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A LEGAL ANALYSIS OF THE NIGERIAN NATIONAL INSPECTOR GENERAL FOR TAX CRIMES COMMISSION BILL, 2022

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Abstract

The number of Ministries, Departments and Agencies ('MDAs') listed on the Nigerian Federal Civil Service official website is 1316. Although this figure is unwieldy, the cost of governance and the debt profile of these civil services are equally astounding. This prompted the Federal Government of Nigeria to set up the Oronsaye Presidential Committee on the Reduction and Rationalization of Federal Government Parastatals, Commissions and Agencies to consolidate the MDAs and reduce governance costs. However, the Nigerian National Assembly is currently deliberating on the National Inspector General for Tax Crimes Commission Bill, 2022 ('the Bill') with the aim of creating a National Inspector-General for Tax Crimes Commission. This article analyses the Bill and the various statutes aimed at curbing tax crimes such as the Economic and Financial Crimes Establishment Act, 2004 ('EFCC Act') and the Federal Inland Revenue Services (Establishment) Act 2007 ('FIRS Act') in order to determine whether the Bill is a duplication of these Acts and agencies. The adopted methodology is doctrinal. This article provides that creating a National Inspector-General for Tax Crimes Commission will inevitably lead to an increase in the cost of governance, overlapping functions, friction and conflicts with agencies such as the Federal Inland Revenue Services ('FIRS'), Economic and Financial Crimes Commission ('EFCC'), the Revenue

* LLB (LASU), MSc (Lagos), MBA (Ife), LLM (OSU), PhD (Ilorin), BL (Nig). This article was influenced in part by Animashaun, *A Legal Analysis of the Extent and Limit of the Nigerian State Powers of Taxation* (unpublished PhD thesis, University of Ilorin, 2017) 165–221.

** LLB (Cum Laude), LLM (UFH), LLD (NMMU).

Mobilisation, Allocation and Fiscal Commission ('RMAFC') and the Nigeria Customs Service. Accordingly, there is a need to harmonise the existing revenue agencies, tax administration and enforcement mechanisms.

Keywords: National Tax Crimes Commission; tax offences; corruption; cost of governance; ministries, departments and agencies.

I INTRODUCTION

Nigeria is regarded as one of the most corrupt countries in the world because it has rampant economic crimes such as money laundering, tax evasion and other tax crimes.¹ Notably, the tax to Gross Domestic Product ('GDP') ratio in Nigeria for 2020 and 2021 was 5.5² and 10.86 per cent

¹ Chitimira & Animashaun, 'The adequacy of the legal framework for combating money laundering and terrorist financing in Nigeria' (2023) 26(7) *Journal of Money Laundering Control* 110 at 110–114; Animashaun & Chitimira, 'The reliance on lifestyle audits for public officials to curb corruption and tax evasion in Nigeria' (2021) 24 *PER/ PELJ* 1 at 1–4; Animashaun & Amuda-Kannike, 'Taxpayers' attitude and perception and its social and legal perspectives' in Ikoni, Yerima & Faga (eds), *Judicial Autonomy, Administration of Justice and Contemporary Trends in Development of Legal Profession in Nigeria: Essays in Honour of His Lordship, Honourable Justice SO Itodo* (Wisdom Books and Publishing, Co. 2023) 666–682; Otekunrin, Nwaji, Eluyela, Inegbedion & Eleda, 'E-tax system effectiveness in reducing tax evasion in Nigeria' (2021) 19(4) *Problems and Perspectives in Management* 175 at 175–176; Paoki, Yusha, Kale & Mangoting, 'The effect of information technology and perceived risk in anticipating tax evasion' (2021) 11(2) *Jurnal Reviu Akuntansi Dan Keuangan* 238 at 239; Ehigior, 'The legal framework, procedure and challenges of tax audit and investigation in Nigeria: A comparative analysis of the United Kingdom and United States of America' (2021) 4 *Maradona University Faculty of Law Journal* 126 at 126; Selkur, 'Prosecution in criminal tax proceeding in Nigeria: Legal challenges' (2019) 6(4) *KAS African Law Study Library* 523 at 529–530; Esu, 'Legal implications of tax avoidance and tax evasion under the Nigerian tax regime' (2022) 11(6) *International Journal of Business and Economics Research* 314 at 314–320; Osho, Olorunsola & Ayejuyo, 'Taxation on social, economic and infrastructural development in Nigeria' (2020) 6(2) *Journal of Accounting Information and Innovation* 67 at 67–80; Olaoeye & Ogundipe, 'Application of tax audit and investigation on tax evasion control in Nigeria' (2018) 4(1) *Journal of Accounting, Finance and Auditing Studies* 79 at 79–80; Esoimeme, 'The Nigerian Money Laundering (Prevention and Prohibition) Bill, 2016: Critical appraisal' (2017) 20(1) *Journal of Money Laundering Control* 79 at 79–88; Oduntan, *The role of taxation in Nigeria's oil and gas sector reforms — Learning from the Canadian experience* (unpublished LLM thesis, University of Saskatchewan, 2015) 14–15; Adedeji & Obboh, 'An empirical analysis of tax leakages and economic growth in Nigeria' (2012) 48 *European Journal of Economics, Finance and Administrative Sciences* 43 at 44–50; Fagbemi, Uadiale & Noah, 'The ethics of tax evasion: Perceptual evidence from Nigeria' (2010) 17(3) *European Journal of Social Sciences* 360 at 361.

² OECD, 'Tax revenue and statistics in Africa 2023', available at <https://www.oecd.org/tax/tax-policy/revenue-stat-istics-africa-nigeria.pdf>, accessed on 12 October 2023

respectively.³ These percentages are lower than the tax to GDP ratio of many other African countries such as South Africa, Seychelles and Tunisia with the GDP to tax ratio of about 25.2, 32 and 32.5 per cent in 2020.⁴ According to Transparency International, Nigeria's corruption index is depicted by a score of 24 points out of the maximum 100 points in 2022. Thus, Nigeria is in the same category with countries such as Afghanistan, Cambodia, Guatemala and Lebanon.⁵ Corruption and tax crimes are related because corruption may induce tax crimes such as tax evasion, tax fraud, failure to deduct or remit tax, false declaration, counterfeiting of documents and failure to file tax returns. Countries with high corruption rates tend to have high rates of tax crimes.⁶ Moreover, tax crimes such as tax evasion are essentially classified as a form of corruption.⁷ Corruption and tax crimes are intertwined.

³ National Bureau of Statistics, 'Tax-to-GDP ratio revised computation', available at <https://www.nigerianstat.gov.ng/pdfuploads/TAX-TO-GDP%20RATIO%20REVISED%20COMPUTATION-2021.pdf>, accessed on 12 October 2023.

⁴ OECD, 'Tax policy and revenue statistics for Africa', available at <https://www.oecd.org/tax/tax-policy/revenue-statistics-africa-nigeria.pdf>, accessed on 12 October 2023; Animashaun & Amuda-Kannike, (Wisdom Books and Publishing, Co. 2023) 666–682; Mcculloch, Moerenhout & Yang, 'Building a social contract? Understanding tax morale in Nigeria' (2021) 57(2) *The Journal of Development Studies* 226 at 226–243; Smith, 'Nigeria's tax challenge', available at <https://abmagazine.accaglobal.com/global/articles/2022/feb/public/nigeria-s-tax-challenge.html>, accessed on 12 October 2023.

⁵ *Trading Economics*, 'Corruption index', available at <https://tradingeconomics.com/country-list/corruption-index>, accessed on 12 October 2023; OECD, 'Revenue statistics in Africa 2022–Nigeria', available at <https://www.oecd.org/tax/tax-policy/revenue-statistics-africa-nigeria.pdf>, accessed on 12 October 2023.

⁶ Yamen, Coskun & Mersni, 'Digitalization and tax evasion: The moderation effect of corruption' (2023) 36(2) *Economic Research* 1 at 7–8; Kuraone, Kong, Mago, Sun, Famba & Muzamhindo, 'Tax evasion, political/public corruption and increased taxation: Evidence from Zimbabwe' (2020) 28(1) *Journal of Financial Crime* 300 at 300–319; Yamen, Mersni & Ramadan, 'Tax evasion and public governance before and after the European "big bang": A red flag for policymakers' (2023) 30(2) *Journal of Financial Crime* 420 at 420–436; Ozili, 'Tax evasion and financial instability' (2020) 27(2) *Journal of Financial Crime* 531 at 531–539; Payne & Saunoris, 'Corruption and firm tax evasion in transition economies: Results from censored quantile instrumental variables estimation' (2020) 48(3) *Atlantic Economic Journal* 195 at 195–206; Yamen, Allam, Bani-Mustafa & Uyar, 'Impact of institutional environment quality on tax evasion: A comparative investigation of old versus new EU members' (2018) 32 *Journal of International Accounting, Auditing and Taxation* 17 at 17–29; Schlenther, 'The taxing business of money laundering: South Africa' (2013) 16(2) *Journal of Money Laundering Control* 126 at 126–141; Akdede, 'Corruption and tax evasion' (2006) 7(2) *Dogus University Journal* 141 at 141–149.

⁷ Androniceanu, Georgescu & Kinnunen, 'Public administration digitalization and corruption in the EU member states: A comparative and correlative research analysis' (2022) 65E *Transylvanian Review of Administrative Sciences* 5 at 55–22; Amoh & Ali-Nakyea, 'Does corruption cause tax evasion? Evidence from an emerging economy' *Journal of Money Laundering Control* (2019) 22(2) 217 at 217–232; Amara & Khelif, 'Financial crime, corruption and tax evasion: A cross-country investigation' (2018) 21(4) *Journal of Money Laundering Control* 545 at 545–554; Alm, Martinez-Vazquez & McClellan, 'Corruption and firm tax evasion' (2016) 124 *Journal of Economic Behavior & Organization* 146 at 146–163; Alon &

Consequently, a reduction in corruption will lead to a reduction in tax crimes and vice versa. The media reported that Nigeria loses billions of naira annually to corrupt collusion between tax officials and taxpayers.⁸ In addition, a former Nigerian Minister of Finance (Ngozi Okonjo-Iweala), who is currently the Director-General of the World Trade Organization maintained that Nigeria experienced losses of 'over NGN80 billion monthly from tax dodgers'.⁹ Multinational oil companies operating in Nigeria were not spared from tax evasion accusations by the Nigerian Finance Ministry and other scholars.¹⁰

Although tax crimes were prevalent in Nigeria before 2019, they have increased during and after the coronavirus pandemic ('Covid-19').¹¹ These tax crimes may belinked to the unpreparedness of tax officials in implementing digitalisation processes, as well as the violence caused by radical Islamist groups like Boko Haram and other terrorists who engage in kidnappings and demand large ransoms.¹² The large amounts of cash

Hageman, 'The impact of corruption on firm tax compliance in transition economies: Whom do you trust?' (2013) 116(3) *Journal of Business Ethics* 479 at 479–494; Angour & Nmili, 'Estimating shadow economy and tax evasion: Evidence from Morocco' (2019) 11(5) *International Journal of Economics and Finance* 1 at 1–7; Khyareh, 'A cointegration analysis of tax evasion, corruption and entrepreneurship in OECD countries' *Economic Research/Ekonomska Istrazivanja* (2019) 32(1) 3627 at 3627–3646; DeBacker, Heim & Tran, 'Importing corruption culture from overseas: Evidence from corporate tax evasion in the United States' (2015) 117(1) *Journal of Financial Economics* 122 at 122–138; Khelif and Achek, 'The determinants of tax evasion: A literature review' (2015) 57(5) *International Journal of Law and Management* 486 at 486–497; Cerqueti & Coppier, 'Economic growth, corruption and tax evasion' (2011) 28(1–2) *Economic Modelling* 489 at 489–500; Khelif, Guidara & Hussainey, 'Sustainability level, corruption and tax evasion: A cross-country analysis' (2016) 23(2) *Journal of Financial Crime* 328 at 328–348; Schneider, 'Size of the shadow economies of 28 European Union countries from 2003 to 2018' in Vlachos & Bitzenis (eds), *European Union: Post crisis challenges and prospects for growth* (Palgrave Macmillan 2019) 111–121.

⁸ Jimoh, 'Moves to raise IGR to N400b, prosecute corrupt officials', *The Guardian* 22 August 2022 at 21.

⁹ Vunderkind, '65% of corporate citizens don't pay tax — Okonjo-Iweala', *Nigerian Bulletin* 16 May 2014 at 4.

¹⁰ Otusanya, 'The role of multinational companies in tax evasion and tax avoidance: The case of Nigeria' (2011) 22(3) *Critical Perspectives on Accounting* 316 at 316–332; Adegbe & Fakile, 'Petroleum profit tax and Nigeria economic development' (2011) 1(1) *International Journal of Research in Computer Application Management* 11 at 17; Editorial 'Nigerians don't like to pay tax — Finance Minister', *The Leader News* 18 August 2013 at 3.

¹¹ Ojide, Agu, Ohalet & Chinanuife, 'Nigerian economic policy response to COVID 19: An evaluation of policy actors views' (2022) 14(1) *Poverty & Public Policy* 69 at 69–85; Animashaun & Chitimira, 'A legal analysis of the protection of the rights of persons with disabilities during the COVID-19 pandemic in Nigeria' (2023) 15 *African Journal of Legal Studies* 91 at 91–114; Yamen, 'Tax evasion, corruption and Covid-19 health risk exposure: A cross country analysis' (2021) 28(4) *Journal of Financial Crime* 995 at 995–1007; Abumere, 'Taxation in the Covid-19 pandemic: To pay or not to pay' (2023) 51 *Philosophia* 5 at 6–7.

¹² Animashaun & Chitimira, 'An analysis of the statutory measures adopted to curb tax evasion in Nigeria after the COVID-19 pandemic' (2023) 56(1) *De Jure Law* 136 at 138–156; Obayemi, 'Digitalization of Nigerian businesses: Tax challenges post-covid-19', available at <https://www.afronomicslaw.org/2020/07/28/digitalization-of-nigerian-busines>

collected by Boko Haram, insurgents, terrorists and other recidivists distort the economy and reduces tax revenue.¹³ Many statutes and specialised agencies were introduced in a bid to combat economic and financial crimes over the years. For instance, Nigeria took the initiative to enact the National Drug Law Enforcement Agency ('NDLEA') Act 48 of 1989, which has been repealed and replaced by the NDLEA Act Chapter N30 LFN 2004. These Acts were enacted to curb drug trafficking, money laundering and related tax crimes. Similarly, the Banks and other Financial Institutions Decrees ('BOFID') 25 of 1991 were also enacted to strengthen the Central Bank of Nigeria ('CBN') in bringing both banks and non-bank financial institutions (NBFI) under the supervision of the CBN. The BOFID was enacted to combat bank failures and financial crimes.¹⁴ This Act was amended by the Banks and other Financial Institutions Act 5 of 2022 ('BOFIA').¹⁵ The Failed Banks (Recovery of Debts) and Financial Malpractices in Banks Act 18 of 1994¹⁶ was enacted in order to address bank failures by curbing the activities of money launderers, tax criminals and insider traders in the banking sector.

The Economic and Financial Crimes Commission (Establishment) Act ('EFCC Act')¹⁷ was enacted to establish the Economic and Financial Crimes Commission ('EFCC') which is the primary agency for investigating and prosecuting financial crimes, including tax crimes in Nigeria.¹⁸ The EFCC is the coordinating agency for the enforcement of the Money Laundering (Prevention and Prohibition) Act 14 of 2022 (Money Laundering Act), the Terrorism (Prevention and Prohibition)

ses-tax-challenges-post-covid-19#:[:text=In%20Nigeria%2C%20the%20outbreak%20of, Tax%20Act%20(PPTA)%2C%20, accessed on 19 March 2024.

¹³ Ojewale, 'Theorising and illustrating plural policing models in countering armed banditry as hybrid terrorism in northwest Nigeria' (2023) 9(1) *Cogent Social Sciences* 1 at 3–20; Dahiru, 'Terrorists abduct over 100 villagers over nonpayment of "tax" in Northwest Nigeria', available at <https://human. glemedia.com/terrorists-abduct-over-100-villagers-over-nonpayment-of-tax-in-northwest-nigeria/>, accessed on 28 January 2024; Oyero, 'Ansaru terrorists operate as another govt in Birnin Gwari, collect levies from residents–Kaduna Councillor', available at [¹⁴ See also various amendments and new Acts such as Banks and other Financial Institutions Act 5 of 2020; the Banks and other Financial Institutions Act 7 of 2007; the Banks and other Financial Institutions Decrees \(Amended\) 4 of 1997; the Banks and other Financial Institutions Decrees 38 of 1998; the Banks and other Financial Institutions Decrees 25 of 1991.](https://www. channelstv.com/2022/12/14/ansaru-terrorists-operate-as-another-govt-in-birnin-gwari-collect-levies-from-residents-kaduna-councillor/#[:text=December%2014%2C%202022-,The%20Ansaru%20terrorist%20group%20has%20established%20another%20government%20within%20the,Zubair%20Abdurra'uf%20has%20said, accessed on 28 January 2024.</p>
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¹⁵ Sections 1–132 of the BOFIA.

¹⁶ Chapter F2 LFN 2004.

¹⁷ Chapter E1 LFN 2004.

¹⁸ Section 6 of the EFCC Act.

Act 15 of 2022 ('Terrorism Act'),¹⁹ the Advance Fee Fraud and Other Fraud Related Offences Act 14 of 2006 (Fraud Act),²⁰ the BOFIA, the Miscellaneous Offences Act 20 of 1984 and any other laws or regulations related to economic and financial crimes.²¹ The EFCC is also the parent body of the Nigerian Financial Intelligence Unit ('NFIU'), which is responsible for receiving, analysing and disseminating financial intelligence to relevant law enforcement agencies in Nigeria. The unit works closely with other agencies to combat economic and financial crimes in the country. Similarly, the Proceeds of Crime (Recovery and Management) Act 16 of 2022 ('PCRMA') provides the legal and institutional framework for the recovery and management of the proceeds of crime. This Act utilises a non-conviction-based procedure for the recovery of proceeds of all crimes.²² It also strengthens the criminal confiscation procedure and collaboration among the relevant organisations to trace properties reasonably suspected to be the proceeds of unlawful activity.²³

The Corrupt Practices and other Related Offences Act 5 of 2000 ('ICPC Act') also establishes the Independent Corrupt Practices and Other Related Offences Commission ('ICPC').²⁴ The ICPC investigates and prosecutes persons who are involved in corrupt practices and financial crimes.²⁵

Finally, the Federal Inland Revenue Service (Establishment) Act 13 of 2007 ('FIRS Act') was enacted. The Nigerian Federal Inland Revenue Service²⁶ was initially created in 1943 out of the Inland Revenue Department of the British West Africa. Different laws recognise the Federal Board of Inland Revenue under different names and powers.²⁷ The FIRS Act created the Federal Inland Revenue Service ('FIRS') as a body corporate with perpetual succession and capable of suing or being sued in its own name.²⁸ The FIRS Act vests the FIRS with the

¹⁹ Sections 21–24 of the Terrorism Act in relation to terrorism financing and financial crimes; see also Tijani, 'The effective prosecution of the crime of terrorism and terrorist related offences in Nigeria: Challenges and prospects' (2023) 14(1) *Beijing Law Journal* 300 at 300–323.

²⁰ Sections 1–22 of the Fraud Act.

²¹ Section 7 of the EFCC Act.

²² Section 82 of the PCRMA.

²³ Section 1–83 of the PCRMA.

²⁴ Section 3 of the ICPC Act.

²⁵ Sections 8–27 of the ICPC Act.

²⁶ Also referred to as the Federal Board of Inland Revenue.

²⁷ Income Tax Act No 39 of 1958; the Companies Income Tax Act ('CITA') 22 of 1961, Chapter C21 LFN 2004; Finance (Miscellaneous Taxation Provisions) Act 3 of 1993; see also Omoigui-Okauru, *A Comprehensive Tax History of Nigeria* (Safari Books 2012) 123–124.

²⁸ Section 1(1) of the FIRS Act.

administration of taxes specified in the First Schedule to the Act.²⁹ Similarly the FIRS Act provides that the National Assembly may create new taxes, and enact other tax laws and regulations from time to time. It also provides that the FIRS should account for all collected taxes.³⁰ The FIRS Act is divided into eight sections and five schedules. Part I deals with the establishment of FIRS and its management board.³¹ Part II enumerates the powers and functions of the Board and the Service.³² Part III deals with management and staff of the service,³³ while Part IV deals with financial provision.³⁴ Part V provides for tax administration and enforcement.³⁵ Part VI deals with offences and penalties,³⁶ while Part VII contains general provisions such as the provision on the official secretary and confidentiality, powers of the Minister and the delegation of powers of the Board.³⁷ Part VIII consists of miscellaneous provisions.³⁸ The First Schedule to the FIRS Act consists of the list of taxes and legislations administered by the FIRS. The Second Schedule contains supplementary provisions relating to the Board. The Third Schedule deals with authorisation forms to access lands, buildings, books and documents. The Fourth Schedule relates to the warrant of distraint and the Fifth Schedule contains provisions on the establishment, jurisdiction, authority and procedure with regards to the Tax Appeal Tribunal.

Low tax revenue inflow is prevalent in Nigeria. This is mainly caused by tax avoidance, tax evasion, record falsifications, leakages, inefficiency and the corruption of tax officials.³⁹ The low collection of tax revenue is not only caused by the inadequacy of appropriate laws but it is also caused by a myriad of socio-cultural, administrative and political factors.⁴⁰ The factors mitigating revenue collection in Nigeria include the taxpayers' perception of government officials as wasteful and

²⁹ Certain taxes are designated as federal taxes due to the allocation of powers between the federal and state governments which is customary in federal states. Such federal taxes include company income tax, petroleum profit tax, and value-added tax.

³⁰ Section 2 of the FIRS Act.

³¹ Sections 1–6 of the FIRS Act.

³² Sections 8–10 of the FIRS Act.

³³ Sections 11–14 of the FIRS Act.

³⁴ Sections 15–24 of the FIRS Act.

³⁵ Sections 25–39 of the FIRS Act.

³⁶ Sections 40–49 of the FIRS Act.

³⁷ Sections 50–58 of the FIRS Act.

³⁸ Sections 59–70 of the FIRS Act.

³⁹ Adebite & Fasina, 'Taxation and revenue generation in Nigeria' (2019) 3(1) *Accounting & Taxation Review* 82 at 83–84.

⁴⁰ Animashaun & Chitimira, (2023) 56(1) *De Jure* 138–156; Animashaun & Amuda-Kannike, (Wisdom Books & Publishing, Co. 2023) 666–682.

corrupt, the complexity of tax laws, the corruption of tax officials, and the taxpayers' perceptions of the distribution of social amenities as unfair and unequitable.⁴¹ There is also the fact that the income from the informal sector is difficult to ascertain and assess tax liability in most cases.⁴²

In light of the above, the National Inspector General for the Tax Crimes Commission Bill, 2022 ('National Tax Crimes Commission Bill or the Bill') was introduced in the Nigerian Senate. This is notwithstanding the fact that the number of MDAs which already stood at 1 316 is large, and the cost of governance and the debt profile are equally too big.⁴³ The high cost of running these MDAs and related commissions prompted the Federal Government of Nigeria to set up the Oronsaye Presidential Committee on the Restructuring and Rationalization of the Federal Government's Agencies, Parastatals and Commission ('the committee') in a bid to consolidate the MDAs, and reduce the cost of governance.⁴⁴ Consequently, this article examines the desirability of the National Tax Crimes Commission vis-à-vis the existing laws and regulatory agencies. Thereafter, possible recommendations and conclusions are proffered.

II OVERVIEW OF THE NATIONAL TAX CRIMES COMMISSION BILL

The main objective of the National Tax Crimes Commission Bill is to establish the National Inspector-General for Tax Crimes Commission ('NTCC'). This Commission seeks to address revenue leakages emanating from non-payment and underpayment of taxes and irregularities in the assessment, reporting and remittance of taxes. It will also curb tax-related crimes and plug all leakages in the Nigerian tax administration system.⁴⁵ Other objectives of the NTCC include ensuring the protection of taxpayers' rights and addressing complaints by tax payers on tax-related matters in terms of the relevant laws.⁴⁶

⁴¹ Animashaun & Chitimira, (2023) 56(1) *De Jure* 138–156; Animashaun & Amuda-Kannike, (Wisdom Books & Publishing, Co. 2023) 666–682.

⁴² Andersen, 'Effective taxation of the Nigerian informal sector', <https://ng.andersen.com/effective-taxation-of-the-nigerian-informal-sector/>, accessed on 29 January 2024; ActionAid, 'Taxation of the informal sector', available at https://actionaid.org/sites/default/files/publications/informal_sector_taxes.pdf, accessed on 29 January 2024.

⁴³ Federal Civil Service Commission, 'Ministries departments and agencies' (2023) available at <https://fedcivilservice.gov.ng/mdas>, accessed on 12 October 2023

⁴⁴ Eme & Ogbochie, 'Civil service and cost of governance in Nigeria' (2013) 1(2) *International Journal of Accounting Research* 27 at 27–44.

⁴⁵ See sections 6 and 7 of the Bill.

⁴⁶ See sections 6 and 7 of the Bill.

The proposed National Tax Crimes Commission will report to the National Assembly and not the Ministry of Finance as in the case of the FIRS.

The Bill consists of seven parts and one schedule. The first part deals with the establishment of the NTCC and its governing board. The second part deals with the functions and powers of the NTCC. Thus, section 6 of the Bill provides that the NTCC is obliged to: (a) complement the FIRS in ensuring compliance with the payment of taxes; (b) develop and implement national policy for tracking down tax defaulters; (c) develop tax compliance strategies; (d) provide for an efficient and effective mechanism in administering the Nigerian tax system; (e) protect taxpayers' rights; (f) educate the citizenry on tax matters; (g) collaborate with relevant stakeholders to ensure the payment of taxes and the proper remittance to the Federation Account; (h) provide a transparent platform on all matters relating to tax; (i) provide sustainable finance and revenue for the government; and (j) perform any other functions that may be considered as necessary for the attainment of the objectives of the Bill.

The third part deals with the structure of the NTCC and its operational departments. Part four provides for the membership and zonal operation of the NTCC. Part five of the Act deals with the designation of the staff of the NTCC, the duties of the Inspector-General of Tax and the entitlement of the NTCC staff to pensions. Part six deals with financial provisions such as the funds and expenditures of the NTCC and its power to borrow funds and the budgetary allocations. The establishment of the fund in terms of section 16 of the Bill entails that the required money is derived from the Federal Government budgetary allocations and possible grants and donations from local and international organisations. The donations made to the NTCC will be treated as an allowable expense for tax purposes.⁴⁷ Part seven deals with miscellaneous provisions such as indemnity of the officers of the NTCC, pre-action notice, penalties, the non-disclosure of information and the power of the NTCC staff to obtain information. For instance, section 31 of the Bill empowers the NTCC to carry out tax audits and investigations. The schedule of the Bill deals with the proceedings of the NTCC's board and its committees.

The Bill has passed a second reading at the Senate and the next step will be to await the report of the Senate Committee on Finance and

⁴⁷ Section 23 of the Bill.

possibly a public hearing on the Bill.⁴⁸ If the Bill is eventually passed by the Senate, it will be sent to the lower house of the Nigerian parliament — the House of Representatives — where it will undergo a similar process before it is passed into law.⁴⁹ Any law passed by the National Assembly must be assented to by the Nigerian President or passed by a two-thirds majority of the members of the National Assembly, should the President withhold his assent.⁵⁰

III AN ANALYSIS OF THE GAPS AND FLAWS IN THE BILL

Some of the negative and controversial features of the Bill are isolated and discussed below.

(a) *Lack of clarity*

Section 6(a) of the Bill provides that the NTCC shall complement the activities of the FIRS. However, the Bill does not clarify the gaps in the collection of taxes and/or in the investigation and prosecution of tax crimes by the FIRS and other law enforcement agencies in Nigeria. The Bill does not mention areas where the FIRS has failed to execute some of its assigned functions. The identified gaps require strengthening of the existing institutions rather than creating a new commission which could give rise to overlapping functions, friction, conflicts and unreasonable expenses.⁵¹ Therefore, it is more prudent for the relevant authorities to effectively enforce the existing provisions of the FIRS Act by empowering the existing economic and financial crimes agencies such as the EFCC and ICPC.

(b) *Failure of the Bill to define and provide specific penalties for tax crimes*

The Bill does not define what constitutes a ‘tax crime’. It is not clear whether tax crimes consist of those earlier defined as such in statutes

⁴⁸ Kwen, ‘Bill to establish tax crimes commission passes second reading’ *Business Day* (21 July 2022) 4; Andersen Nigeria, ‘National Tax crimes commission (establishment) bill passes second reading at the senate’ *Andersen* (11 May 2022), available at <https://ng.andersen.com/national-tax-crimes-commission-establishment-bill-passes-second-reading-at-the-senate/>, accessed on 23 March 2024.

⁴⁹ Section 58 of the Constitution of the Federal Republic of Nigeria, 1999, Chapter C23 LFN 2004 (Constitution).

⁵⁰ Section 58(5) of the Constitution.

⁵¹ Erikume, Ndebbio & Douglas-Chukwu, ‘Does Nigeria need a tax crimes commission?’, available at <https://pwc-nigeria.typepad.com/files/tax-alert-does-nigeria-need-a-tax-crimes-commission.pdf>, accessed on 12 October 2023.

such as the Personal Income Tax Act 20 of 2011 ('PITA'),⁵² the CITA,⁵³ the Petroleum Industry Act 6 of 2021 ('PIA'),⁵⁴ the EFCC Act,⁵⁵ the Nigeria Police (Establishment) Act 4 of 2020 ('Police Act')⁵⁶ and the FIRS Act.⁵⁷ This Bill does not indicate whether the penalties that may be imposed against the staff of the NTCC include those punishable by civil or criminal action or both. It appears that the Bill does not provide for instances that constituted tax crimes during the Covid-19 pandemic. Further, the Bill makes no reference to any other laws with regard to the definition and penalties of tax crimes. Accordingly, it appears that the office of the Inspector General of Tax is not desirable since the relevant provisions under the FIRS Act, the PIA, the CITA and the PITA already define tax offences and provide penalties such as fines and imprisonment against the offenders. Notably, the provisions of the FIRS Act have comprehensively dealt with tax offences and penalties under sections 40 to 49.

Sections 1 and 25 of the FIRS Act empower the FIRS to administer tax laws, sue and/or collaborate with the Attorney General of the Federation ('AGF'), security and law enforcement agencies in order to prevent, enforce and eradicate tax-related offences in Nigeria. Thus, the FIRS has powers to administer and enforce the provisions of the FIRS Act and it may prevent, arrest and punish tax offenders. These provisions seem comprehensive and sufficient not to warrant the passing of the Bill.⁵⁸ Therefore, the creation of the proposed NTCC is not really relevant and might give rise to a duplication of roles among the regulatory bodies. Similarly, section 68 of the FIRS Act as amended by the section 22 of the Finance Act, 2021 provides that the FIRS is the primary agency for tax administration in Nigeria. The main objective of this provision is to remove the challenges of dealing with multiple agencies on tax matters such as the RMAFC, the Nigerian Postal Services (NIPOST) and other agencies on the part of the taxpayers. The Bill appears to disregard the objectives of this recent clarification in section 22 of the Finance Act, 2021 and the National Tax Policy.⁵⁹ The proposed NTCC is likely to duplicate and complicate the functions of the FIRS and other agencies. Prosecution of defaulting taxpayers is also within the statutory powers of

⁵² Sections 94–101 of the PITA Chapter P8 LFN 2004 as amended.

⁵³ Sections 92–99 of the CITA.

⁵⁴ Sections 260–287 and 297–301 of the PIA.

⁵⁵ Sections 14, 16 and 18 of the EFCC Act.

⁵⁶ Section 4 of the Police Act.

⁵⁷ Sections 40–49 of the FIRS Act.

⁵⁸ Sections 40–49 of the FIRS Act.

⁵⁹ Federal Ministry of Finance *National Tax Policy* (2017) 1–13.

the FIRS. For instance, section 47 of the FIRS Act expressly provides that the FIRS has powers to employ its own legal officers who shall have powers to prosecute any offences under this Act subject to the powers of the AGF. The Bill does not have a similar provision or the powers granted to the FIRS. It is difficult to see how the NTCC will execute its functions without duplicating the roles of the FIRS and other related agencies.

(c) The failure of the Bill to adequately protect taxpayers' rights

The Bill did not contain adequate provisions on taxpayers' rights and/or how taxpayers are protected in Nigeria.⁶⁰ The Bill does not expressly provide how the NTCC will protect the rights of the taxpayers. Moreover, the FIRS Act⁶¹ and other tax statutes such as the PITA,⁶² the PIA,⁶³ and the CITA⁶⁴ already have provisions for dispute resolution including a complaint resolution mechanism, relief for taxpayers in respect of mistake or error by the tax authorities, and expeditious litigation through the Tax Appeal Tribunal and the statutory courts.

(d) The NTCC has a skewed reporting process

The Bill fails to create a clear reporting line. For instance, directives on the functions of the NTCC may only be prescribed by the President of the Federal Republic of Nigeria.⁶⁵ The Inspector General of Tax is given powers to make regulations without recourse to the Minister of Finance.⁶⁶ Annual reports are only required to be submitted to the Minister of Finance who is mandated to forward the report to the National Assembly, without the initial approval by the Federal Executive Council.⁶⁷ Similarly, the Inspector General of Tax seeks permission from the Senate in order to borrow money for the NTCC from the Nigerian government or its agencies and/or any other source.⁶⁸ These provisions create questions about the reporting protocols to be followed, which seems to give rise to elusive and multiple reporting lines for the NTCC. Moreover, the requirement that the NTCC should report to the

⁶⁰ The Preamble and section 6(e) of the Bill.

⁶¹ Section 59 FIRS Act and section 11(1) of the First Schedule to the FIRS Act.

⁶² Section 58 of the PITA.

⁶³ Sections 288–290, 293 and 295 of PIA.

⁶⁴ Section 69 of the CITA.

⁶⁵ Sections 19 and 32 of the Bill.

⁶⁶ Sections 19 and 21 of the Bill.

⁶⁷ Section 22 of the Bill.

⁶⁸ Section 19 of the Bill.

National Assembly could negatively affect its independence and violate the basic principle of the separation of powers. The NTCC appears to fall under the executive branch of the government, which should work independently.⁶⁹

(e) Some of the provisions are poorly arranged

Notably, some provisions of the Bill were placed in inappropriate parts. For instance, section 31 of the Bill which empowers the NTCC to carry out tax audits and investigations was wrongly placed in Part VII (Miscellaneous Provisions) instead of Part II which deals with the functions of the NTCC.

IV RECOMMENDATIONS

It is submitted that the Bill should not be passed by the National Assembly since it is riddled with various gaps and flaws as indicated above. For instance, the Bill does not adequately provide for the protection of taxpayers' rights. This flaw could have been avoided by amending the current tax law legislation and the Public Complaints Commission Act.⁷⁰ The Public Complaints Commission Act establishes 'the Public Complaints Commission with wide powers to inquire into complaints by members of the public concerning the administrative action of any public authority and companies or their officials, and other matters'.⁷¹ Therefore, the powers of the Public Complaint Commissioners under the Public Complaints Commission Act should be amended to make special provision for a tax ombudsman office to attend to taxpayers' complaints against tax authorities and law enforcement agencies.⁷² Similarly, there are various specific laws which mandate companies to keep proper and accurate financial records and make the records accessible to the public and regulatory bodies for inspection in order to counter tax evasion and fraud among other crimes.⁷³ Thus, the proposed NTCC is unlikely to add any value to the tax collection and the combating of tax crimes in Nigeria. The Bill

⁶⁹ Sections 88–89 of the Constitution.

⁷⁰ Sections 1–12 of the Public Complaints Commission Act 31 of 1975 Chapter P37 LFN 2004 ('Public Complaints Commission Act').

⁷¹ See the Explanatory Note to the Public Complaints Commission Act.

⁷² The Act which was enacted in 1975 should have been amended and updated to meet the modern exigencies.

⁷³ Sections 59 and 64 of the Financial Reporting Council of Nigeria Act 6 of 2011 as amended; sections 23–24 of the BOFIA; section 33 of the Central Bank of Nigeria Act 7 of 2007; sections 16, 82, 363, 380 and 404–405 of the Companies and Allied Matters Act 3 of 2020; section 42(2) of the Insurance Act Chapter I17 LFN 2004; section 10–12 of

should not be passed to avoid the possible challenges of the duplication of roles between the relevant role-players, overregulation and double jeopardy on the part of the offenders.

V CONCLUDING REMARKS

As discussed in this article, there is a need for effective tax regulation to enhance the generation of revenue by combating tax evasion and tax crimes in Nigeria.⁷⁴ The need to pay tax is enshrined in section 24(f) of the Constitution which obliges all persons to register for tax, declare their income honestly and pay the assessed tax promptly to the FIRS and other relevant tax authorities. The importance of tax and the need to curb flaws and gaps in tax revenue collection might have informed the introduction of the Bill. Nonetheless, the Bill is flawed. For instance, the proposed functions of the NTCC are already covered by the FIRS.⁷⁵ Furthermore, the NTCC is likely to duplicate the role and functions of the FIRS, the EFCC, the NFIU and the various Tax Appeal Tribunals located in each of the geo-political zones of Nigeria. The Bill creates possible challenges of the duplication of roles between the relevant role-players, overregulation and double jeopardy on the part of the offenders.⁷⁶

The introduction of the NTCC could give rise to the high cost of governance and the duplication of functions by the MDAs and regulatory bodies which results in regulatory conflicts and legal uncertainty. The Bill may also end up deterring more people from paying taxes because they will be afraid of being overtaxed by multiple tax regulatory authorities. Accordingly, all tax-related bodies should be merged into a single and competent independent body that is empowered to regulate, collect, investigate and prosecute tax crimes in Nigeria.⁷⁷ Moreover, the existence of multiple agencies competing and

the Money Laundering Act; section 91 of the Federal Competition and Consumer Protection Act 1 of 2018.

⁷⁴ Koloane, Makananisa, Sityoshwana & Tokwe, 'What drives the tax compliance levels of sole traders in South Africa?' (2023) 1 *African Multidisciplinary Tax Journal* 20 at 20–21; Adefolake & Omodero, 'Tax revenue and economic growth in Nigeria' (2022) 9(1) *Cogent Business & Management* 1 at 2–3.

⁷⁵ Andersen, 'National tax crimes commission bill passes second reading at the senate', available at <https://ng.ander sen.com/national-tax-crimes-commission-establishment-bill-passes-second-reading-at-the-senate/>, accessed on 23 March 2024.

⁷⁶ Onuoha & Onyekpere, *Cost of Governance: Adjusting the Structures: A Review of the Oronsaye Committee Report and the Federal Government White Paper* (Centre for Social Justice 2014) 1–77.

⁷⁷ Ogunseyin, 'FG economic advisers recommend Customs, NIMASA, and FIRS merger', available at <https://guardian.ng/news/fg-economic-advisers-recommend-customs-nimasa->

having the same function could give rise to inefficiencies, bureaucracy and poor tax revenue collection.⁷⁸

firs-merger/, accessed on 27 March 2024; *The Nation*, 'Tax review committee recommends Customs, FIRS Merger', available at <https://thenationonline.ng/tax-review-committee-recommends-customs-firs-merger/>, accessed on 14 October 2023.

⁷⁸ Oyero, 'Presidential committee pushes for FIRS to collect revenues for Customs, other MDAs', available at [https:// www.channelstv.com/2023/08/09/presidential-committee-pushes-for-firs-to-collect-revenues-for-customs-other-mdas/](https://www.channelstv.com/2023/08/09/presidential-committee-pushes-for-firs-to-collect-revenues-for-customs-other-mdas/), accessed on 27 March 2024.