lack of certainty with regard to which of the CITA incentives a taxpayer is qualified for or the order of qualification (and the enjoyment of the grant) where the circumstances of the taxpayer qualifies it for more than one of the CITA incentives. In the absence of tax policy objectives which necessitates the trade-off of certainty for thr former,[13] the issuance by FIRS of guidelines for clarification would remedy the aforementioned issue. This can be achieved through the route of section 61 of the FIRSEA which provides that the Board of FIRS with the permission of the Federal Minister of Finance can make rules and regulations which in its opinion:

> are necessary or expedient for giving full effect to the provisions of this Act and for the due administration of its provisions and may in particular, make regulations prescribing the:
> (a) forms for returns and other information required under this Act or any other enactment or law; and
> (b) procedure for obtaining any information required under this Act or any other enactment or law.[14]

In addition to introducing certainty into the tax system, it is argued that the existence of rules, guidelines or regulations would provide considerable benefits of which one is the reduction of the cost of the administration of the tax system, and, with regard to the taxpayer, this has the potential of reducing the cost of compliance for taxpayers.

3. Tax intermediary regulation

The relevance of tax and taxation in a state is a fact that is at the fore of collective consciousness. In line with the call for re-conceptualisation of tax compliance, it is argued

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13 See May, RR, 'Update on Tax Certainty' (2019) (BRITACOM Special Edition) *Journal of International Taxation in China* 138, where the author stated that tax uncertainty is part of every tax and may even be encouraged

14 Pursuant to this provision, the *Income Tax (Country by Country Reporting) Regulations 2018* and the *Income Tax (Transfer Pricing) Regulations 2018*

that the role of TIs in Nigeria deserves greater attention. Hence there is the need for FIRS to accredit professionals (i.e. TIs) who interact with it on behalf of taxpayers. This would ensure that the TIs exist and operate within a framework characterised by an amalgam of state regulation, market forces (i.e. demand and supply) and the extant rules of professional conduct peculiar to their professions. A consequence of this is that TIs would operate within a stricter management framework.

In addition, there is the need for a vehicle for the implementation of the recommendations subsumed in the OECD BEP Action 12, i.e. the establishment of a mandatory disclosure regime (MDR) for tax avoidance arrangements or schemes. As a template, Nigeria could adopt any of the current models, (i.e. the Australian Promoter Penalty Regime,[15] the United Kingdom's Disclosure of Tax Avoidance Schemes (DOTAS) model,[16] or the South African Reportable Arrangements Regime[17]). In addition, the MDR should have stiff punishment such as the suspension/or loss of licence to practise upon the application of FIRS to the relevant professional body or fine/jail term where it is determined that the TI provided services related to a hallmark arrangement or succumbed to the pressure of the taxpayer. It is believed that this would facilitate tax compliance in Nigeria. Again section 61 of the FIRSEA provides the legislative support for the implementation of this recommendation (i.e. the accreditation of TIs and the setting up of the MDR). They have become necessary for giving full effect to the provisions of the FIRSEA as well as for the due administration of its provisions and the Nigerian tax system.

7.4 LIMITATIONS

The research process was beset by methodological and substantive limitations. The former relates to those associated with, or which are derivatives of, the research design while the latter are those peculiar to or associated with the researcher.

1. Methodological

The first methodological limitation is the fact that the research is reductionist in nature. This is because the focus was the tax compliance behaviour of MSCs only without a

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15 See section 290-50 Schedule 1, Taxation Administration Act 1953 *(Cth).* Also see ATO, *Promoter Penalty Law (2016).* Available at https://www.ato.gov.au/General/Tax-planning/Promoter-penalty-law/ (accessed 17 March 2018)

16 See sections 306-319, *Finance Act 2004(c.12)* and the *Tax Avoidance Schemes (Prescribed Descriptions of Arrangements) (Amendment) Regulations 2016* SI 2016/No. 99)

17 See sections 34-39, *Tax Administration Act 2011* (No. 28 of 2011) (TAA) and *SARS Notice 140* (Government Gazette 39650)*: Reportable and Excluded Arrangements for Purposes of Sections 35(2) and 36(4) of the TAA*)

consideration of the position of the other taxpayers (i.e. the medium and large taxpayers) on the compliance continuum. Nevertheless, the fact remains that the limitation of scope directed focus to a segment of taxpayers (i.e. micro and small taxpayers) that has been neglected[18] for myriad reasons one of which is that the constituents are considered 'often incapable of rigorously fulfilling their tax obligation … and tempted to exploit opportunities to be non-compliant'.[19]

Another is the use of a self-reporting instrument (i.e. the questionnaire) for data collection. This is because, by nature, questionnaires are not bias-free as they are an entrance for bias (both researcher's and that of participants) into a study. In relation to research participants, the bias originates in asking them to recollect or recall. With specific reference to this study, it should be noted that the other research tools (i.e. KII, observation and participant observation) provided a means for the sourcing of data that was put to use in validating what the survey participants reported. Also, the fact that the sampling was not by random selection could be pointed to as another limitation as there is the possibility that this could have introduced bias. Nevertheless, it should be recalled that the decision of the sampling strategy was a product of the pragmatic philosophy adopted within the boundaries of the MMMF. In view of the fact that the intention behind the survey was not to provide a statistically significant basis for generalisation and inference, this limitation in the methodology is not considered fatal.

Furthermore, there is also the issue of the proficiency level of the researcher with regard to the quantitative epistemology. This had an impact on the form of the instrument, its content as well as the presentation and analysis of data. Owing to the fact that, within the MMMF, the shortcomings as well as possible biases were countered by the outputs of the use of the other research tools utilised in the study, the effect of limited proficiency is marginal. Secondly, since the objective of the research was to be idiographic and non-deterministic, the shortcomings were of no moment.

2. Substantive

As was highlighted in chapter three and six, the researcher had to contend with issues of access to the research field. This first presented itself in diverse forms in the course of the

[18] Yucedogru, R & Hasseldine, J, 'Understanding Tax Morale if SMEs: A Qualitative Study' (2016) Vol. 14 (No. 3) *eJournal of Tax Research* 531, 532

[19] Swistak, A, 'Tax Penalties in SME Tax Compliance' (2016) Vol. 40 (1) *Finance Theory and Practice* 129, 130

quest for the requisite gatekeepers' consent. For example, of the nine gatekeeper's consent sought, eight responded after repeated physical follow-up visits and interviews/screenings (in both Abuja and Lagos) as well as telephone calls, WhatsApp messages and SMSs. Of the eight responses, only one was received in a space of less than six weeks from the date of the submission of the application of gatekeeper consent. The longest response time was after seven months of persistent visits, repeated interviews and screening as well as phone calls (plus WhatsApp messages and SMSs). For one of the eight, payment by the researcher of three years back practice and branch fees were made a prerequisite for gatekeeper consent even though the researcher had proven absence from practice for a continuous period of eight years prior to the date of the application (and the same had been acknowledged by the institution). Even where the consents were secured, the participation rate was poor. This had an impact on researcher's ability to collect data. As hitherto stated, (see chapter three) this gave birth to the pragmatic (or functional) approach to the use of methods and tools in the course of the research process and on the research field to gain useful insights.[20]

Furthermore, owing to the fact that taxation is emotive in nature and that the study utilised qualitative methods as well as tools, the researcher became privy to information that could be regarded as secret or sensitive. In addition, because the research design took cognisance of the fact that ethical issues would arise, these organisational secrets and sensitive information cannot be brought into the public domain. This decision is a consequence of the undertaking in the research protocol that the anonymity of research participants and the confidentiality of their identity would be paramount throughout the research process. Hence, there had to be data exclusion or suppression and this had an impact on the data presentation and analysis.

7.5 CONTRIBUTION TO KNOWLEDGE

The exposition of the contribution of this study to knowledge is approached from three perspectives, namely:

a. Methodology

Although unstated as an objective of this study (in chapter one), the entire research process was driven by the desire to contribute to the development of legal scholarship by the

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[20] This functional use/change of methods and tools where the use of an initially intended one becomes impossible is commended by literature. See generally Berry, AJ, & Otley, DT, 'Case-Based Research in Accounting' in Christopher, H & Bill, L (eds.), *The Real Life Guide to Accounting Research: A behind the Scenes View of Using Qualitative Research Methods* (Amsterdam: Elsevier, 2004)

conceptualisation and undertaking of a study within the legal discipline using or adapting research process, methods and tools from social science. This explains choice of taxation as the field for this endeavour because of its multidisciplinary nature and nexus with law. To this end, the study utilised the research framework (described in chapter three), an 'unusual' within legal scholarship.[21] Instead of being entirely descriptive and/or interpretative, as is usual of legal scholarship, the researcher donned the toga of an empiric and infused some of the associated research methods and tools into a legal research study. This took the research to the realm of empirical legal study or made it socio-legal in nature because the study: (1) highlights the relationship between social, administrative, economic, commercial practices that interact with the extant tax law in Nigeria; (2) subjects the normative regime of the tax law to investigation; and (3) examines the consequences of the tax law from the perspective of the research subjects.[22] This accounts for the detail and in-depth exposition of the research frameworks and justification of their use in chapter three as well as the content of chapter six.

Furthermore, the research design provided an opportunity for the assessment of legal provisions of interest to the study (i.e. CIT incentives within and outside of CITA) in a social context and facilitates the appreciation of the prevailing dynamics that relates to the variables of interest (i.e. tax incentives, MSCs-TI relationship and compliance). Vibhute and Aynalem refer to this as 'social auditing of law'.[23] With this methodology, this research undertook a gap-identification and analysis with regard to the legal ideal and social reality underpinning provisions of CITA-incentives, their utilisation by MSCs and the role of the TIs and their relationship with TpB in the context of CITA incentives using a pragmatic research philosophy.

b. Tax law, policy and administration

The findings of the study generally complement existing literature on the tax-trade (or business) interface. As it is an evidence-based research study, it has the potential to, in the

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21 Legal scholarship is famous for the use of black letter or doctrinal analysis: a research method that in terms of today's research standards, lacks the basis characteristics (i.e. empiricism) that would qualify it for categorisation as a science. See Van Hoecke, M, 'Legal Doctrine: Which Method(s) for What Kind of Discipline?', Van Hoecke, M (ed), *Methodologies of Legal Research: What Kind of Method for What Kind of Discipline?* (UK: Hart Publishing, 2011) 1-18. See chapter three (paragraph 3.5: utility of the research design) for further justification of the utility of the research design

22 Lacey, N, 'Normative Reconstruction in Socio-Legal Theory' 5 (No. 2) (1996) *Socio Legal Studies* 131, 132. Available at http://studysites.uk.sagepub.com/cross/files/Chapter10-Article2.pdf (accessed 19 April 2016)

23 Vibhute, K & Aynalem, F, *Legal Research Methods: Teaching Material* (2009), 31. Available at https://chilot.files.wordpress.com/2011/06/legal-research-methods.pdf (accessed 21 November, 2017)

context of Nigeria, catalyse policy formulation, the enactment of law as well as the design of administrative structures and processes within the Nigerian tax system that would improve CIT incentive management, facilitate domestic revenue mobilisation in Nigeria, and foster trade and investment without negatively affecting CIT revenue inflow to government coffers. To this end, the findings of the study are beneficial to tax policy formulators as well as tax administration as they provide a better understanding of the extent to which tax provisions (CITA/CIT incentives) actuate, impact or influence the decisions of Nigerian MSCs and the role of the TIs in the mix. Furthermore, the findings provide a template with which taxpayer compliance behaviour can be effectively influenced in Nigeria.[24]

c. Public finance

Although this study was conceived and undertaken within the disciplinary boundaries of law, its findings contribute to the subject of public finance - a field of human endeavour which is concerned with the balancing of the income and expenditure of public authorities and governments in the course of the allocation of public goods and services or the determination of who gets what, when, where, why and how.[25] The contribution of this study to the public finance discourse is the fact that it draws attention to the impact of negative tax incentive-induced behaviour (i.e. the preparation and filing of inaccurate financial statements as well as the claiming tax incentives which they do not qualify for) on other economic actors as well as the economy of the state.

Another contribution of this study which puts it within the public finance discourse is the fact that the study highlights variables[26] that impact negatively on Nigeria's domestic resource mobilisation strategy (i.e. the process of extracting resources from economic actors like taxpayers) to muster revenue needed to drive the expenditure side of its budget, combat deficit budgeting and prevent foreign debt/aid financing of public expenditure as well as make recommendations with the potential to countervail the highlighted variable.

d. Beneficence

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[24] See OECD, *Understanding and Influencing Taxpayers' Compliance Behaviour* November 2010, 9 where the nexus between better understanding of taxpayer behaviour and effective influencing for good compliance outcome was drawn. Available at https://www.oecd.org/tax/administration/46274793.pdf (accessed 23 August 2017)

[25] Akindele, ST, et al, 'Fiscal Federalism in Nigeria: A Contemporary Review' (2002) 6 (3) *Journal of Social Science* 215

[26] This includes (1) the uncertainty surrounding the grant and management of CITA incentives, (2) the management of TIs, (3) the TI-TpB relationship in the context of tax incentives, (4) the impact of the psycho-social orientation of the alter ego of MSCs on TpB and the services provided by TIs

A finding of the study is the complicity level of the respective intermediary groups in the context of tax noncompliance. The study has revealed that, with regard to the objective (and questions) of the research, the TIs are more or less victims of the prevailing socio-economic dynamics in Nigeria. In addition, when TIs are ranked in terms of their complicity in the noncompliant behaviour of MSCs, legal practitioners and professionals with both CITN and ICAN or ANAN certification are respectively at the bottom and top of the complicity scale. The implication of the foregoing is that the approach of classing all TIs as enablers of tax noncompliance (i.e. the one-size 'cap-fit-all' or standard approach)[27] to the assessment of TIs is not entirely a fair description or assessment of the circumstances of Nigerian TIs with MSCs as clients.

7.6 SUGGESTIONS FOR FUTURE RESEARCH

Owing to the fact that this research was designed and carried out as a small *n*-study, future studies might consider remedying the lack of representativeness of *n* to ground the extrapolation and generalisation of the findings associated with the current study. Furthermore, in the context of Nigeria where there seem to be no previous study of this nature, the findings of this study could become the hypothesis that would be tested by a future empirical study.

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27 See OECD, *Co-operative Compliance: A Framework – From Enhanced Relationship to Co-operative Compliance (2013),* 31. Available at http://www.oecd.org/ctp/administration/Co-operative-Compliance-Preliminary.pdf, (accessed 21 April 2016) for the emerging orientation that a standard approach to the consideration and resolution of tax-related issues may not always be practical or desirable

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APPENDICES

Appendix 1.1: Summary of Gatekeepers Consent Application

S/N	Institution/Agency	Date of Application	Date of Response
1	Nigerian Bar Association	26 November 2016	8 December 2016
2	Institute of Chartered Accountants of Nigeria	26 November 2016	21 March 2017
3	Chartered Institute of Taxation of Nigeria	December 2016	21 March 2017
4	Federal Ministry of Finance	7 December 2016	3 July 2017
5	Federal Inland Revenue Service	2 December 2016	3 July 2017
6	Joint Tax Board	4 January 2017	11 January 2017
7	Nigerian Investment Promotion Commission	4 January 2017	6 March 2017
8	Abuja Chamber of Commerce and Industry	8 December 2016	10 January 2017

Appendix 1.2 (a): University of Benin Research and Ethics Committee Approval

RESEARCH AND ETHICS COMMITTEE

COLLEGE OF MEDICAL SCIENCES
UNIVERSITY OF BENIN, BENIN CITY, NIGERIA

Chairman: Prof. E. I. Unuigbe
MB.BS, DPH, FMCP, FWACP
08023374640, 08033382881

P.M.B. 1154, Benin City
email: researchethics@gmail.com

Our Ref: **CMS/REC/01/VOL.2/53**

DATE: 7th December, 2016

RE: THE TAX-TRADE INTERFACE: AN INVESTIGATION OF THE INFLUENCE OF THE NIGERIAN INCOME TAX INCENTIVES ON TAXPAYER BEHAVIOUR.

Name of Principal Investigator: **Aniyie, Ifeanyichukwu Azuka,**
Department of Mercantile,
Faculty of Law,
University of Pretoria,
South Africa.

REC Approval No: **CMS/REC/2016/032**

This is to inform you that the research described in the submitted proposal, the informed consent forms, participant information materials and other documents have been reviewed and approved by the College Research Ethics Committee, University of Benin.

This approval dates from 7th December 2016 to 8th December 2107. In multi-year research, endeavor to submit your annual report to the REC early in order to obtain renewal of your approval and avoid disruption of your research.

The National Code of Health Research Ethics requires you to comply with all institutional guidelines, rules and regulations and with the tenets of the code including ensuring that all adverse events are reported promptly to the REC. No changes are permitted in the research without prior approval by REC except in circumstances outlined in the code. REC reserves the right to conduct compliance visit to your research site without prior notice.

Thank you.

Professor E. I. Unuigbe
Chairman: Research Ethics Committee

Promoting Best Ethical & Scientific Standard for Research in Nigeria

Appendix 1.2 (b): Faculty of Law, University of Pretoria Research Ethics Clearance

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Gmail — Ifeanyichukwu Azuka Aniyie <hyper2712@gmail.com>

APPLICATION FOR RESEARCH ETHICS CLEARANCE

Ifeanyichukwu Azuka Aniyie <hyper2712@gmail.com> — Wed, Aug 16, 2017 at 9:16 AM
To: Annelize Nienaber <annelize.nienaber@up.ac.za>
Cc: Benjamin Kujinga <Benjamin.Kujinga@up.ac.za>

Good morning Prof,

Attached hereto are the documents in support for my application for research ethics clearance.

Earnestly await your response.

Regards.

ANIYIE, IA
13324617

7 attachments

- **Appltn Letter.pdf** 81K
- **CONSENT_2.pdf** 1911K
- **DECLARATION OF STORAGE.pdf** 50K
- **LETTER OF INTENT AND SUBMISSION.pdf** 194K
- **LLD Proposal_PRETORIA_v4_2.pdf** 483K
- **SUPERVISOR LETTER.pdf** 30K
- **SURVEY_FGD.pdf** 400K

An effective tax admin | EP36.pdf | APPLICATION FOR RES | Gmail - APPLICATION F | Gmail - APPLICATION F | Appltn Letter.pdf

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Gmail — Ifeanyichukwu Azuka Aniyie <hyper2712@gmail.com>

APPLICATION FOR RESEARCH ETHICS CLEARANCE

Annelize Nienaber <annelize.nienaber@up.ac.za> — Wed, Sep 20, 2017 at 9:24 AM
To: Ifeanyichukwu Azuka Aniyie <hyper2712@gmail.com>
Cc: Benjamin Kujinga <Benjamin.Kujinga@up.ac.za>

Dear Mr Aniyie

I am pleased to report that ethics clearance has been granted for your study entitled "The Tax-Trade Interface: An Investigation of the Influence of the Nigerian Income Tax Incentives on Taxpayer Behaviour".

All the best!

Kind regards

Prof Annelize Nienaber

B Hons (Wits), LLM, LLD (Pret)
Head: Department of Public Law
Professor of International Law & Bioethics

Faculty of Law
Room 4-45, Level 4, Law Building
University of Pretoria, Private Bag X20
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UNIVERSITEIT VAN PRETORIA
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Email annelize.nienaber@up.ac.za

Web profile

On 18 September 2017 at 22:16, Ifeanyichukwu Azuka Aniyie <hyper2712@gmail.com> wrote:
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Appendix 6.1: Sample Application for Gatekeeper's Consent

UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA
Denkleiers • Leading Minds • Dikgopolo tša Dihlalefi
Department of Mercantile Law
Faculty of Law
University of Pretoria
South Africa

07 December 2016

OFFICE OF THE HON. MINISTER
RECEIVED
07 DEC 2016
FED. MIN. OF FINANCE

The Honourable Minister
Federal Ministry of Finance
Central Business District
FCT, Nigeria.

Attention: Director, Technical Services Department

Sir,

THE TAX-TRADE INTERFACE: AN INVESTIGATION OF THE INFLUENCE OF THE NIGERIAN INCOME TAX INCENTIVES ON TAXPAYER BEHAVIOUR

This refers to the above subject.

I am Ifeanyichukwu Azuka ANIYIE and I am undertaking doctoral research in the Department of Mercantile Law, Faculty of Law at the University of Pretoria, South Africa (attached herewith as **annexure 1** is my proof of studentship and school identity card as insert for your perusal). The research seeks to investigate how taxation impact on business decisions. Specifically, the research seeks to answer the following questions:

a. To what extent does incentives in the Companies Income Tax Act Cap. C21 Laws of the Federation of Nigeria 2004 (as amended) (CITA) influence the setup of business and trade/business decisions?
b. To what extent does the intermediaries influence the decisions of taxpayers?
c. What is (are) the theoretical underpinnings of the tax-influenced/induced decisions?
d. What is (are) the manifestations of the tax-influenced/induced decisions and its/their consequence(s) on the Nigerian tax system?
e. What is (are) the rationale(s) behind incentives in CITA?

The chosen research methodology includes a survey to gather empirical data for analysis and that would provide a premises for the conclusions that would be reached with regard to the questions. To this end, responses will be sought from three distinct groups of respondents (to wit, businesses/investors (i.e. the taxpayers), government personnel who regularly interface with businesses/investors and advisors to group one (i.e. the lawyers, accountants and tax advisors)) and pooled to achieve a holistic view of underlining the issues.

To deliver on the foregoing, I propose to have focused group discussions (FGDs) and/or key informant interviews (KIIs) with personnel of your institution. The research protocol and sample questions to be fielded during the FGDs/KIIs are attached hereto as **annexure 2 and 3** for your perusal. Every session is expected to last 30-45 minutes.

Please take note:

a. That the responses would be handled with confidentiality, used only for this research (and related research) and any result obtained would be reported collectively without attribution.
b. That the survey has been approved by the University of Benin Research Ethics Committee.

with experience in tax policy and administration is a condition precedent to securing the approval of the University of Pretoria Research Ethics Committee

Furthermore, the approval and/or consent is sought because, it is believed that it would facilitate easy access to personnel of your esteemed institution as well as serve as introduction of the researcher to the former. Thus it is humbly requested that:

a. The Honourable Minister approve and/or consent in writing to the researcher's plan as espoused above in writing. This would facilitate the application by the researcher for ethical clearance from the University of Pretoria, South Africa
b. The aforementioned correspondence should also serve as introduction of the researcher to the Ministry personnel

Please take note that the participation of the personnel of your esteemed institution is voluntary, without any obligation and devoid of negative consequence(s) if they do not wish to participate. If they choose to participate, they may decide not to answer any particular question and are at liberty to withdraw at any point they feel so inclined. Should there be any concern or query relating to participating in this research, my supervisor or I can be contacted. We would be pleased to provide clarification.

While we await your response, please to assured of our highest regards.

Yours sincerely

07/12/16

Ifeanyichukwu Azuka ANIYIE
LLD candidate, Department of Mercantile
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University of Pretoria
South Africa
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09 — 01 — 2017
OTS otter block 5th floor
ADII (TP) 11/1/17
Room 519

Appendix 6.2: Question Guide for FGD/KII

UNIVERSITEIT VAN PRETORIA
UNIVERSITY OF PRETORIA
YUNIBESITHI YA PRETORIA
Denkleiers • Leading Minds • Dikgopolo tša Dihlalefi

Research Title: **The Tax-Trade Interface: An Investigation of the Influence of the Nigerian Income Tax Incentives on Taxpayer Behaviour**

Researcher: **Ifeanyichukwu Azuka ANIYIE**

Questions for Focus Group Discussion/ Key Personnel Interview with Members of the Chartered Institute of Taxation of Nigeria, Institute of Chartered Accountants of Nigeria and the Nigerian Bar Association

EXPRESSION OF CONSENT: Research participants are to read the statement in the box below before indicating their consent to participate by appending their signature/initials and date of participation

I have also been informed that my participation is voluntary, without any obligation; that there will be no negative consequence(s) if I do not wish to participate; that if I choose to participate, to protect my identity and guarantee the anonymity of my response, no personal information is required and should be provided; that I may decide not to answer any particular question; and that I am at liberty to withdraw at any point should I feel so inclined.

I hereby **consent** ( ) /**do not consent** ( ) (please tick (√) where appropriate) to participating in the survey/research.

Signature/Initials: _______________ Date: _______________

NOTE: Please carefully consider each statement/question in relation to your business before reacting as is required by the statement/question. It is estimated that the discussion/interview would be for 30-45 minutes.

1. What is your educational qualification/professional affiliation?
2. Do you have a tax practice?
3. Do you in the course of your practice provide CIT incentives related advice? If yes, please give examples.
4. Do you think that the advice is capable of influencing or impacting on the trade/business decision or behaviour of your client(s) or would-be client(s)?
5. Are you aware if your CIT incentives related advice has had any influence or impact on trade/business decision or behaviour of your client(s) or would-be client(s)?
6. If yes, what is (are) the manifestations of the advice influenced/induced decisions or behaviour of the client or would-be client?
7. Do you think CIT incentives influence the trade/business decision or behaviour of your client or would-be clients?
8. If yes, please give specifics of which CIT incentives and the consequential advice/tax-influenced/induced decision or behaviour.
9. What actuates your CIT incentives related advice to client(s) or would-be client(s):
   a. Responsibility to your client
   b. Clients' instruction/demand
   c. Prevailing tax policy, legal provisions and/or administration
   d. Sheer audacity
   e. Prevailing economic reality
   f. Others, please specify

10. Do your religious beliefs or that of your client/would-be client influence your CIT incentives related advice to the client/or would-be client?

11. What is your assessment of the relevance and/or functionality of CIT incentives vis-à-vis the present-day Nigeria?

12. In the context of CIT incentives, to who or what are you responsible and how would you prioritise these responsibilities?

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Researcher: **Ifeanyichukwu Azuka ANIYIE**

Questions for Focus Group Discussion/ Key Personnel Interview with persons in Tax Administration and Tax Policy Formulation

EXPRESSION OF CONSENT: Research participants are to read the statement in the box below before indicating their consent to participate by appending their signature/initials and date of participation

I have also been informed that my participation is voluntary, without any obligation; that there will be no negative consequence(s) if I do not wish to participate; that if I choose to participate, to protect my identity and guarantee the anonymity of my response, no personal information is required and should be provided; that I may decide not to answer any particular question; and that I am at liberty to withdraw at any point should I feel so inclined.

I hereby **consent** ( ) /**do not consent** ( ) (please tick (√) where appropriate) to participating in the survey/research.

Signature/Initials: _______________ Date: _______________

NOTE: Please carefully consider each statement/question in relation to your business before reacting as is required by the statement/question. It is estimated that the discussion/interview would be for 30-45 minutes.

1. Do you think that income tax incentives are capable of influencing trade/business decision or behaviour of micro and small taxpayers (M&STs)?
2. In the course of work have you come across, experienced or been exposed to any M&ST income tax incentive influenced/induced decision/behaviour?
3. If yes, please give specifics of which income tax incentive and the consequential decision or behaviour
4. To what source do the M&STs attribute their knowledge of the income tax incentive which have influenced/induced their decision or behaviour:
   a. Their personal knowledge
   b. Tax intermediaries
   c. Others. Please specify.
5. From experience at work, what do you consider as actuating the harnessing of income tax incentive by the M&STs.
   a. Prevailing tax policy, legal provisions and/or administration
   b. Sheer audacity
   c. Prevailing economic reality
   d. Business/shareholders demand
   e. Others, please specify
6. What do think actuates income tax incentive related advice from tax intermediaries to the M&STs:
   a. Responsibility to client
   b. Clients' demand
   c. Prevailing tax policy, legal provisions and/or administration
   d. Sheer audacity
   f. Prevailing economic reality
   g. Others, please specify

7. Do you think religious beliefs influence the behaviour of M&STs?

8. Do you think the religious beliefs of tax intermediaries or their clients influence/actuate the advice of M&STs?

9. What do you consider is (are) the rationale(s) behind the income tax incentives available to or harnessed by M&STs? Please state.

10. What is (are) the consequence(s) of the tax influenced/induced decision(s) of M&STs on the Nigerian tax system and Nigeria? Please state

11. What is your assessment of the relevance and/or functionality of income tax incentives vis-à-vis the present-day Nigeria?

12. Are you aware if there is or has been any estimation of the value of the tax incentive granted taxpayers (M&STs) in Nigeria?

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Researcher: **Ifeanyichukwu Azuka ANIYIE**

Questions for focus group discussion/ key personnel interview with personnel of entities representing the business community

EXPRESSION OF CONSENT: Research participants are to read the statement in the box below before indicating their consent to participate by appending their signature/initials and date of participation

I have also been informed that my participation is voluntary, without any obligation; that there will be no negative consequence(s) if I do not wish to participate; that if I choose to participate, to protect my identity and guarantee the anonymity of my response, no personal information is required and should be provided; that I may decide not to answer any particular question; and that I am at liberty to withdraw at any point should I feel so inclined.

I hereby **consent** ( ) /**do not consent** ( ) (please tick (√) where appropriate) to participating in the survey/research.

Signature/Initials: _______________ Date: _______________

NOTE: Please carefully consider each statement/question in relation to your business before reacting as is required by the statement/question. It is estimated that the discussion/interview would be for 30-45 minutes.

1. Do you think that income tax incentives are capable of influencing trade/business decision or behaviour?

2. Have you come across, experienced or been exposed to any income tax incentive influenced/induced decision or behaviour?

3. If yes, please specify the income tax incentive and the consequential decision or behaviour.

4. To what source do the members attribute their knowledge of the income tax incentive which have influenced/induced decision or behaviour:
   a. Their personal knowledge
   b. Tax intermediaries
   d. Others. Please specify. ....

5. What actuates the harnessing of income tax incentive by members (businesses)?
   a. Prevailing tax policy, legal provisions and administration
   b. Sheer audacity
   c. Prevailing economic reality
   d. Business/shareholders demand
   e. Others, please specify..

6. What do you think actuates income tax incentive related advice from tax intermediaries to members (businesses)?
   a. Responsibility to client
   b. Clients' instructions and or demand
   c. Prevailing tax policy, legal provisions and or administration
   d. Sheer audacity
   e. Prevailing economic reality
   f. Others, please specify

7. Do you think religious beliefs or morals can influence or impact on:

a. The relationship of businesses with the income tax incentive?
b. Income tax incentive related advice from tax intermediaries to their client(s) or would-be client(s)?

8. What is (are) the rationale(s) behind the income tax incentives? Please state.

9. What could be the consequence(s) of the tax influenced/induced decision(s) on the Nigerian tax system and Nigeria? Please state

10. What is your assessment of the relevance and/or functionality of income tax incentives vis-à-vis present-day Nigeria?

11. Are you aware if there is or has been any estimation of the value of the tax incentive granted taxpayers in Nigeria?

Appendix 6.3: Sample of Questionnaire

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Researcher: **Ifeanyichukwu Azuka ANIYIE**

SECTION A: INTRODUCTION AND EXPRESSION OF CONSENT (Please read the statement in the boxes below before indicating their consent to participate by appending their signature/initials and date of participation

Sir/Ma,

I am undertaking doctoral research in the Faculty of Law, University of Pretoria, South Africa. This document relates to a survey which is part of the research. You have been approached to participate in the survey by responding to the questions below. **It is estimated that you would spend 10-15 minutes in responding to the questions.**

I have also been informed that my participation is voluntary, without any obligation; that there will be no negative consequence(s) if I do not wish to participate; that if I choose to participate, to protect my identity and guarantee the anonymity of my response, no personal information is required and should be provided; that I may decide not to answer any particular question; and that I am at liberty to withdraw at any point should I feel so inclined.

I hereby **consent** ( ) /**do not consent** ( ) (please tick (√) where appropriate) to participating in the survey/research.

Signature/Initials: ________________ Date: ________________

SECTION B: SOCIO-DEMOGRAPHIC CHARACTERISTICS (Please carefully consider each statement/question in relation to your business before reacting by ticking (√) and/or responding as required)

1. What is your role or position in relation to the business?

CEO	
Managing Director	
Others (Please specify)	

2. Level of education (please tick (√) the highest applicable level):

Informal education		WAEC or equivalent	
Ordinary Diploma or equivalent		Higher National Diploma or equivalent	
Post graduate degree/certificate			

3. Religion:

Christian		Muslim		Others (please specify)	

4. What is the form of your business?

Limited Liability (Ltd)		Public Limited Company (Plc)	

5. What is the reason for the choice or type of registration at the Corporate Affairs Commission (CAC)?

A	The nature/peculiarity of the trade/business	
B	The cost implication of the type of registration	
C	The ease of doing business with the chosen type	
D	To gain tax-related benefit	
E	I was advised. (Please state who)	

6. Where is the registered business address in Nigeria? ....

SECTION C: TAX HISTORY (Please the tick the appropriate option(s))

7. Does the business file annual tax returns in Nigeria? **YES ( )** **NO ( )**

8. If answer to **Q7** is **YES,** specify the last year of filing

2017		2016		2015		2014		2013	

9. State the tax office where the business files its annual tax returns..

10. Has the business paid interest and penalty before? **YES ( )** **NO ( )**

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11.

If answer to **Q10** is **YES,** specify the year(s) which the interest and penalty relate to:	2017		2016		2015		2014		2013		

12. Post registration with CAC the business has used the service of a tax intermediary? **YES ( ) NO ( )**

13.

If answer to **Q12** is **YES** please match tax intermediary to service by ticking (√) the appropriate			
Nature of tax intermediary	**Service**		
	Business incorporation	*Advisory*	*Book keeping*
Legal Practitioner			
Chartered Accountant			
Chartered Tax Practitioner			

14.

Below are issues with regard to which it is expected you had to make decisions. Please indicate which of the following issue influenced business decision in the past		
a	Choice of business	
b	Type of registration at CAC	
c	Purchase of business equipment and other asset (e.g. building)	
d	When to start using the purchased equipment or asset	
e	Choice of registered business address	
F	Location/siting of business	
G	Business financing	
H	Size of business	
I	Procurement of the service of a tax intermediary	
J	Preparation of accounts and tax returns	
k	Filing of returns	
l	Tax due (i.e. the amount of tax to be paid)	
m	Due date for tax (i.e. the time in a tax year fixed by law for payment of companies income tax)	
n	Others (please specify):	

15. Please indicate the year the business last paid tax

2017		2016		2015		2014		2013	

16. In relation to the year in **Q15** above, the time for the payment of the tax was determined by:

Legal Practitioner		Chartered Accountant		Chartered Tax Practitioner		Other (specify)	

17. In relation to the year in **Q15** above the business paid the tax

Before Due Date		After Due Date	

18. In relation to the year in **Q15**, the amount of tax paid by the business was determined by:

Legal Practitioner		Chartered Accountant		Chartered Tax Practitioner		Other (specify)	

SECTION D: PERCEPTION OF TAX AND INCOME TAX INCENTIVES (Please carefully consider each statement/question in relation to your business before reacting)

		Strongly Agree	**Slightly Agree**	**Somewhat Agree**	**Neutral**	**Somewhat Disagree**	**Slightly Disagree**	**Strongly Disagree**
	BEHAVIOURAL BELIEFS							
19	Claiming by businesses of income tax incentives that they do not qualify for amounts to not paying the right taxes							
20	Payment by businesses of the right taxes on or before due date and/or claiming of income tax incentives that it qualifies for is compliance with the law							

		Strongly Agree	Slightly Agree	Somewhat Agree	Neutral	Somewhat Disagree	Slightly Disagree	Strongly Disagree
21	Payment of right taxes on or before due date can negatively affect my business capital							
22	A business that pays taxes after due date has broken the law							
23	Claiming of income tax incentives that they do not qualify for and payment of taxes after due date is contrary to law							
24	The need for business cash would make the business delay in payment of tax							
25	Claiming income tax incentives that the business does not qualify for is a source of extra income							
26	When the business pays right taxes on or before due date and claim only income tax incentives that it qualifies for, it is tax compliant							
27	Tax provisions influence business decisions							
	NORMATIVE BELIEFS							
28	Associates/competitors approve the claiming by the business of income tax incentive which it does not qualify for							
29	My religion disapproves of the claiming for my business income tax incentives which it did not qualify for							
30	It is right for a business to lay claim to income tax incentives that it does not qualify for							
31	Businesses claim income tax incentives that they are not qualified for because the tax authority would never find out							
32	Tax intermediaries insist that the business pay right taxes on or before due date							
33	My religious beliefs influences the services I request of tax intermediaries							
34	Socio-economic realities in Nigeria encourages payment of right taxes on or before due date							
35	Tax officers expect that businesses would not pay right taxes on or before due date and/or claim income tax incentives that it does not qualify for							
36	My religion requires that I am tax compliant							
37	Need for growth/protection of capital makes businesses not to pay right taxes on or before due date and/or claim income tax incentives that it does not qualify for							
	CONTROL BELIEFS							
38	Income tax incentives promotes compliance							
39	I have no knowledge of available income tax incentives							
40	It is my tax intermediary's responsibility to seek out income tax incentives for the business							
41	Because of my religious beliefs my tax intermediary cannot claim for the business income tax incentives which the business does not qualify for							
42	Possibility of detection does make a business to become tax compliant							
43	Benefits for non-payment of right taxes on or before due date does outweighs the punishment/loss for the act							
44	The need to have cash for investment does not make it a priority for the business to be tax complaint							
45	The potential punishment for not paying the right tax on or before or due date and/or the claiming of income tax incentives that it does not qualify for does not induce compliance by the business							
46	Associates/competitors and the tax authority expect the business to be non-compliant							
47	Reward for payment of right tax on or before due date would make my business tax compliant							

Appendix 6.4: Workflow 2 participants

S/N	Participant Code	Sex	Date of Interview	Location
1	TAE(1)	M	27/9/2017	Abuja
2	TAE(2)	M	27/9/2017	Abuja
	TAE(3)	F		
	TAE(4)	F		
3	TIA(1)	M	14/10/2017	Mararaba
4	TIA(2)	M	30/10/2017	Abuja
5	CSO	M	29/11/2017	Abuja
6	TIL(1)	M	12/12/2017	Benin
7	TIL(2)	M	12/12/2017	Benin
8	TIL(3)	F	12/12/2017	Benin
9	TIL(4)	M	12/12/2017	Benin
10	TIL(5)	M	13/12/2017	Asaba
	TIL(6)	M		
11	TIC(1)	M	23/02/2018	Kaduna
12	TIA(3)	M	2-4/08/2018	Mararaba/Abuja

Key:

TAE: FIRS personnel
TIA: Tax Intermediary (ICAN member)
CSO: Civil Society Organisation representative
TIL: Tax Intermediary (NBA member)
TIC: Tax Intermediary (CITN member
M: Male
F: Female

Appendix 6.5: Engagements during the period of field work and outcome

Date	Event	Location	Represented Population	Outcome Description
30/11/2016	GEMS 3/NBA Abuja Branch 1 Day Sensitisation Workshop for members on their tax obligation	Abuja	• NBA members • FIRS Staff • Civil Society	• Observation of the attendees • Had informal discussions with the members of NBA with regard to issues touching on the research vis-à-vis their practice
19-20/06/2017	11th Annual Business Law Conference of the Nigerian Bar Association Section of Business Law	Lagos	• NBA members	• Had informal discussions with the members of NBA with regard to issues touching on the research vis-à-vis their practice
29-30/06/2017	International Centre for Tax and Development (ICTD) /Olaniwun Ajayi LP/FIRS International Tax Law Workshop	Lagos	• Tax intermediaries • FIRS staff	• Had informal discussions with the representatives from the entire spectrum of the research population
27-29/09/ 2017	Field work (three tax offices)	Abuja	• Taxpayers • Tax intermediaries • FIRS staff	• Secured response to questionnaire • Interviews of 4 FIRS staff • Observed the entire spectrum of the research population interact
05/10/2017	FIRS Day at the Abuja Chamber of Industry and Commerce (ACCI) 12th Abuja International Trade Fair	Abuja	• Taxpayers	• Secured response to questionnaire • Had 'informal' discussions with taxpayers
14/10/2017	Field work	Mararaba	• Tax intermediary (ICAN member)	• Had informal discussions
31/10/2017	Field work	Abuja	• Tax intermediary (ICAN member)	• Secured interview
29/11/2017	Field work	Abuja	• CSO	• Secured interview
12-13/12/ 2017	Field work (Select court premises)	Benin and Asaba	• NBA members	• Secured interviews
01-21/02/2018	Field work (2 tax offices)	Abuja Benin	• Taxpayers • Tax intermediaries • FIRS staff	• Observed the entire spectrum of the research population interact
22-23/02/2018	Oxfam Stakeholder Sensitisation on Taxation and CSR	Kaduna	• Members of ICAN, CITN, NBA • Taxpayers FIRS staff	• Secured an interview with a tax intermediary (a CITN member) • Had informal discussions with taxpayers and FIRS staff
18-20/07/2018	Field work	Abuja	• Member of ICAN	• Had a 'ride along' with the TI in the course of which we had informal discussions, meetings with clients and FIRS staff on behalf clients
2-4/08/2018	Field work	Mararaba	• Tax intermediary (ICAN member)	• Had informal discussions