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TRUST AND EFFICIENCY IN TAX ADMINISTRATION: THE SILENT ROLE OF POLICY-BASED LEGITIMATE EXPECTATION IN NIGERIA

Okanga Ogbu Okanga[1]

Abstract

The interaction between tax administration, discretion, and legitimate expectation has been widely explored. However, the subject has traditionally been approached from the perspective of legality and deeply focussed on how courts adjudicate cases bordering on the frustration of legitimate expectation by tax authorities. This is unsurprising, given that legitimate expectation evolved as a judicial remedy to check administrative unfairness and to provide certainty and trust in public administration. Cases show that this remedy is rarely accorded by the courts, which makes its efficiency questionable. Using Nigeria as a case study, this doctrinal paper explores the prospects of taking an alternative approach; one that focusses on what tax authorities, rather than the court, can and, perhaps should, do when confronted with claims of legitimate expectation, and how what they do potentially impacts public trust in the tax system. The concept of "trust" has played a useful role in shaping the jurisprudence of legitimate expectation. Some authors, likewise, advocate trust as the core underlying principle or justification for the protection of legitimate expectation. It is, however, the view of this author that, regarding taxation especially, adjudication is not a plausible way by which to engender trust between taxpayer and tax authority. Rather, only an approach that sees the tax authority leading positively on claims of legitimate expectation can engender trust. This approach will be more successful at making the taxpaying public trust the tax authority, since trust is more likely to derive from a symbiotic interaction between interested parties than through the actions of an intervener.

Keywords: Tax Policy, Tax Administration, Legitimate Expectation, Tax Certainty, Trust

1. INTRODUCTION

This paper examines whether there are policy reasons why the Nigerian tax authority should uphold, respect, or observe the legitimate expectations of taxpayers that arise in the course of tax administration, or that result from the exercise of discretion by the tax authority. Nigerian tax laws confer enormous discretion on the tax authority, which means the tax authority may choose, in particular circumstances, how to act or to exercise its powers. How the tax authority acts in a given case may give rise to expectations on the part of taxpayers. The taxpayer becomes disillusioned if the tax authority reverses its position on a matter. Not only does such resilement undermine the trust that should exist between the tax authority and the taxpayer, it can also expose the taxpayer to financial loss. Ordinarily, taxpayers are entitled to seek judicial review for the remedy of legitimate expectations where they feel that the tax authority has acted "unfairly." However, the legal doctrine of legitimate expectations does not provide significant assistance to taxpayers in such circumstances. The author proposes that tax authorities should, nevertheless, use their discretion to honour such expectations—not because there is a legal

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obligation to do so, but because it is conducive to increasing trust and fostering administrability. The ultimate virtue of the proposal is that taxpayers are given legal certainty as to when they can trust that their tax authority will respect previous commitments; this approach simultaneously results in administrative benefits for the tax authority.

2. DISCRETION IN NIGERIAN TAX ADMINISTRATION[2]

Like many socio-legal concepts, the term "discretion" perhaps defies precise definition. However, I attempt here to highlight a few authorities that bear out its use in this paper. Professor Hart observes that:

> it seems to me then that discretion occupies an intermediate place between choices dictated by purely personal or momentary whim and those which are made to give effect to clear methods of reaching clear aims or to conform to rules whose application to the particular case is obvious (Hart, 2013, p. 658).

He also asserts that:

> When we are considering the use of discretion in the Law, we are considering its use by officials who are holding a responsible public office. It is therefore understood that if what officials are to do is not rigidly determined by specific rules but a choice is left to them, they will choose responsibly having regard to their office and not indulge fancy or mere whim, though it may of course be that the system fails to provide a remedy if they do indulge their whim. The position may perhaps be clarified by distinguishing between the following pair of expressions: (1) the expression "a discretion," which means the authority to choose given on the understanding that the person so authorized will exercise discretion in his choice; and (2) the expression "discretion", which means a certain kind of wisdom or deliberation guiding choice (Hart, 2013, pp. 657-658).

The Nigerian Supreme Court has defined "discretion", in its general usage, as "that freedom or power to decide what should be done in a particular situation" (*Akinyemi v Odu'a Investment Co. Ltd*, 2012, 240). The same court has also defined it as the "equitable decision of what is just and proper under the circumstance or a liberty or privilege to decide and act in accordance with what is fair and equitable under the peculiar case guided by the principles of law" (*Artra Ind. Nig. Ltd v NBCI,* 1998*,* 35, paras B-D; *Ero v Ero,* 2018; *Sumaila v State*, 2012). It seems, from these statements, that the central element of discretion is "choice" (Rosenberg, 1971) which, in public law, entails the choice to exercise public authority one way or another, largely unhindered by external intervention or by the strictness of rules, yet characterised by wisdom and conscience (*Achie v Ebenighe,* 2013; *Iwuji v Federal Commissioner for Establishment,* 1985). Discretion is an endowment of Nigerian tax administration. Tax administration involves the assessment, collection, and accounting of all forms of taxes, as well as the implementation of tax laws and government policy guidelines on tax administration (Aniyie, 2012). Tax administration is one of the three components of the Nigerian tax system, the others being tax

[2] Throughout this paper, the author uses the term "discretion" broadly to refer to other terms such as promise, concession, guidance, ruling, and representation. I use these terms to reflect any advice, information, guideline, position statement, etc. issued or expressed by the tax authority to a taxpayer/taxpayers either to enable their understanding of and compliance with tax law or to convey how the tax authority would treat any matter of fact or law in relation to the payment of tax by the taxpayer. I also use the terms "tax authority" and "the Revenue" interchangeably to refer to the government body that administers tax law.

policy and tax legislation (Aniyie, 2012). Discretionary powers accorded by tax legislation enable tax authorities to make flexible decisions that advance the administration of tax laws. Discretion is an integral part of public administration globally. In Nigeria, many, if not all, public authorities are conferred discretion—express or implied, broad or narrow—in the performance of their functions. In the context of tax administration, significant residual power is vested in the Federal Inland Revenue Service (FIRS) to exercise its discretion in managing Nigeria's tax system (see Federal Inland Revenue Service (Establishment) Act 2007, s. 25(1) [FIRS Act]).

Paragraph 8(1)(t) of the FIRS Act provides that the FIRS shall, in addition to its express functions, "carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions under this Act."[3] The scope of the discretion conferred in this provision is not easily determinable, especially in the context of the broad language used. Functions regularly performed by the FIRS, such as the issuance of tax rulings, information circulars, and explanatory notes to taxpayers, are not expressly prescribed by statute.[4] Yet, legal authority to perform such functions can be linked to omnibus provisions such as the above. There are various other provisions that impliedly empower the FIRS to exercise discretion (Okoro, 2019). These include: discretion to assess a taxpayer not by their actual assessable profit, but by a fair and reasonable percentage of that profit (Companies Income Tax Act 1961, s. 30(1), (CITA); discretion on the selection of transfer pricing method (Transfer Pricing Regulations 2018, reg 5); and discretion to extend time for tax compliance (CITA, s. 59; Petroleum Profits Tax Act 2004, s. 34). In the latter case, the author argues that the extension of time also implies a waiver of the penalty that would have applied if time was not extended (Okoro, 2019). The FIRS is also empowered, *inter alia,* with discretion to reopen assessment, raise additional assessment (CITA, s. 66), and to levy tax by distress of goods (CITA, s. 33(1) and s. 86). The tax laws contain provisions that allow the tax authority to make adjustments as it deems fit for the purpose of protecting the revenue base from erosion (CITA, s. 13(2)(d) and s. 22, for instance).

There are various reasons why tax laws confer discretion on the tax authority. The nature of tax administration is such that, once the tax legislation has been enacted, the tax authority assumes responsibility for administering it in order to meet its intended effect. The administrators foster the practicability of the law by ensuring compliance (Olokooba, 2019). The provision of tax guidance, for instance—an aspect of discretion—is an integral part of this function. Guidance provides taxpayers with insights into relevant developments in tax and offers the interpretive position on how the tax authority will apply tax legislation, especially where the provision is unclear or where the tax authority has discretion to act one way or another. A taxpayer who is eager to avoid confrontation will willingly comply.

The sheer size and complexity of the tax *corpus juris* also necessitates the exercise of discretion. In a given tax system, governments levy different forms of taxes under different names. In some instances, taxpayers do not know when to pay, which mode of payment to use, who to pay, or how to ascertain whether the payment is a tax or something else (Olokooba, 2019). In some cases of ambiguity, clearly worded and easy to understand representations by public authorities will serve to guide an individual's actions and decisions (Schønberg, 2000).

[3] Subsection 8(2) of the FIRS Act further provides that "the Service may, from time to time, specify the form of returns, claims, statements and notices necessary for the due administration of the powers conferred on it by this Act."

[4] See, generally, FIRS (2020). See also FIRS (1993); FIRS (1998); FIRS (2010a); FIRS (2010b); FIRS (2018a); FIRS (2018b); FIRS (2012); FIRS (2019b); FIRS (2019a) etc.

The words of the U.K. Court of Appeal, per Moses LJ, in *Gaines-Cooper* (2010), usefully explain the importance of tax guidance specifically:

> The importance of the extent to which thousands of taxpayers may rely upon guidance, of great significance as to how they will manage their lives, cannot be doubted. It goes to the heart of the relationship between the Revenue and taxpayer. It is trite to recall that it is for the Revenue to determine the best way of facilitating collection of the tax it is under a statutory obligation to collect. But it should not be forgotten that the Revenue itself has long acknowledged that the best way is by encouraging co-operation between the Revenue and the public… Co-operation requires fair dealing by the Revenue, and frank and open dealing by the public. Of course the Revenue may refuse to give guidance and re-create a situation in which the taxpayers and their advisers are left to trawl through the authorities to find a case analogous to their own, or, if they are fortunate, a statement of principle applicable to their circumstances (*Gaines-Cooper,* 2010, para 12).

It is clear from this quote that guidance, in addition to facilitating the collection of tax, strengthens the relationship between the taxpayer and the tax authority, provided that both sides are dealing fairly. Guidance also provides assurance to taxpayers who are making important investment decisions. As far back as 1962, this point was stressed by the former U.S. Commissioner of the Service, Mortimer Caplin, who noted that "with complex tax laws and high tax rates, it is understandable why taxpayers frequently hesitate to move on important business transactions without some official assurance of the tax consequences" (Givati, 2019, p. 147).

Again, it is important to reiterate that the exercise of discretion in tax administration is necessitated by the very fact that statutory provisions cannot contemplate all circumstances (Abdulrazaq, 2016). This situation leaves gaps that administrative discretion attempts to fill. One scholar forcefully asserts that it is impossible to have a government of laws and not of men to the extent that public officers, such as tax authorities, exercise vast discretionary power, and that we cannot change this reality—the exercise of discretion by public officers—because we simply cannot have a government or legal system without a large amount of discretionary power (Davis, 1970). Thus, according to him, discretion, even unguided discretion, is an absolute necessity for every legal system (Davis, 1970). Unless the Act of Parliament were made with supernatural prescience, the enduring relevance of the exercise of discretion in tax administration cannot be over-emphasised. Therefore, the justification for discretion is often the need for individualised justice (Adedokun, 2017).

A peculiar factor that makes discretion indispensable in the tax system is the self-assessment regime. Nigeria is one of many countries that operate a self-assessment system of tax compliance. Under self-assessment, the taxpayer is granted the right, by law, to accurately compute their own tax liability, pay the tax due, and produce evidence of tax paid at the time of filing their tax return at the tax office on the due date (Appah & Nkwazema, 2014; Silvani & Baer, 1997). On the other hand, the tax authority is responsible for ensuring taxpayers' compliance with the tax law and administration process through compliance and enforcement activities that may include the application of statutorily prescribed sanctions (Silvani & Baer, 1997).

Self-assessment tax compliance in Nigeria is governed by the Tax Administration (Self-Assessment) Regulations 2011. Overall, these regulations seek to provide some guidance and

introduce some level of consistency in the filing of self-assessment tax returns (Oyedele, 2012). It is implicit that an understanding of the requirements of the substantive tax legislation is a precursor to this do-it-yourself method, since a taxpayer who does not understand their tax liabilities would most likely not know what to file. Given that the tax rules are not always as simple as breaking an eggshell, it is sacrosanct that the taxpayer receives some form of external assistance on how to efficiently make computations. While some taxpayers can afford the services of competent tax advisors, not all taxpayers can. Moreover, even expert tax advisors cannot always tell with certainty how the tax authority would apply a specific tax provision, especially one that is ambiguous. The absence of guidance may also circumvent the ability of the taxpayer to plan their affairs prudently, even in the most genuine of cases. These factors further underline the importance of tax guidance.[5]

Again, guidance enables taxpayers to better apply filing rules, which reduces the need for the Revenue to conduct intense tax audits. This allows the Revenue to channel limited resources to matters that require closer attention. Guidance can also help to ensure a uniform application of tax law to taxpayers, which engenders equity among similarly placed taxpayers. When guidance is publicly provided, all taxpayers can more readily ascertain the position of the tax authority on specific matters, which reduces the likelihood of similarly placed taxpayers being treated differently by individual tax officers.

Notwithstanding these positives, it is evident that the exercise of discretion by tax authorities also presents problems. Among these are the questions of whether and when the tax authority can or should change a position that it has conveyed to a taxpayer and which the taxpayer has acted on. Incidentally, in Nigeria, a taxpayer cannot confidently rely on FIRS guidance to determine their tax position because the FIRS may change its position after previously providing guidance or exercising it discretion one way or another. The current policy seems to be that the FIRS does not consider itself obligated to abide by guidance provided to taxpayers. In any case, no hard law compels the FIRS to do so. This may, at least in theory, pose problems for taxpayers who rely on such guidance to make business decisions or otherwise arrange their affairs (Onyenkpa & Ayoola, 2014). What then is the fate of a taxpayer whose interest stands to be undermined by an abrupt FIRS resilement?

3. LEGITIMATE EXPECTATION

Under Nigeria's court system, a person can, generally, seek judicial review of a decision or action of an administrative body if such decision or action is deemed to unfairly prejudice that person (see *ACB Plc. v Nwaigwe,* 2011; *Bakare v Lagos State Civil Service Commission,* 1992; Constitution of the Federal Republic of Nigeria 1999, paras 6(6)(a) & (b); Federal High Court Rules, 2019, Ord 34; High Court of Lagos State Rules, 2019, Ord 44; *Military Governor of Imo State v Nwauwa,* 1997; Ogbuabor, 2012). Legitimate expectation is one of the remedies improvised by the courts to deal with such situations. Legitimate expectation is a shorthand for the public law principles that will, in some circumstances, place limitations on a public authority's ability to act inconsistently with a person's expectation as to how the authority would exercise its powers in a particular situation or case, where the expectation is reasonably based on a representation by, or consistent past practice of, the authority (Bates, 2011). In the context of taxation, the concept of legitimate expectation provides that, where a tax authority gives an opinion or clarification on a tax issue (either on its own or in response to a specific

[5] The self-assessment system is not without cost. It provides greater opportunities for tax avoidance and evasion, undermining the tax base and reducing government revenues (Tanzi & Shome, 1993, cited in Ansari & Sossin, 2017).

request by a taxpayer, with full disclosure of the facts) and the taxpayer has relied on the clarification, the tax authority should not retrospectively reverse its position (Onyenkpa & Ayoola, 2014). Legitimate expectation creates a basis upon which taxpayers can adopt and rely on official representations and patterned tax practices with the assurance (which is indeed the legitimate expectation) that the relevant tax body would maintain its expressed position or promise; or at least that the courts would intervene if the tax authority reneges (Okoro, 2019). The concept can be traced to the modest pronouncements of Lord Denning in the English case of *Schmidt & ors v Secretary of State for Home Affairs* (1969).[6] Since that case, the concept has been assimilated into the legal systems of many countries (Abbas, 2008; Groves & Weeks, 2017) and has been applied in various areas of law, including immigration and taxation (see *AG Hon Kong v NG Yuen Shiu,* 1983; *Council of Civil Service Unions & Ors v Minister for the Civil Service,* 1984; *Ex p Asif Mahmood Khan,* 1984*; Ex p Ruddock,* 1987; *ex parte MFK Underwriting Agents Ltd*, 1990; *Ex p Walker,* 2000; *Oloniluyi v Secretary of State for the Home Department,* 1989; *R v Ministry of Defence, R (Reprotech (Pebsham) Ltd) v East Sussex County Council,* 2003). In a legitimate expectation claim, the ingredients that courts typically look at are: (1) prior disclosure by the claimant; (2) a clear and unqualified representation; (3) communication to the claimant (or "class"); and (4) detrimental reliance by the claimant (Fordham, 2001; See *R v North and East Devon Health Authority, Ex parte Coughlan* [2000] 3 All ER 850; *United Policyholders Group and others v Attorney General of Trinidad and Tobago* [2016] UKPC 17, [2016] 1WLR 3383). Sometimes, even if those factors exist, which means there is a valid expectation, the claimant's case can only succeed if there is no overriding public interest (*Aozora v HMRC,* 2019; *Ex parte Coughlan* 2000; *Hely-Hutchinson v HMRC,* 2017; *United Policyholders*, 2000).

Legitimate expectation became a part of Nigerian law through the case of *Stitch v AG Federation* (1986), where the Supreme Court of Nigeria bound the Nigerian government to representations made to the appellant in respect of the payment of import duty after the government reneged on its earlier position to the detriment of the appellant. Subsequent Nigerian cases relating to legitimate expectation have been tax cases (*Federal Board of Inland Revenue v Halliburton,* 2014; *Transocean v FIRS,* 2017; *VF Worldwide Holdings Ltd v FIRS,* 2016). Incidentally, each of those cases was decided against the taxpayer. In each case, the court found that the taxpayer failed to establish the existence of one or more of the relevant elements of legitimate expectation. This has led some to conclude that judicial attitude to legitimate expectation in tax matters in Nigeria is not very accommodating (Ndibe, 2018; Okoro, 2019; Olajide & Salu, 2015; *Saipem v FIRS,* 2018). This very limited success in legitimate expectation litigation is common to other jurisdictions. In the U.K., for instance, it is fairly difficult to find cases where substantive legitimate expectations arguments have succeeded and more difficult still to find cases where the courts have actually directed the public authority concerned to uphold the expectation (Tomlinson, 2017b). Empirical conclusions reached by Professor Robert Thomas, from England, support this view, highlighting that, in quantitative terms, the number of successful legitimate expectation cases is small; there are just five (*Coughlan,* 2000; *ex parte Khan*, 1984; Thomas, 2017, pp. 62-63; *R (HSMP Forum) v Secretary of State for the Home Department,* 2008; *R v (Luton Borough Council and others) v Secretary of State for Education,* 2011; *R (Bibi) v Newham London Borough Council,* 2002). Even more compellingly, in another common law jurisdiction, India, a survey of the Supreme Court decisions on substantive legitimate expectation shows that of 34 cases litigated between 1992 and 2012, none was successful (Chandrachud, 2017). Suffice

[6] The protection of legitimate expectations is, however, said to originate from the German public law principle of *Vertrauensschutz*, which seeks to ensure that "everyone who trusts the legality of a public administrative decision should be protected". See Schroeder (2005).

it to say that, in Nigeria, *Stitch v Attorney-General* remains the only successful case. The factors/arguments that usually militate against judicial protection of legitimate expectation—especially substantive legitimate expectation—include that the principle undermines the public interest (perhaps by risking a reduction of the tax base), contravenes the fundamental principles, such as the rule of law, statutory limitation or *ultra vires*,[7] as well as the cardinal principle of separation of powers (see Brooks, 2011; Forsyth, 2011; Jowell, 2000; Maluleke, 2011; Stewart, 2000; Tomlinson, 2017b; see the Nigerian cases of *AG Abia State v AG Federation,* 2003; *Ahmad v Sokoto State House of Assembly,* 2002), and fetters administrative discretion (Varuhas, 2017). Judicial attitude to legitimate expectation in Nigeria is, perhaps, summed up by the pronouncement of Saidu J of the Federal High Court in *Saipem v Federal Inland Revenue Service* (2014): "It is not the issue of resiling of earlier statement [sic] that is important now. What is important are the various provisions of law guiding payment of tax in Nigeria".

With what appears to be conscious judicial restraint towards the protection of legitimate expectation,[8] it seems that the fate of the taxpayer rests in the hands of the tax authority and that only a favourable administrative policy towards legitimate expectation can preserve the interests of the taxpayer when such claims arise. Short of a favourable policy of adherence to legitimate expectation, the tax authority has the carte blanche (subject to limits of legality) to waver as it deems fit in dealing with taxpayers. Put another way, the tax authority may dishonour its promises, provided that it does not appear to contravene the express provisions of the relevant tax statute in so doing. This may, of course, result in graver uncertainty, and in eroded public trust and confidence in tax administration.

4. JUSTIFYING THE PROTECTION OF TAX-BASED LEGITIMATE EXPECTATION

It seems evident from available English case law that the two most prominent explanations for why the courts protect legitimate expectation is the importance of ensuring "fairness" and to prevent decision-makers from "abusing their power" (Reynolds, 2010, p. 331). Thus, there are various cases where the courts' approaches to legitimate expectation were concerned with the "duty to act fairly" or where fairness has either expressly or implicitly been considered to be central to the doctrine (see, for instance, *Attorney-General of Hong Kong v NG Yuen Shiu,* 1983; *R v Inland Revenue Commissioners, ex parte MFK Underwriting Agents Ltd*, 1990, 1570; *R* v *Minister for the Civil Service ex parte CCSU,* 1985, 415; *Stitch,* 1986). Likewise, there are cases where the courts have grounded the protection of legitimate expectation on the need to

[7] See, for instance, *FBIR v Halliburton* (2016), where the court asserted the supremacy of the tax statute over FIRS discretion. *Ultra vires* and statutory supremacy are well recognised in Nigerian jurisprudence. See *Menakaya v Menakaya* (2001)*; Psychiatric Hospital Management Board v Ejitagha* (2000).

[8] While highlighting apparent judicial restraint and doctrinal obstacles as strong reasons for the limited success of legitimate expectation cases, it is also important to acknowledge that legitimate expectation cases do fail on their facts. That is to say that some legitimate expectation cases fail, not because the court is not willing, but because the facts established by the plaintiffs simply do not meet the criteria for successful outcomes. Cases are often unsuccessful because the plaintiff fails to demonstrate the existence of one or more of the ingredients of legitimate expectation: that the representation was clear and unambiguous (*Saipem v FIRS,* 2018); that the plaintiff relied on the representation (*Saipem v FIRS,* 2018); and that the plaintiff made necessary factual disclosures to the authority about the transactions that elicited the representation (*Halliburton, Transocean Drilling, VF Worldwide Holdings*). What is common to these cases—a source of optimism—is that the way in which the court went about dissecting the facts of each case suggests that the court was somewhat inclined to consider each on its merit rather than completely dismiss them on grounds of legality. From an administrative perspective, it is also possible—this is merely speculative—that some of the more meritorious legitimate expectation cases do get resolved amicably between taxpayer and tax authority. One cannot rule out this possibility.

prevent abuse of power by the public authority. In these cases, what the courts seem to be saying is that "we will intervene to protect an expectation in order to preclude public authorities from abusing their powers when dealing with members of the public" (see *R* v *Education Secretary ex parte Begbie,* 2000; *R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs* (2)*,* 2008; *R* v *Education Secretary ex parte Begbie,* 2000; *R v IRC ex parte Preston,* 1985). There is also judicial support for the proposition that legitimate expectation is predicated on the rule of law (see *Rainbow Insurance Company Ltd v Financial Services Commission,* 2015, 51). Judicial concern for the dignity and autonomy of individuals in their dealings with administrative decision-makers evokes the rule of law, as "a principle of institutional morality" (Daly, 2017, p. 107; Jowell, 2015). In legitimate expectation cases where the rule of law is invoked, courts are typically concerned by the effect on individuals of promises being broken or settled expectations being disrupted (Daly, 2017).[9]

In Nigeria, the few decided cases (*Stitch,* for instance) evidence the Nigerian Supreme Court's endorsement of the principles of fairness and non-abuse of power, as well as good administration, as the "moral compass" of legitimate expectation. Instructively, the Nigerian Supreme Court has also endorsed confidence and trust as justifications for the protection of legitimate expectation.

> The rationale which I gather from these decided cases is that a Government in which the citizen is entitled to repose <u>confidence and trust</u>, is not expected to act in breach of the faith which it owes to the citizen, and if it does so act, the courts will intervene. The right of the appellant in this case to be issued an import licence, on terms prescribed by the Minister on compliance with those terms, had vested. It was the right of the citizen which could not be ignored (*Stitch v AG Federation,* 1985, 1029, A-B).

Among scholars, there seems to be a lack of consensus on what *the* underlying basis for the protection of legitimate expectation should be; or indeed, whether there is a need to deliberate on such a basis at all (Tomlinson, 2017b). Various theories have been advanced to justify the protection of legitimate expectation. Proponents often lean on theories such as fairness,[10] trust (Reynolds, 2010), social confidence (Watson, 2010), good administration (Daly, 2017), legal certainty (Romano, 2002), and the rule of law (Daly, 2017). In addition, utilitarian arguments on the protection of legitimate expectation focus on the gains of protection vis-à-vis the ills of non-protection (Barak-Erez, 2005).

5. THE CONCEPT OF TRUST

Of the various theories offered as justification for the protection of legitimate expectation, one—Paul Reynolds's (2010) theory of trust—merits particular attention. Reynolds starts by criticising other justifications. He criticises the principles of fairness and abuse of power as being inadequate—although not irrelevant—to explain and guide the application of legitimate expectation (Reynolds, 2010). Reynolds advocates for the concept of "public trust" as the principle that both fits well with the doctrine and can provide guidance for its application. He asserts that the reason why it is unfair to breach a legitimate expectation is because this would

[9] Some critics, however, argue that it is hardly evident that protecting substantive legitimate expectations forms an essential ingredient of promoting the rule of law. See Groves (2008), cited in Chandrachud (2017).

[10] This has been the predominant theme in judicial authorities. As a concept, fairness is traceable to general principles of natural justice as postulated by thinkers like Thomas Aquinas, Immanuel Kant, and John Rawls.

breach the claimant's trust in the public authority, and so would be an abuse of power and contrary to good administration (Reynolds, 2010).

Like Reynolds, Watson (2010) views legitimate expectation from a sociolegal standpoint. The author believes that promises exist not just as statements but also as social conventions that carry with them a number of socially programmed assumptions. The foremost element of this social convention is an invitation to an individual to place their confidence in the promise maker. Thus, the promise exists as a recognised social convention of trust that is vital to avoid a society dominated by self-interest and duplicity. To break a promise is to directly interfere with the liberty of the person or persons who have relied on that promise. Thus, for Watson (2010), the enforcement of a legitimate expectation is the judicial protection of a moral obligation that the public authority has freely solicited.[11] Likewise, Ahmed and Perry (2014) state that there is a moral rule that requires promises to be kept. If a public body promises to follow a procedure or make a decision, it triggers the application of the promise-keeping rule, and that public body is, therefore, required to fulfil that promise (Ahmed & Perry, 2014). These views align with the view that "good government depends upon trust between the governed and the governor. Unless that trust is sustained and protected, officials will not be believed, and government becomes a choice between chaos and coercion" (Wade & Forsyth, 2009, as cited in Watson, 2010, p. 641). These views also find judicial support in Nigeria in *Stitch*, where the Supreme Court remarked that "the citizen is entitled to repose confidence and trust" in the government (*Stitch v AG Federation,* 1986, 1029, A-B).

Reynolds's (2010) theoretical postulation of a general public trust as the basis of legitimate expectations,[12] which, as noted, aligns with the views of Watson and Forsyth (2009, as cited in Watson, 2010), is meritorious, especially when one views the relationship between the tax authority and the taxpayer as one between a service provider and consumer, and considers the importance of trust in such a mutual relationship. Trust might even be adjudged the principle that provides the most plausible justification for legitimate expectation from a tax perspective. Trust appears, in that sense, to be a low-hanging fruit as far as the interest of the taxpayer is concerned, especially when compared with more demanding concepts like a "high degree of unfairness" or "unfairness amounting to an abuse of power" sometimes advocated by the courts (see *Aozora,* 2019; *Ex p. Unilever Plc,* 1996, 695a; *Hely-Hutchinson,* 2017, para 72; *R (Dixons Retail plc) v HMRC,* 2018, 2556, para 62). This is especially so if abuse of power is to be measured on the scale of the egregious conduct of the public authority in *Stitch*. Suffice it to say that a taxpayer's claim would be more feasible if the court views it from the angle that the tax authority's repudiation of a promise amounts to a betrayal of trust reposed in the tax authority rather than an abuse of power.

The postulations of Reynolds (2010) and Watson (2010) also appear to be in tune with the tax policy objective of certainty. By anchoring legitimate expectation on trust, the court would invariably be helping to entrench a more certain tax system. Be that as it may, it is my view

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[11] Watson's (2010) priority is similar to that of Reynolds (2010), in that it seeks the protection of a moral code. For Reynolds (2010), that code is a general trust, while for Watson (2010), it is a morally binding promise. For both authors, damage is done to both the society and the public institution if public authorities do not keep their promises.

[12] Reynolds (2010) elaborates that "an example of trust informing the standard of review might be that where a promise is made to a large group of people whilst the court will appreciate that this promise is less intimate and contract-like than had the group been very small, it will go on to note that the overall connection between general public trust and good administration must not be forgotten… and that failing to protect the relevant expectation could cause serious injury to general public trust given the number of people involved, such that something beyond a light-touch review is called for" (p. 348).

that there are reasons why the concept of trust cannot work from a judicial perspective of legitimate expectation.[13] The one reason that is relevant to this paper is forum-related. It is doubtful that the court is the appropriate forum in which to foster or fine-tune public trust in administrative bodies. While trust is undoubtedly an important value, it is, perhaps, counterintuitive to suppose that trust in the Revenue, as a distinct entity, can somehow be fostered by the court through its cohesive powers rather than by the Revenue itself acting in a manner that would elicit or maintain trust. To illustrate, can A (the taxpayer) maintain trust in B (the tax authority) because of the actions of C (the court), especially at a point where B has broken its promise to A? I think it is logically coherent that it is only the actions of B that can reinstate or maintain the trust of A. The court binding the tax authority to a broken promise made to a taxpayer will not make the taxpayer trust the tax authority or the tax system. It might make the taxpayer trust in the court as a viable forum by which to seek redress, but that trust is reposed in the court, not the tax authority.

Despite the misgivings expressed above, it must be said that legitimate expectation has the capacity to engender trust in public administration if approached from a different perspective: a non-adjudicatory perspective. Put differently, it is plausible to explain legitimate expectation as an engenderer of trust between the taxpaying public and the tax authority if legitimate expectation is upheld by the tax authority rather than being enforced by the court. It is pertinent to note that while the doctrine of legitimate expectation lawfully allows tax authorities to renege on previous commitments—provided that no substantial unfairness is present—it does not mean that tax authorities *should* renege. The tax authority must be able to discern when it is overall more beneficial to honour a commitment than not. That in itself underscores judicious use of discretion.

It is important to iterate at this point that discussions on the subject have mainly focussed on judicial protection of legitimate expectation (see, for instance, Ahmed & Perry, 2014; Chandrachud, 2017; Groves, 2008; McHarg, 2017; Murcott, 2015; Varuhas, 2017; Wright, 1997). These discussions have mainly examined the legal possibility and parameters of enforcing tax-based legitimate expectation in court. This paper, at this point, aims to shift the conversation from the traditional approach that focusses on judicial protection to an approach that focusses on administrative adherence; that is, an approach that focusses on how and why a public body, particularly the Revenue, can observe or uphold the legitimate expectations that it creates.[14] I consider this discussion pertinent because, while the court has an important role to play in ensuring that the Revenue's commitments to taxpayers are honoured, the Revenue itself has a managerial responsibility to the tax system to try to honour those commitments. Some writers have suggested that the current situation, where the FIRS has severally expressed a view on a tax issue and subsequently reversed itself, might see the tax authority find itself in a position where its views on tax matters are considered irrelevant (Onyenkpa & Ayoola, 2014).

[13] One reason is that, contrary to Reynolds's (2010) views, the fact that a trust is breached may not always amount to abuse of power; nor would it always be unfair. That conclusion would depend on the circumstances in which the trust was breached and not just the fact that trust was breached.

[14] It is important to bear in mind that legitimate expectation is a preliminary fact that arises when the taxpayer places reliance on representation, assurance, promise, guidance, etc. emanating from the tax authority, and not necessarily when a case is subsequently brought to court for enforcement. See Watson (2010). It is also important to note that every case of legitimate expectation that goes to court is premised on a conflict between the tax authority and the taxpayer from a withdrawal by the tax authority of a benefit that the taxpayer expected to enjoy.

I address these concerns in the context of the overall tax policy framework of Nigeria.[15] I examine the concept of tax policy and some evaluative criteria of tax policy, such as fairness, certainty, and administrability. With reference to relevant aspects of Nigeria's tax policy framework, I discuss how taking an accommodating administrative approach to legitimate expectation dovetails with Nigeria's tax policy, and may engender trust and better benefit Nigeria than taking a dismissive or repudiatory approach.[16]

6. POLICY AND TAX POLICY

A "policy" is a "set of ideas or a plan of what to do in particular situations that has been agreed officially by a group of people, a business organization, a government or a political party" (see Woodford, 2003, p. 958). In legal parlance, it is "[t]he general principles by which a government is guided in its management of public affairs" (see Garner, 2004, p. 3674; *Ogundipe v Minister of FCT & ors,* 2014, paras B–D). A policy speaks to what a public authority plans to do at a given time (Weeks, 2017, p. 149). Drawing from these definitions, tax policy may be viewed as the general principles which guide the management of the tax system in a given state towards the attainment of that state's tax objectives. It has been observed that a "good tax policy" does not change during times of large budget deficits or healthy surpluses. Good tax systems can fall woefully short of creating adequate revenue during recessions and poor tax systems can raise plenty of money (but are often unsustainable) (Minnesota Center for Fiscal Excellence, n.d.). In addition, a country's tax regime is a key policy instrument that may negatively or positively influence investment (Organisation for Economic Co-operation and Development [OECD], 2013).

6.1 Evaluative Criteria of Tax Policy

There have been various theoretical expositions of what constitutes a good tax system or the yardsticks for evaluating a good tax system, starting from Adam Smith (1776).[17] In modern times, some frequently discussed models include the traditional tax policy criteria (equity, neutrality, and administrability),[18] as well as other relevant offshoots: simplicity, certainty, convenience of payment, information security, economic growth and efficiency, transparency and visibility, minimum tax gap, accountability to taxpayers, and appropriate government revenues (see Association of International Certified Professional Accountants, 2017). For some, equity (or fairness), economic efficiency, and administrative capacity are identified as

[15] It is important to note that tax policy is not only made through legislation. Tax policy is driven through various vehicles including tax treaties, tax regulations, court opinions, Revenue internal guidance, and private and public guidance or rulings, as discussed here. See Solomon (2013). In addition, "the tax administration… does play an important part in the development and amendment of tax policies, by requiring its Legal Department to closely monitor, analyse, and report on the positive or negative impact of tax policy and legislation on the operations of the tax administration, as well as to recommend changes" (Jacobs, 2013, p. 7).

[16] The search for justification for policy-based legitimate expectation in tax administration is also predicated on the concept of administrative justice. The administrative justice view is that, in order to foster a good administrative system, public authorities should adopt policies that promote a broad range of values, such as clarity, confidentiality, transparency, secrecy, fairness, efficiency, accountability, consistency, participation, openness, rationality, equity, and equal treatment, user-friendliness, accuracy, rationality, coherence, accessibility, etc. See, generally, Tomlinson (2017a).

[17] The four canons of taxation identified by Adam Smith (1776) are the: Canon of Equality; Canon of Certainty; Canon of Convenience; and Canon of Economy. Both the term "canon" and some of the specific canons have been redesigned by other scholars as the years have gone by. See, for instance, Alley & Bentley (2005), cited in Memon (2010).

[18] See, for instance, Brooks (2004); Christians (2018). See also Stokes & Wright (2013), pointing to a consensus among scholars that, as a basic criterion, a good tax system should be fair, efficient, and simple.

the three key principles that most tax scholars adjudge as the right normative criteria to guide society in achieving the desired distribution of costs and benefits through taxation (Christians, 2018).[19]

Nigeria, like other countries, operates a tax system that is guided by a set of identifiable evaluative policy criteria. These evaluative criteria can be found in a consolidated document, the National Tax Policy (NTP or "the Policy") (NTP, 2017). The NTP sets the agenda for the formulation and implementation of tax laws in Nigeria. The NTP directs that tax policies, laws, and administration shall promote the attainment of, *inter alia,* the ability of all taxable persons to declare their income honestly to appropriate and lawful agencies, and pay their tax promptly; ensuring that the rights of all taxable persons are recognised and protected; and eradicating corrupt practices and abuse of authority in the tax system (NTP, paras 1.3 (a), (d), and (e)). In addition, the NTP identifies the following factors as the Guiding Principles of Nigeria's Tax System: equity and fairness;[20] simplicity, certainty and clarity;[21] convenience;[22] low compliance cost;[23] low cost of administration;[24] flexibility;[25] and sustainability.[26] Accordingly, all existing and future taxes are expected to align with these "fundamental features".[27]

The policy criteria contained in the NTP are consistent with both the traditional and modern categorisations of tax policy criteria. I do not consider a discussion of all categories necessary for the purpose of this paper. Instead, I discuss only those that I consider to directly impact or be impacted by the revenue's adherence to legitimate expectation. The tax policy criteria that I discuss are certainty (with simplicity and clarity) and administrability.

6.1.1 Simplicity, certainty, and clarity

The NTP outlines the triplet of simplicity, certainty, and clarity as part of the guiding principles of the Nigerian tax system. It mandates that tax laws and administrative processes should be simple, clear, and easy to understand (NTP, 2017, para 2.1). Legislative clarity is important because it enables businesses to comply more easily with their better understood tax liabilities, which should reduce costly and time-consuming conflicts with the tax authority. Tax compliance should not require an excessive amount of company resource, which would divert energy from more productive and profitable business activities (U.K. Parliament, 2011).

[19] Professor Christians (2018) contends that a main challenge of the above framework is that it ignores institutions and decision-making processes as if they are irrelevant to the normative quality of the tax policies themselves.
[20] "Nigeria tax system should be fair and equitable devoid of discrimination. Taxpayers should be required to pay according to their ability" (NTP, 2017, para 2.1).
[21] "Tax laws and administrative processes should be simple, clear and easy to understand" (NTP, 2017, para 2.1).
[22] "The time and manner for the fulfilment of tax obligations shall take into account the convenience of taxpayers and avoid undue difficulties" (NTP, 2017, para 2.1).
[23] "The financial and economic cost of compliance to the taxpayer should be kept to the barest minimum" (NTP, 2017, para 2.1).
[24] "Tax Administration in Nigeria should be efficient and cost-effective in line with international best practices" (NTP, 2017, para 2.1).
[25] "Taxation should be flexible and dynamic to respond to changing circumstances in the economy in a manner that does not retard economic activities" (NTP, 2017, para 2.1).
[26] "The tax system should promote sustainable revenue, economic growth and development. There should be a synergy between tax policies and other economic policies of government" (NTP, 2017, para 2.1).
[27] The 2012 National Tax Policy specified as its underlying agenda that: "taxpayers should understand and trust the tax system, and this can only be achieved if Nigerian tax policy keeps all taxes simple, creates certainty through considerable restrictions on the need for discretionary judgments, and produces clarity by educating the public on the application of relevant tax laws. It is therefore imperative that the Nigerian Tax system should be simple (easy to understand by all), certain (its laws and administration must be consistent) and clear (stakeholders must understand the basis of its imposition)." See NTP (2012, para 1.8.1).

Simplifying the tax system will thus lead to a reduction in the costs of complying with tax obligations for taxpayers (Silvani & Baer, 1997).

The lack of clarity in tax legislation leaves gaps that sometimes only the provision of administrative guidance to taxpayers can fill. This is one of the core discretionary functions performed by the FIRS. By inference, providing guidance to taxpayers is a part of the FIRS's policy responsibilities, especially as the NTP mandates the FIRS to undertake tax awareness and taxpayer education duties (NTP, 2017, 3.3v). It is arguable that, by not honouring the legitimate expectation arising from its guidance, the FIRS not only breaches the trust of the taxpayer but also deviates from one of its NTP responsibilities. This also stokes uncertainty in the tax system.

Uncertain tax consequences deter some taxpayers from carrying out contemplated transactions, while others who do carry out the transactions bear the risk of potential loss (Givati, 2009). Since investors are concerned with the certainty of the tax consequences of their proposed transactions and trades (Maluleke, 2011), unrevoked tax guidance provides the kind of certainty and consistency that is encouraging to investors. Where the tax authority is prone to withdrawing or modifying its tax rulings, or dishonouring them even to the detriment of the taxpayer, the air of certainty disappears (Maluleke, 2011).

Tax certainty has been defined as the creation and maintenance of stable and regulatory policy frameworks for tax administration, taxpayers, and tax compliance (Monkam et al., 2017). Certainty is one of the hallmarks of a good tax system as it helps to stabilise the expectations of both taxpayers and governments (Monkam et al., 2017). Indeed, the property and business interests involved in taxation lead some to suggest that certainty in tax law is of the utmost importance—perhaps even more so than in other areas of law (Freedman & Vella, 2011). Research shows the many causes of tax uncertainty to include unpredictable or inconsistent treatment by a tax authority, retroactive changes to legislation, frequent changes in the statutory tax system, complexity in the tax code, poor understanding of the tax code by the tax authority, unpredictable or inconsistent treatment by the courts, inability to achieve clarity proactively through rulings, poor general relationships with tax authorities, and corruption (Devereaux, 2016; Zangariet al., 2017). Uncertainty is also traceable to biased and inconsistent adjudication of tax cases by the court in favour of the Revenue (Tjenberg, 2016) and, in some cases, to deliberate legislative intendment.[28] Uncertainty arising from unpredictable or inconsistent

[28] This may be referred to as "uncertainty by design" or "structured uncertainty". Not all tax uncertainty is necessarily adverse, especially on the side of the state. Sometimes the legislature designs tax law to be uncertain either simply to allow for greater administrative discretion or to combat tax avoidance. This flows from the notion that, when tax laws are certain, they may open unintended opportunities for unwarranted tax planning and tax avoidance. See, generally, Pagone (2009). Moreover, it is arguable that rewards and penalties linked to unpredictable outcomes are an important part of ordinary economic behaviour in ordinary life. Accordingly, in some cases, keeping taxes uncertain may diminish the sense of control that a taxpayer may have in terms of contriving a tax avoidance scheme. See, generally, Straffin Jr. (2001), "The Prisoner's Dilemma", in Eric Rasmusen (Ed.), (2001), *Readings in Games and Information*, as cited in Pagone (2009); von Neumann & Morgenstern, (2004), *Theory of Games and Economic Behaviour* (60th anniversary ed.), as cited in Pagone (2009). To buttress these salient points, a study by Dyreng et al. (2019) reveals that:

treatment by the tax authority notoriously ranks as the second most important factor in determining uncertainty when encountered (Devereaux, 2016).

Empirical evidence of the effects of tax uncertainty at the firm level is still limited due to the difficulties in measuring tax uncertainty (Zangari et al., 2017) However, the existing studies consistently support the view that tax uncertainty has a negative impact on investment (Devereaux, 2016; Givati, 2009). Devereux's empirical research reveals that uncertainty about the effective tax rate on profit ranks as one of the top four considerations for investment and location decisions (Devereaux, 2016; International Monetary Fund [IMF] & OECD, 2017). A poorly designed tax system, where the rules and their application are non-transparent, overly complex, or unpredictable, may discourage investment, therefore adding to project costs and

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> First, tax avoiders appear to bear significantly more tax uncertainty, on average, than non-avoiders. For example, univariate comparisons show that the mean addition to the UTB [uncertain tax benefits] for a tax avoider over a typical five-year period is over 50 percent larger than the mean addition to the UTB for a tax non-avoider. The difference between the groups is statistically and economically significant. To put these differences into perspective, the mean tax avoider paid about $650 million of cash taxes, while the mean tax non-avoider paid $1,261 million of cash taxes over a typical five-year period.
>
> However, the mean tax avoider also faced more tax uncertainty, increasing its UTB account by $139 million, compared to an increase of only $68 million for the mean non-avoider over the five-year period…
>
> Second, firms with frequent patent filings face significantly higher tax uncertainty than do other firms, and the relation between tax avoidance and tax uncertainty is stronger among firms with frequent patent filings. These results are consistent with intangibles exposing firms to increased tax uncertainty, particularly among firms we classify as tax avoiders. Third, we find that tax haven usage and intangible intensity appear to have a joint effect on the relation between tax avoidance and tax uncertainty. This suggests that while intangible-related tax avoidance involving transfer pricing provides tax savings, it also forces firms to bear tax uncertainty. Fourth, we find limited evidence that tax avoidance using tax shelters leads to more tax uncertainty than does tax avoidance outside of tax shelters. The tax shelter results should be interpreted cautiously, however, because of the difficulty of distinguishing between likely tax shelter users and likely non-users in samples of large firms.
>
> Finally, we conduct a path analysis that confirms the presence of both direct and indirect effects of tax avoidance, patents, and havens on tax uncertainty. The results of this study also have implications for two puzzling empirical regularities. First, there is mounting evidence that multinational firms incur effective tax rates at least as large as domestic firms (Dyreng, Hanlon, Maydew, and Thornock 2017). This is a somewhat puzzling empirical regularity given that multinational firms have access to (arguably vast) opportunities for tax avoidance (i.e., shifting income to low-tax countries) that are simply not available to purely domestic firms. Our findings, however, show that income shifting involving tax havens and intangibles comes at a price, in the form of increased tax uncertainty (Dyreng et al., 2019, p.180).

This is an insightful contribution to the literature. It is difficult, however, to state emphatically how this perspective fares alongside the seemingly predominant pro-certainty views. A tiebreaker may be that the focus of this perspective rests only on the objective of tax avoidance, which may be deemed narrow when compared to the pro-certainty school that focusses on broader micro and macroeconomic considerations. It is also worth iterating that the preponderance of work in this area seems to lean towards certainty in the tax system rather than the opposite. While a trend may not speak conclusively to what is best, it does suggest that certainty is a greater goal to pursue than uncertainty, especially since the aim of the tax system is not only to collect tax. In terms of peculiar needs, can a capital importing country (like Nigeria) afford to prioritise uncertainty over certainty?

uncertainty (OECD, 2013).[29] Companies make long-term investment decisions over substantial time periods and need to do so in a tax system that is stable in order to receive the expected return on investment (which may then, for example, encourage further investment) (Reva, 2015). Prior to taking an investment decision, investors must forecast the prospective tax burden associated with the investment as it can be a significant cost factor (Diller & Vollert, 2011). Thus, to integrate taxes accurately into the decision calculus, the taxpayer has to estimate the prospective tax burdens of available investment options in advance (Diller & Vollert, 2011). Stability in the tax system gives companies certainty about their ongoing tax liabilities and when they fall due. A more predictable tax policy and administration will, thus, increase investment attractiveness (Reva, 2015).

Tax uncertainty is a concern in Nigeria. This is due to: the fact that Nigerian tax laws are fraught with intricate provisions, complexities, and ambiguities that greatly impede tax compliance (Okoro, 2019; Oyedele, 2015; PricewaterhouseCoopers, 2010; Simeon et al., 2017); the poor policies of successive governments (Effiok & Oti, 2017); and inconsistent legal frameworks (Effiok & Oti, 2017). Therefore, taxpayers, who are often willing to discharge their responsibilities, commonly find that they are stuck with uncertainties on what the law actually requires of them (Okoro, 2019). It is partly for these reasons that sound, consistent, and trustworthy use of discretion that respects legitimate expectation is important to businesses/taxpayers in Nigeria. The adoption of a policy of disregard for the legitimate expectation that guidance and other forms of discretion provide, sometimes with retroactive effect, does nothing to aid Nigeria's quest for an improved tax system and investment attraction, especially in the light of other socio-political and infrastructural challenges facing the country.[30]

The uncertainty that follows inconsistent use of tax discretion and non-observance of legitimate expectation must be regarded as a disincentive to investors. Nigeria has, for years, used tax incentives to attract investors while seemingly neglecting the impact of tax disincentives on investors (Oyedele, 2015). Ironically, the more embraced tax incentives are only likely to hurt Nigeria by either negatively influencing taxpayer behaviour or transferring much needed tax revenue from Nigeria to resident countries (Bird & Scott Wilkie, 2012; Brooks, 2009; Zolt, 2013). It is the view of this author that, rather than focussing on granting tax incentives, tax policy should be redirected to building trust and eradicating tax disincentives, such as inconsistent use of tax discretion.[31] Through such re-balancing, any apprehensions of lost investment due to the non-conferment of tax incentives may be offset by strategic elimination of tax disincentives and entrenchment of a trusted tax system.

[29] Diller and Vollert (2011) observe that, in order to reduce uncertainties due to complexity and interpretation, several countries allow for the possibility of an advance tax ruling. This enables investors to gain certainty on the tax consequences of a planned investment. In other words, an investor can then enjoy legal certainty when factoring the tax consequences of a possible investment into their calculus.

[30] Paragraph 3.0 of the 2012 National Tax Policy states that with the current challenges in the country's investment environment regarding its infrastructure, the government should ensure that the tax system is favourable enough to attract investment. This is a sort of omnibus provision to guide the government's tax policy. This provision recognised Nigeria's peculiar infrastructural challenges which ordinarily make the country a less attractive investment destination compared to countries with better infrastructures.

[31] It is arguable that, while infrastructurally more secure countries, like the U.K. and Canada, can afford to be more whimsical in their tax administration, a country like Nigeria, which faces deep infrastructural challenges, has far less room in which to play in this way.

6.1.2 Administrability

A trust-based approach to tax discretion will strengthen the administrability of Nigeria's tax system. The principle of administrability suggests that societies should be able to enforce the tax systems they create (Christians, 2018). Administrability also suggests that societies should impose tax obligations that taxpayers can comply with (Mason, 2016). This policy objective is not always achieved because it is often the case that there is a related disconnect between what lawmakers say they want the law to do and what it actually does (Mason, 2016). Moreover, regardless of how well tax laws are drafted, the role played by institutional players has a significant bearing on how they are implemented in reality. In the view of some, "tax administration *is* tax policy" (Casanegra de Jantscher, 1990, cited in Christians, 2018). Ultimately, tax administrators would want to ensure that the primary objective of taxation—revenue generation—is met as smoothly as possible. Theoretically, there are at least two ways that the tax authority's adherence to its promises and representations can facilitate administrability. First, adherence can engender public trust and confidence in the tax system which, in turn, facilitates self-assessment. Second, adherence can minimise the risks of dispute between the tax authority and taxpayers, which, in turn, saves valuable time and resources that the Revenue can use to pursue tax defaulters.

6.1.2.1 Public trust and voluntary compliance

Public confidence in the administration and enforcement of taxes is a cornerstone of self-assessing tax systems (Templeton, 2015). Although the primary responsibility of a tax administration is to collect the proper amount of tax due to the government, it is essential that the tax authority carries out its responsibilities in a manner that warrants the highest degree of public confidence in the organisation's efficiency, integrity, and fairness (Alink & van Kommer, 2016). The Revenue must understand its role as that of a service provider and be ready to treat the taxpayer as a customer.[32] As such, the tax authority should create a conducive tax atmosphere and environment that will engender taxpayer confidence at all levels of tax administration (*Shell v FIRS,* 2016).

Multi-jurisdictional research reveals that taxpayers' trust in the tax authority is an important enabler of both voluntary and efficient tax compliance, with trust often ranking higher than coercion/enforcement in actualising that important objective (see Faizal et al., 2017; Gobena & Van Dijke, 2016; Jimenez & Iyer, 2016; Kogler et al., 2013; Lisi, 2014). It has been established that the most cost-effective means of collecting taxes is through voluntary compliance of the public with the tax laws. The more enforcement activities that are necessary, the more expensive the administration of the tax system (Alink & van Kommer, 2016). Voluntary compliance goes hand in hand with a system of self-assessment (Silvani & Baer, 1997). Good taxpayer services, and well-designed and well-targeted publicity campaigns, are crucial elements in encouraging taxpayers to comply with the tax legislation (Silvani & Baer, 1997). Given clear information, proper education, simple procedures, and sufficient encouragement, there is a greater possibility that taxpayers will calculate and pay their tax

[32] See paragraph 3.3(i) of the NTP (2017), which expressly admonishes tax administration and collection agencies to treat the taxpayer as a customer. The taxpayer is deemed to be a consumer of the services provided by tax administrators and, as such, a client. The taxpayer is perceived to be a consumer as a user of the processes and structures that constitute the tax system. From this perspective, tax administrators are obliged to create a system that is characterised by ease of utilisation and manoeuvrability. Accordingly, tax authorities are urged to treat the interests of taxpayers with the maximum respect and to adopt policies that do not prejudice or jeopardise taxpayers. See Aniyie (2012).

liabilities on their own. In this way, the tax administration can concentrate its resources on identifying and dealing effectively with those taxpayers who fail to comply properly with their tax obligations. Extensive reliance on a self-assessment system combined with targeted enforcement would allow the tax administration to effectively administer the tax system. The two broad principles of voluntary compliance and self-assessment are the foundations of modern tax administration (Silvani & Baer, 1997). Among the core functions performed by tax administration is the provision of information, forms, publications, and tax education to taxpayers to help them to comply with their tax obligations, to demonstrate that they are considered valued customers of the tax administration, and to reduce the need for extensive enforcement, given limited resources (Jacobs, 2013). This can be done through various means of taxpayer assistance. It is, however, essential for the tax administration to establish procedures and processes for providing guidance to taxpayers (Alink & van Kommer, 2016). Taxpayers need to be able to apply guidance to their business without worrying that the FIRS might come after them in the future and seek to apply a different interpretation to the periods they had relied on the guidance. A FIRS that cannot be trusted will lose its credibility; and that will be a sad day for the country (Onyenkpa & Ayoola, 2014).

Critical to the concept of voluntary compliance is the belief on the part of the taxpaying public that the tax administration respects the rights of taxpayers and operates on the principles of integrity and honesty (Alink & van Kommer, 2016). Too much emphasis on raising revenue as against emphasis on customer service and taxpayers' rights can lead to a lack of confidence on the part of the public in a tax administration's ability to manage its responsibilities properly. Lack of confidence in the tax administration can also lead to reduced levels of voluntary compliance (Alink & van Kommer, 2016). When a taxpayer acts on a representation made by the tax authority, the taxpayer presumes that the tax authority has both the competence and the know-how to make that representation, as well as a legitimate expectation that the tax authority will stand by it. Thus, where the tax authority disappoints that legitimate expectation on the basis that it does not disclose the correct position, the confidence is broken. This is a recipe for distrust in the tax system, which may affect compliance, especially in a self-assessment system. Thus, as a matter of policy, refusal to honour promises should be the exception, not the general disposition, while the need for judicial review should only arise as a last resort.

6.1.2.2 Conflict management

There is a view that tax guidance delivered through the ruling system can reduce potential disputes between the taxpayer and tax authorities and the necessity for litigation (Maluleke, 2011). A well-managed tax guidance system should, therefore, enhance administrative efficiency by reducing conflict between taxpayers and the tax authority. Since taxpayers know what the law is—or, at least, what the tax authority deems the law to be—in respect of their activities, there is, presumably, a lower risk of conflict between the two sides. This limits the need for the tax authority to dissipate resources on litigation. The tax authority's nonadherence to legitimate expectations invariably takes both sides back to the roots of conflict which, of course, may limit the ability of the tax authority to concentrate its energy on the actual collection of taxes.[33]

[33] There is a symbiotic nexus between tax certainty and dispute management in tax administration. For instance, an IMF/OECD report (2019) states that a shifting focus from dispute resolution to dispute prevention, ensuring that disagreements between tax administrations can be resolved quickly to avoid double taxation, will always be a core element of tax certainty.

Finally, it is asserted that an official, well-tailored policy of adhering to legitimate expectation simply abides with the NTP. Of course, this is not to imply that the NTP should take pre-eminence over tax legislation. It is, nevertheless, important for a state to apply its tax laws in line with defined policy, since policy gives life to the law. The NTP should not become a redundant policy document or reference tool only for academics (Deloitte, 2015). The NTP should be the "bible" that guides the thinking, formulation, and execution of strategies relevant to taking tax administration at all levels (assessment, collection etc.) and the tax system at large to optimum heights (Deloitte, 2015).

7. CONCLUSION

In Nigeria, as in most countries, taxation is a matter of legislation. Legislation prescribes tax obligations on various sources and stipulates how taxes are collected. Regrettably, tax laws tend to be complex and uncertain, thus leaving taxpayers with the need to rely, in many instances, on the discretion of the tax authority to ascertain their tax obligations. Things become even more complicated when the tax authority departs from its previous position, especially in a manner that leaves the taxpayer with detrimental retroactive implications. Legitimate expectation is one of the remedies that the courts have advanced to protect the interest of taxpayers in such circumstances. However, for various tax policy reasons, it seems that it is better for taxpayer claims of legitimate expectation to be addressed on the administrative, rather than judicial, platform. This is bearing in mind the notion that the "non-justiciability" of a case, in court, does not mean that it totally lacks merit. There could be merit that benefits both the plaintiff (taxpayer) and the defendant (tax authority), as well as the tax system, overall. It is these policy issues that I address in this paper, in the context of Nigeria's tax policy framework. The proposal discussed here does not seek to supplant the role of the court in developing and applying legitimate expectation. It recognises that expectations arise at the administrative stage and seeks instead to supplement the judicial role by highlighting what the tax authority can do and why it may be more judicious for the tax authority to keep its promises than to break them.

REFERENCES

Abbas, Q. (2008). Doctrine of legitimate expectations: Prospects and problems in Pakistan. *Pakistan Law Journal*, 448-460.

Abdulrazaq, M. T. (2016). *Taxation system in Nigeria*. Ikeja-Lagos, Nigeria: Gravitas Legal and Business Resources Ltd.

Adedokun, K. (2017). An overview of discretionary powers in tax administration within the context of the Nigerian National Tax Policy. In O. Animashaun, O. Y. Abdul-Hamid & B. Atilola (Eds.). *Changing perspectives in the law and practice of taxation in Nigeria: Essays in honour of Prof, M. T. Abdulrazaq*. Surulere, Lagos, Nigeria: Hybrid Consult.

Ahmed, F., & Perry, A. (2014). The coherence of the doctrine of legitimate expectations. *Cambridge Law Journal, 73*(1), 61-85. https://doi.org/10.1017/S0008197314000026

Alink, M., & van Kommer, V. (2016). *Handbook on tax administration* (2nd ed.) Amsterdam, The Netherlands: IBFD.

Aniyie, I. A. (2012). Consumer-oriented reforms in tax administration in Nigeria. In M. L Ahmadu (Ed.), *Legal prisms: Direction in Nigerian law and practice* (pp. 554-570). Sokoto, Nigeria: Usmanu Danfodiyo University.

Ansari S., & Sossin, L. (2017). Legitimate expectations in Canada: Soft law and tax administration. In M. Groves & G. Weeks (Eds.), *Legitimate expectations in the common law world* (pp. 293-317). Oxford, England: Hart Publishing.

Appah, E., & Nkwazema, O. G. (2014). Self-assessment scheme and revenue generation in Nigeria. *Developing Country Studies*, *4*(10), 102-111.

Association of International Certified Professional Accountants. (2017). *Tax policy concept statement 1: Guiding principles of good tax policy: A framework for evaluating tax proposals*. np: Association of International Certified Professional Accountants. https://www.aicpa.org/advocacy/tax/downloadabledocuments/tax-policy-concept-statement-no-1-global.pdf

Barak-Erez, D. (2005). The doctrine of legitimate expectations and the distinction between the reliance and expectation interests. *European Public Law*, *11*(4), 583-601.

Bates, A. (2011). *Taxation and protection for legitimate expectations*. https://www.monckton.com/wp-content/uploads/2011/05/TAXATIONLEGITIMATEEXPECTATIONSPLC.pdf

Bird, R. M., & Scott Wilkie, J. (2012). *Designing tax policy: Constraints and objectives in open economy* (International Center for Public Policy Working Paper 12-24). Atlanta, GA: International Center for Public Policy, Andrew Young School of Policy Studies, Georgia State University.

Brooks, K. (2004). Delimiting the concept of income: The taxation of in-kind benefits. *McGill Law Journal*, *49,* 255-307.

Brooks, K. (2009) Tax sparing: A needed incentive for foreign investment in low-income countries or an unnecessary revenue sacrifice. *Queen's Law Journal, 34*(2), 505-564.

Brooks, K. (2011). A reasonable balance: Revenue authority discretions and the rule of law in Canada. In C. Evans, J. Freedman & R. Krever (Eds.), *The delicate balance: Tax, discretion and the rule of law* (pp. 63-77). Amsterdam, the Netherlands: IBFD.

Chandrachud, C. (2017). The (fictitious) doctrine of substantive legitimate expectations in India. In M. Groves & G. Weeks (Eds.), *Legitimate expectations in the common law world* (pp. 245-266). Oxford, England: Hart Publishing.

Christians, A. (2018). *Introduction to tax policy theory*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3186791

Daly, P. (2017). A pluralist account of deference and legitimate expectations. In M. Groves & G. Weeks (Eds.), *Legitimate expectations in the common law world* (pp. 101-120). Oxford, England: Hart Publishing.

Davis, K. C. (1970). Discretionary justice. *Journal of Legal Education*, *23*(1), 56-62.

Deloitte. (2015). Nigeria's national tax policy: Any agenda for the new FIRS' chair? *Inside Tax*. https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/tax/inside-tax/ng-nigerias-national-tax-policy-any-agenda-for-the-new-firs-chair.pdf

Devereaux, M. P. (2016). *Measuring corporation tax uncertainty across countries: Evidence from a cross-country survey* (Oxford University Center for Business Taxation Working Paper 16/13). Oxford, England: Oxford University Center for Business Taxation.

Diller, M., & Vollert P. (2011). *Economic analysis of advance tax rulings* (Arqus Working Group in Quantitative Tax Research Discussion Paper Nr. 122). Berlin, Germany: Arbeitskreis Quantitative Steuerlehr.

Dyreng, S. D., Hanlon, M., & Maydew, E. L. (2019). When does tax avoidance result in tax uncertainty? *The Accounting Review, 94*(2), 179-203. https://doi.org/10.2308/accr-52198

Effiok, S. O., & Oti, P. A. (2017). Re-invigorating the Nigeria tax system as a redemption from the vagaries of the world oil market. *International Journal of Advanced Studies in Economics and Public Sector Management, 5*(1), 131-142.

Faizal, S. M., Palil, M. R., Maelah, R., & Ramli, R. (2017). Perception on justice, trust and tax compliance behavior in Malaysia. *Kasetsart Journal of Social Sciences, 38*(3), 226-232. https://doi.org/10.1016/j.kjss.2016.10.003

Federal Inland Revenue Service. (1993, March 22). *The taxation of non-residents in Nigeria* (Information circular No. 9302). Abuja, Nigeria: FIRS.

Federal Inland Revenue Service. (1998, October 1). *Explanatory notes on the application of withholding tax provisions to contracts and agency arrangements* (Information circular No. 9801). Abuja, Nigeria: FIRS.

Federal Inland Revenue Service. (2010a). *Guidelines on the tax implications of leasing* (Information circular 2010/01). Abuja, Nigeria: FIRS.

Federal Inland Revenue Service. (2010b). *What constitutes 'trade' for tax purposes: Guidelines for the general public* (Information circular PC-T10.2.3.1021). Abuja, Nigeria: FIRS.

Federal Inland Revenue Service. (2012, April). *Explanatory notes on the critical tax issues for the operation of bank holding company structure in Nigeria* (Information circular PC-T12.2.3.1027). Abuja, Nigeria: FIRS.

Federal Inland Revenue Service. (2018a). *Country-by-country guidelines* (Information circular 2018/01). Abuja, Nigeria: FIRS.

Federal Inland Revenue Service. (2018b). *The guidelines for the appropriate use of information contained in CBC reports* (Information circular 2018/02). Abuja, Nigeria: FIRS.

Federal Inland Revenue Service. (2019a). *Claim of tax treaties benefits in Nigeria* (Information Circular 2019/03). Abuja, Nigeria: FIRS.

Federal Inland Revenue Service. (2019b). *The guidelines on mutual agreement procedure* (Information circular 2019/01). Abuja, Nigeria: FIRS.

Federal Inland Revenue Service. (2020). *Tax circulars, regulations and public notices.* https://firs.gov.ng/tax-circulars-regulations-and-public-notices/

Fordham, M. (2001). Legitimate expectation II: Comparison and prediction. *Judicial Review, 6*(4), 262-270. https://doi.org/10.1080/10854681.2001.11427194

Forsyth, C. (2011). Legitimate expectations revisited. *Judicial Review*, *16*(4), 429-439. https://doi.org/10.5235/108546811799320754

Freedman, J., & Vella, J. (2011). HMRC's management of the U.K. tax system: The boundaries of legitimate discretion. In C. Evans, J. Freedman & R. Krever (Eds.), *The delicate balance: Tax, discretion and the rule of law* (pp. 79-120). Amsterdam, the Netherlands: IBFD.

Garner, B. A. (Ed). (2004) *Black's law dictionary* (8th ed.). St. Paul, MN: West Group.

Givati Y. (2009). Resolving legal uncertainty: The unfulfilled promise of advance tax rulings. *Virginia Tax Review, 29,* 137-175.

Gobena, L. B., & Van Dijke, M. (2016). Power, justice, and trust: A moderated mediation analysis of tax compliance among Ethiopian business owners. *Journal of Economic Psychology, 52,* 24-37. https://doi.org/10.1016/j.joep.2015.11.004

Groves, M. (2008). Substantive legitimate expectation in Australian administrative law. *Melbourne University Law Review, 32*(2)*,* 470-523.

Groves, M. & Weeks, G. (Eds.). (2017). *Legitimate expectations in the common law world.* Oxford, England: Hart Publishing.

Hart, H. L. A. (2013). Discretion. *Harvard Law Review, 127*, 652-665.

International Monetary Fund & Organisation for Economic Co-operation and Development. (2017). *Tax uncertainty: IMF/OECD report for the G20 finance ministers*. https://www.oecd.org/tax/tax-policy/tax-certainty-report-oecd-imf-report-g20-finance-ministers-march-2017.pdf

International Monetary Fund & Organisation for Economic Co-operation and Development (2019). *2019 progress report on tax certainty: IMF/OECD Report for the G20 finance ministers and Central Bank governors.* https://www.oecd.org/tax/tax-policy/imf-oecd-2019-progress-report-on-tax-certainty.pdf

Jacobs, A. (2013, August 31). Conceptual framework. In U.S. Agency for International Development, *USAID Leadership in Public Financial Management.* https://www.usaid.gov/sites/default/files/LAC_TaxBook_Ch%202%20-%20ENGLISH.pdf

Jimenez, P., & Iyer, G. S. (2016). Tax compliance in a social setting: The influence of social norms, trust in government, and perceived fairness on taxpayer compliance. *Advances in Accounting, 34,* 17-26. https://doi.org/10.1016/j.adiac.2016.07.001

Jowell, J. (2000). Of vires and vacuums: The constitutional context of judicial review. In C. Forsyth (Ed.), *Judicial Review and the Constitution* (pp. 327-340). Oxford, England: Hart Publishing.

Kogler, C., Batrancea, L., Nichita, A., Pantya, J., Belianin, A., & Kirchler, E. (2013). Trust and power as determinants of tax compliance: Testing the assumptions of the slippery slope framework in Austria, Hungary, Romania and Russia. *Journal of Economic Psychology, 34*, 169-180. https://doi.org/10.1016/j.joep.2012.09.010

Lisi, G. (2014). The interaction between trust and power: Effects on tax compliance and macroeconomic implications. *Journal of Behavioral and Experimental Economics*, *53,* 24-33. https://doi.org/10.1016/j.socec.2014.07.004

Maluleke, M. J. (2011). *A critical analysis of the doctrine of legitimate expectation in the context of the advanced tax rulings system and tax assessment measures by SARS, with specific emphasis on substantive legitimate expectation* [LLM dissertation, University of Pretoria]. UP Space Institutional Repository, University of Pretoria. http://hdl.handle.net/2263/27892

Mason, R. (2016). Citizenship taxation. *Southern California Law Review, 89*(2), 169-239.

McHarg, A. (2017). Administrative discretion, administrative rule-making, and judicial review. *Current Legal Problems, 70*(1)*,* 267-303. https://doi.org/10.1093/clp/cux011

Memon, N. (2010). Prioritizing principles of a good tax system for small business in informal economies. *Australian Tax Forum, 25*(1)*,* 57-94.

Minnesota Center for Fiscal Excellence. (n.d.). *Taxing decisions matter: A guide to good tax policy*. https://www.fiscalexcellence.org/our-studies/tax-policy-primer.pdf

Monkam, N., von Haldenwang, C., de Sarralde, S. D., & Hentze, T. (2017). *Tax certainty* (G20 Insights). https://www.g20-insights.org/policy_briefs/tax-certainty/

Murcott, M. (2015). A future for the doctrine of substantive legitimate expectation – The implications of Kwazulu-Natal Joint Liaison Committee v MEC for Education, Kwazulu Natal. *Potchefstroom Electronic LJ, 18*(1), 3132- 3158. https://doi.org/10.4314/pelj.v18i1.06

Ndibe, C. (2018). *Advance tax ruling in Nigeria; Can the tax man eat his cake and have it?* [Post]. LinkedIn. https://www.linkedin.com/pulse/advance-tax-ruling-nigeria-can-man-eat-his-cake-have-ndibe/

Ogbuabor, C. A. (2012). Expanding the frontiers of judicial review in Nigeria: The gathering storm. *Nigerian Juridical Review, 10*, 1-21.

Okoro, J. (2019, January 25). *Holding the taxman to his word: The doctrine of legitimate expectation and tax administration in Nigeria*. https://doi.org/10.2139/ssrn.3322382

Olajide, M., & Salu, S. (2015, April). *Pioneer tax holiday: Matters arising from recent developments and the doctrine of legitimate expectation* (PwC Nigeria Tax Bites Series). n.p.: PwC. https://www.pwc.com/ng/en/assets/pdf/tax-watch-april-2015.pdf

Olokooba, S. M. (2019). *Nigerian taxation: Law, practice and procedures simplified.* n.p.: Springer Singapore.

Onyenkpa, V., & Ayoola, A. (2014). FIRS and the principle of legitimate expectation [Blog post]. *KPMG.*

Organisation for Economic Co-operation and Development. (2013). *Policy Framework for Investment User's Toolkit: Chapter 5: Tax Policy*. http://www.oecd.org/investment/toolkit/policyareas/41890309.pdf

Oyedele, T. (2012). *Tax Administration (Self Assessment) Regulations 2011: What you need to be aware of*. np: PwC. https://www.pwc.com/ng/en/pdf/tax-administration-self-assessment-regulations-nigeria.pdf

Oyedele, T. (2015, February 23). How Nigeria's tax system discourages investments. *The Guardian.* https://guardian.ng/features/tax-discourse/how-nigeria-s-tax-system-discourages-investments/amp/

Pagone, G. T. (2009). Tax uncertainty. *Melbourne University Law Review, 33*(3), 886-907.

PricewaterhouseCoopers. (2010). *Nigeria @ 50: Top 50 tax issues*. http://www.orandcconsultants.com/downloads/nigeria-top-50-tax-issues.pdf

Reva, A. (2015). *Toward a more business friendly tax regime: Key challenges in South Asia* (World Bank Group Policy Research Working Paper No. 7513). http://hdl.handle.net/10986/23477

Reynolds, P. (2010). Legitimate expectation and the protection of trust in public officials. *Public Law*, *2011*, 330-352.

Romano, C. (2002). *Advance tax rulings and principles of law: Towards a European tax rulings system?* (IBFD Doctoral Series, Vol 4). Amsterdam, the Netherlands: IBFD Publications.

Rosenberg, M. (1971). Judicial discretion of the trial court, viewed from above. *Syracuse Law Review, 22*(3)*,* 635-667.

Schønberg, S. (2000). *Legitimate expectations in administrative law.* Oxford, England: Oxford University Press.

Schroeder, M. (2005). Administrative law in Germany. In R. Seerden & F. Stroink (Eds.), *Administrative law of the European Union, its member states and the United States: A comparative analysis* (pp. 91-144). Antwerp, Belgium: Intersentia Uitgevers.

Silvani, C., & Baer, K. (1997). *Designing a tax administration reform strategy: Experiences and guidelines* (IMF Working Paper WP/97/30). https://www.imf.org/external/pubs/ft/wp/wp9730.pdf

Simeon, E. D., Simeon, E. I., & Roberts, I. A. (2017). Issues and challenges inherent in the Nigerian tax system. *American Journal of Management Science and Engineering, 2*(4)*,* 52-57. https://doi.org/10.11648/j.ajmse.20170204.11

Smith, A. (1776). *An inquiry into the nature and causes of the wealth of nations*. London, England: W. Strahan & T. Cadell.

Solomon, E. (2013). The process for making tax policy in the United States: A system full of friction. *Canadian Tax Journal, 61*(4), 1075-1085.

Stewart, C. (2000). Substantive unfairness: A new species of abuse of power? *Federal Law Review*, *28*(3)*,* 617-635. https://doi.org/10.22145/flr.28.3.9

Stokes, A., & Wright, S. (2013). Does Australia have a good income tax system? *International Business & Economics Research Journal*, *12*(5), 533-542.

Templeton, S. (2015). A defence of the principled approach to tax settlements. *Dalhousie Law Journal, 38*(1), 29-68.

Thomas, R. (2017) Legitimate expectations and the separation of powers in English and Welsh administrative law. In M. Groves & G. Weeks (Eds.), *Legitimate expectations in the common law world* (pp. 53-78). Oxford, England: Hart Publishing.

Tjernberg, M. (2016). Legal certainty in taxation at authorities and courts of law: A Nordic view of specialization and unbiasedness. *Nordic Tax Journal, 1*, 17-28. https://doi.org/10.1515/ntaxj-2016-0001

Tomlinson, J. (2017a). The grammar of administrative values. *Journal of Social Welfare and Family Law, 39*(4)*,* 524-537. https://doi.org/10.1080/09649069.2017.1395951

Tomlinson, J. (2017b). The narrow approach to substantive legitimate expectations and the trend of modern authority. *Oxford University Commonwealth Law Journal, 17*(1)*,* 75-84. https://doi.org/10.1080/14729342.2017.1311514

U.K. Parliament. (2011, January 31). The principles of tax policy: Written evidence submitted by the CBI. https://publications.parliament.uk/pa/cm201011/cmselect/cmtreasy/memo/taxpolicy/m38.htm

Varuhas, J. N. (2017). In search of a doctrine: Mapping the law of legitimate expectations. In M. Groves & G. Weeks (Eds.). *Legitimate expectations in the common law world* (pp. 17-52). Oxford, England: Hart Publishing.

Wade, H. W. R., & Forsyth, C. E. (2009). *Administrative law* (10th ed.). Oxford, England: Oxford University Press.

Watson, J. (2010). Clarity and ambiguity: A new approach to the test of legitimacy in the law of legitimate expectations. *Legal Studies*, *30*(4), 633-652. https://doi.org/10.1111/j.1748-121X.2010.00177.x

Weeks, G. (2017). What can we legitimately expect from the State? In M. Groves & G. Weeks (Eds.), *Legitimate expectations in the common law world* (pp. 147-164). Oxford: Hart Publishing.

Woodford, K. (2003). *Cambridge advanced learner's dictionary* (1st ed.). Cambridge, England: Cambridge University Press.

Wright, D. (1997). Rethinking the doctrine of legitimate expectations in Canadian administrative law. *Osgoode Hall Law Journal, 35*(1), 139-194. https://digitalcommons.osgoode.yorku.ca/ohlj/vol35/iss1/4.

Zangari, E., Caiumi, A., & Hemmelgarn. T. (2017). *Tax uncertainty: Economic evidence and policy responses*. (European Union Taxation Papers, Working Paper No. 67 - 2017). https://ec.europa.eu/taxation_customs/sites/taxation/files/taxation_paper_67.pdf

Zolt, E. M. (2013). *Tax incentives and tax base protection issues* (United Nations Draft Paper 3). https://www.un.org/esa/ffd/wp-content/uploads/2014/10/20140604_Paper3_Zolt.pdf

CASE LAW

ACB Plc. v Nwaigwe & ors. (2011) LPELR-208(SC).

Achie v Ebenighe & ors (2013) LPELR-21884(CA).

Ahmad v Sokoto State House of Assembly & anor (2002) LPELR-10996(CA).

Akinyemi v Odu'a Investment Co. Ltd (2012) 17 NWLR (pt. 1329) 209.

Artra Ind. Nig. Ltd v NBCI (1998) LPELR-565(SC), 35, paras B-D.

Attorney-General of Abia State & ors v Attorney-General of the Federation (2003) LPELR-610(SC).

Attorney-General of Hon Kong v NG Yuen Shiu [1983] 2 AC 629, [1983] 2 All ER 346

Bakare v Lagos State Civil Service Commission & anor (1992) LPELR-711(SC)

Council of Civil Service Unions & Ors v Minister for the Civil Service (1984) 3 All ER 935

Ero & ors v Ero & ors (2018) LPELR-44154(CA).

Federal Board of Inland Revenue v Halliburton (WA) Limited (2014) LPELR-24230(CA)

Iwuji v Federal Commissioner for Establishment & anor (1985) LPELR-1568(SC).

Menakaya v Menakaya (2001)16 NWLR (pt. 738) 203

Military Governor of Imo State & anor v Nwauwa (1997) LPELR-1876(SC).

Oloniluyi v Secretary of State for the Home Department [1989] Imm. AR 135

Psychiatric Hospital Management Board v Ejitagha (2000) LPELR-2930(SC)

R (Bancoult) v Secretary of State for Foreign and Commonwealth Affairs (2) [2008] UKHL 61, [2008] 4 All ER 1055.

R (Bibi) v Newham London Borough Council (2002) 1 WLR 237 (CA)

R (Dixons Retail plc) v HMRC [2018] EWHC 2556.

R v *Education Secretary ex parte Begbie* [2000] 1 W.L.R. 1115

R (Gaines-Cooper) v HRMC [2010] EWCA Civ 83.

R (GMAC Investment Limited Aozora) v HMRC (2019) EWCA Civ 1643.

R (Hely-Hutchinson) v HMRC [2017] EWCA Civ 1075, [2018] 1 WLR 1682.

R (HSMP Forum) v Secretary of State for the Home Department [2008] EWHC Admin 664.

R v Inland Revenue Commissioners, ex parte MFK Underwriting Agents Ltd [1990] 1 WLR 1545.

R. v IRC ex parte Preston [1985] A.C. 835

R v *Minister for the Civil Service ex parte CCSU* [1985] AC 374.

R v Ministry of Defence, Ex p Walker [2000] 1 WLR 806.

R v North and East Devon Health Authority, Ex parte Coughlan [2000] 3 All ER 850

R (Reprotech (Pebsham) Ltd) v East Sussex County Council [2003] 1 WLR 348.

R v Secretary of State for the Home Department, Ex p Asif Mahmood Khan [1984] 1 WLR 1337

R v Secretary of State for the Home Department; ex parte Khan [1984] 1 WLR 1337 (CA)

R v Secretary of State for the Home Department, Ex p Ruddock [1987] 1 WLR 1482.

R v (Luton Borough Council and others) v Secretary of State for Education [2011] EWHC Admin 217.

R v Inland Revenue Commissioners Ex p. Unilever Plc [1996] S.T.C. 681

Rainbow Insurance Company Ltd v Financial Services Commission (Mauritius) [2015] UKPC 15.

Saipem Contracting Nigeria Limited v Federal Inland Revenue Service (2014) 15 TLRN 76.

Saipem Contracting Nigeria Ltd & 2 ors v Federal Inland Revenue Service & 2 ors (2018) LPELR-45118(CA).

Schmidt & ors v Secretary of State for Home Affairs [1969] 2 Ch 149.

Shell Nig. Ltd & 3 Ors v FIRS (2016) 24 TLRN 51.

Stitch v Attorney-General of the Federation & ors (1986) NWLR (Pt.46) 1007; (1986) LPELR-3119(SC).

Sumaila v State (2012) LPELR-19724(CA).

Transocean Drilling UK Limited v Federal Inland Revenue Service (2017) 29 TLRN 67

United Policyholders Group and others v Attorney General of Trinidad and Tobago [2016] UKPC 17, [2016] 1WLR 3383.

VF Worldwide Holdings Ltd v Federal Inland Revenue Service (2016) 21 TLRN 101.

LEGISLATION

Companies Income Tax Act 1961, Cap C21, LFN 2004, ss 30(1), (CITA).

Constitution of the Federal Republic of Nigeria 1999.

Federal High Court (Civil Procedure) Rules 2019, No. 72.

Federal Inland Revenue Service (Establishment) Act 2007 (FIRS Act).

High Court of Lagos State (Civil Procedure) Rules 2019.

Nigeria, Federal Ministry of Finance, *National Tax Policy*. FMF 1 February 2012.

Nigeria, Federal Ministry of Finance, *National Tax Policy*. FMF 1 February 2017. (NTP).

Income Tax (Transfer Pricing) Regulations 2018, No. 38.

Petroleum Profits Tax Act 1959, No. 15, Cap P13, LFN 2004.