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Money Laundering and Tax Evasion in Nigeria

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Abstract

The negative economic effects of money laundering and tax evasion on economic development of Nigeria are difficult to quantify. Money laundering and tax evasion activities damage the economic growth, reduce productivity in the economy's real sector by diverting resources and encourage crime and corruption, which slow economic growth. Financial fraud itself is not the cause of the retarded economy which Nigeria experiences, but rather the capital flight that occurs when these monies are taken to overseas banks. In this article, the writer will look at the meaning and history of money laundering and tax evasion, the anatomy of the relevant provisions of the Money Laundering (Prohibition) Act, and instances of money laundering and tax evasion in Nigeria, the role of Nigerian officials in promoting money laundering and tax evasion, and the modus operandi of the perpetrators of this crime. Factors responsible for money laundering and tax evasion and their effects were also considered. Some measures were suggested aimed at eradicating instances and effects of money laundering and tax evasion.

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Introduction

Money means the medium of exchange authorized or adopted by a government as part of its currency, especially domestic currency.¹ It is equally assets that can be easily converted to cash.² It can be seen as capital that is invested or traded as a commodity.³ Money laundering is the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced.⁴ It is an offence to launder money in Nigeria.⁵ Section 14(1)⁶ provides as follows: A person who – (a) converts or transfers resources or property derived directly or indirectly from illicit traffic in narcotic drugs or psycho tropic substances or any illegal act, with the aim of either concealing or disguising the illicit origin of the resources or property, or aiding any person involved in the illicit traffic in narcotic drugs or psycho tropic substances or any other crime or illegal act to evade the legal consequences of his action; or (b) collaborates in concealing or disguising the genuine nature, origin, location, disposition, movement or ownership of the resources, property or rights thereto derived directly or indirectly from illicit traffic in narcotic drugs or psycho tropic substances or any other crime or illegal act, commits an offence under this section and is liable on conviction to imprisonment for a term of not less than two years or more than three years.

Money laundering, in whatever way it is looked at, involves criminality, criminal proceeds, conversion, disguising of true origin and ownership and attempt to avoid detection, prosecution, conviction and confiscation of the proceeds of crime.⁷ It is a derivative or second-order financial crime. That is, for money laundering to take place, there must be an underlying criminal activity, otherwise known as money laundering predicate offence, which may include but not limited to drug trafficking, human trafficking, robbery, fraud

¹ B. A., Garner, *Blacks Law Dictionary*, (USA: Thompson Group, 2004), p. 1027.

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Section 14(1) of the *Money Laundering (Prohibition) Act*, Cap M18, Laws of the Federation of Nigeria, 2004.

⁶ *Ibid.*

⁷ Available at: www.tribune.com.ng/Index.php/tribune, (assessed on 24/12/2011).

such as banking fraud, smuggling, corruption, tax evasion and illegal oil bunkering.⁸

What is Tax Evasion?

Tax evasion is the willful attempt to defeat or circumvent the tax law in order to illegally reduce one's tax liability.⁹ It is the general term for efforts by individuals, corporations, trusts and other entities to evade taxes by illegal means. Tax evasion usually entails tax payers deliberately mis-representing or concealing the true state of their affairs to the tax authorities to reduce their tax liability, and includes, in particular, dishonest tax reporting (such as declaring less income, profits or gains than actually earned, or overstating deductions).¹⁰ Tax evasion is also termed tax fraud, tax avoidance.

Tax avoidance is the legal utilization of the tax regime to one's own advantage to reduce the amount of tax that is payable by means that are within the law.¹¹ Both tax evasion and avoidance can be viewed as forms of tax non-compliance as they described a range of activities that are unfavourable to a state's tax system.¹²

It should be noted that tax evasion is a predicate offence for money laundering. Both deprive government of revenue or resources needed for sustainable development, pose serious challenges to development, cause serious limitation to the revenue mobilization derive of the government and have serious adverse impact on the national/global financial system.¹³ Besides, these crimes, which are both criminal activities, result and reinforce further criminality that culminate in the economic and political empowerment of criminals, who in turn dictate the moral tone of the society.¹⁴

History of Money Laundering and Tax Evasion

Tax evasion and money laundering remain crimes of global phenomena which are derived from loopholes, errors and ambiguities in relevant laws, as well as general weaknesses in a country's anti - money laundering and crime

⁸ *Ibid.*

⁹ B. A., Garner, *Blacks Law Dictionary, op. cit.*, p. 1501.

¹⁰ Available at: En.wikipedia.org/wiki/Tax-evasion (assessed on 10/12/2011).

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Available at: www.tribune.com.ng/Index.php/tribune (assessed on 24/12/2011).

¹⁴ *Ibid.*

management regime.¹⁵ The history of money laundering is primarily, that of hiding money or assets from the state.¹⁶ No one can be really sure when money laundering first began. We can be confident that it has been going on for several thousand years.¹⁷ In China, for example, merchants, some 2,000 years before Christ hid their wealth from rulers who would simply take it off them and banish them.¹⁸ In addition to hiding it, they would move it and invest it in businesses in remote provinces or even outside China. In this way, the offshore industry was born, and so was tax evasion.¹⁹ Over a period of thousands of years, people have used money laundering techniques to move money resulting from crime but also often to hide and move it out of reach of governments. Many minorities in countries down the ages and around the world have taken steps to preserve wealth from rulers, who have targeted them simply because of their beliefs or colour.²⁰ It is happening even today.

It was several thousand years ago that money and value were separated and value became represented by assets that were recognisable and convertible.²¹ So, Gold coins were worth their weight in gold and it was immaterial what country issued them. The only thing that mattered was the quality and quantity of the gold. Once gold is melted down, it does not lose its value, only its shape.²² It can be re-fashioned and having arrived in one place as one thing, it can leave there as something else. So, Gold remains one of the main non-currency means of holding money including laundered money.²³ Diamonds are a particular favourite, too.²⁴ There have been instances of “holy men” carrying laundered funds by concealed diamonds into California.²⁵ Money launderings and tax evasion are restricted only by the imagination of the criminals and there are a lot of criminals trying to find ways to launder.

Anatomy of the Relevant Provisions of the Money Laundering (Prohibition) Act

¹⁵ *Ibid.*

¹⁶ Available at: www.CountermoneyLaundering.com/Public (assessed on 24/12/2011).

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ *Ibid.*

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

By section 1²⁶ no person or body corporate shall make or accept cash payment of a sum exceeding:

- (a) N500,000.00 or its equivalent, in the case of an individual; or
- (b) N2,000,000.00 (Two Million Naira) or its equivalent, in the case of a body corporate, except in a transaction through a financial institution.

Financial institution includes:

Any individual, body, association or group of persons, whether corporate or unincorporated which carries on the business of investment and securities, a discount house, finance company and money brokerage whose principal object includes factoring project, financing equipment leasing, debt administration, fund management, private ledger services, investment management, local purchase order financing, export finance, project consultancy, financial consultancy, pension fund management, insurance institutions, debt factorisation and conversion firms, dealer, clearing and settlement companies, legal practitioners, hotels, casinos, bureau de change, supermarkets and such other businesses as the Central Bank or appropriate regulatory authorities, may from time to time, designate.²⁷

A transfer to or from a foreign country of funds or securities of a sum exceeding \$10,000 or its equivalent shall be reported to the Central Bank of Nigeria. Such report shall indicate the nature and amount of the transfer, and the names and addresses of the sender and receiver of the funds or securities.²⁸

A financial institution shall verify its customer's identity and address before opening an account for, issuing a passbook to, entering into a fiduciary transaction with, renting a safe deposit box to or establishing any business relationship with the customer.²⁹ An individual shall be required to provide proof of his: (a) identity, by presenting to the financial institution a valid original copy of an official document bearing his names and photograph; (b) address, by presenting to the financial institution the originals of receipts issued within the previous three months by public utilities.³⁰

A body corporate shall be required to provide proof of its identity by presenting its certificate of incorporation and other valid official documents

²⁶ *Money Laundering (Prohibition) Act*, Cap M18, Laws of the Federation of Nigeria, 2004.

²⁷ *Ibid.*, section 25.

²⁸ *Ibid.*, section 2.

²⁹ *Ibid.*, section 5 (1).

³⁰ *Ibid.*, section 5 (2).

attesting the existence of the body corporate.³¹ The manager, employee or assignee delegated by a body corporate to open or operate an account shall be required to produce not only the documents mentioned above, but also proof of the power of attorney granted to him in that behalf.

Where a financial institution reasonably suspects that the amount involved in a transaction is the proceeds of a crime or an illegal act, it shall require identification of the customer notwithstanding that the amount involved in the transaction is less than US \$5,000 or its equivalent.³²

Section 10(1)³³ provides that notwithstanding anything to the contrary in any other law or enactment, a financial institution or Casino shall report to the agency³⁴ in writing, within seven days any single transaction, lodgment or transfer of funds in excess of: (a) N1,000,000.00 or its equivalent, in the case of an individual; and (b) Five million naira or its equivalent, in the case of a body corporate. Any person, other than a financial institution, may voluntarily give information on any transaction, lodgment or transfer of funds in excess of: (a) N100,000.00 or its equivalent, in the case of an individual; and (b) N500,000.00 or its equivalent, in the case of a body corporate.³⁵

It should be noted that in the course of this research, we have earlier enumerated money laundering offences. Other offences created by the Act include any person who:

- (a) being a director or employee of a financial institution warns or in any other way intimates the owner of the funds involved in the transaction involved in mandatory disclosure about the report he is required to make or the action taken on it or who refrains from making the report as required under section 10; or (b) destroys or removes a register or record required to be kept under this Act; or (c) carries out or attempts under a false identity to carry out any of the transactions specified in section 1 to 5 of this Act; or (d) makes or accepts cash payment exceeding the amount authorised under this Act; or (e) fails to report an international transfer of funds or securities required to be reported under this Act; or (f) being a director or an employee of a

³¹ *Ibid*; section 5 (3).

³² *Ibid*; section 5(6).

³³ *Ibid*.

³⁴ Agency means the National Drugs Law Enforcement Agency.

³⁵ Section 10(2) of the Money Laundering (Prohibition) Act, Cap M18, Laws of the Federation of Nigeria, 2004.

bureau de change, Casino or other financial institution, contravenes the provisions of sections 2, 3, 4, 5 or 10 of this Act, commits an offence under this section.³⁶

Offence under paragraphs (a) to (c) above attracts imprisonment for a term of not less than two years or more than three years while under paragraph (d) to (f), if the offender is an individual, it will attract a fine of not less than N250,000 or more than one million naira or a term of imprisonment of not less than two years or more than three years or to both fine and imprisonment; or if the offender is a financial institution or any other body corporate, it will attract a fine of not less than N250,000 or more than N1, 000.000.00 (One Million naira).³⁷

Instances of Money Laundering and Tax evasion in Nigeria

The instances of money laundering and tax evasion abound in Nigeria. Some instances include:

The federal government has been granting frivolous import waivers to many foreign companies registered in Nigeria without due diligence. It had granted waivers on rice importation totaling about N50 billion to Vaswani brothers through their company, Stallion group.³⁸ The waiver has caused the government to lose billions of naira. It would be recalled that during the Olusegun Obasanjo democratic administration, the Vaswani brothers were first deported from Nigeria in 2003 on allegations of criminal conspiracy, tax evasion, money laundering and economic sabotage. Twenty one top officials of the Stallion group were reportedly deported.³⁹ But in 2007, the administration of late President Umaru Musa Yar'Adua vacated the deportation order and they were recalled. The Yar'Adua government again ordered their deportation in 2009 following a recommendation from the EFCC which had submitted that its investigation indicted the Asians of short-changing the government of Nigeria to the tune of about N2.5 billion.⁴⁰ The EFCC had found out during its investigation of the activities of the Vaswani brothers that they had colluded with some top officers of the Nigeria Customs Service to shield 9 vessels that they used for the importation of rice into the

³⁶ *Ibid.*, section 15(1).

³⁷ *Ibid.*, section 15 (2).

³⁸ Available at: www.thenigerianvoice.com/nvnews/754 (assessed on 26/12/11).

³⁹ *Ibid.*

⁴⁰ *Ibid.*

country in 2008, thereby avoiding duties or under-paying the prescribed duties for the category of goods they imported.⁴¹

Arik Airline owner, Arumeni-Ikhide and others were indicted for money laundering and fraud. The EFCC which investigated the company for tax evasion totaling N5 billion also investigated the firm's funding.⁴² The commission in its investigation which commenced on August 3, 2009 listed the laws breached by the company as: (a) Money Laundering violations contrary to section 14 (a) of the *Money Laundering (Prohibition) Act*.⁴³ (b) Stealing/conversion contrary to section 383(1), (2), (2) (e) and section 387(1) of the *Criminal Code Act* and punishable under section 390. (c) Failure to keep proper records and accounts under section 9 of the *Value Added Tax Act* and punishable under section 29 of the same Act. (d) Failure to submit returns contrary to section 31 of the Value Added Tax Act. (e) Evasion of tax contrary to section 22 of the *Value Added Tax Act*.

Arik is quoted to be among the top 5 undisputed non – paying corporate entities in the country. The report said that the others are Air Nigeria, Bank of Industry, BOI, Bellview Airline and Daar Communications Plc.⁴⁴

Recently, in Edo state, branches of First Bank of Nigeria Plc were reportedly shut by the authorities of the Edo state Board of Internal Revenue, ESBIR, for alleged tax evasion. The bank was alleged to have defaulted in remitting to the state government Pay as You Earn, PAYE, taxes deducted from staff salaries.⁴⁵

Chevron Nigeria Ltd and its subsidiaries are embroiled in a \$10.8 billion tax evasion scam following queries raised against them by ABZ Integrated Ltd, tax consultants to the EFCC.⁴⁶ The tax consultants findings were contained in a 106-page report submitted to the EFCC which revealed thus: (i) Chevron over - bloated its cost of operations and therefore, evaded Petroleum Profit – Tax by \$ 994million. (ii) Based on over – bloated cost, the federation lost \$1.431 billion through payment of unmerited cash call to the companies. (iii)

⁴¹ *Ibid.*

⁴² Available at: Nigeriansreportyournews.com/index (assessed on 26/12/11).

⁴³ Cap M18 Laws of the Federation of Nigeria, 2004.

⁴⁴ See, www.nigeriannewsworld.com/content (assessed on 16/12/2011).

⁴⁵ *Ibid.*

⁴⁶ Available at: www.Nm.onlinenigeria.com/templates (assessed on 10/12/2011).

In 1998 and 1999, the companies diverted \$75 million government tax revenue through dividends. (iv) It evaded tax through claims to unmerited capital allowances, based on fictitious qualifying capital expenditure by \$190 million. (v) It evaded tax through claims to unmerited tax credits, such as Reserve Additional Bonus (RAB) and Intangible Drilling Cost (IDC) by \$222 million. (vi) Through conspiracy, the companies were assessed to lower amount of tax than expected by \$95 million.⁴⁷

Tax investigation exercises conducted by FIRS over the previous years proved that a good number of companies failed to pay taxes despite repeated requests to do so. An indigenous company based in Aba, Abia state alone was discovered to have evaded tax to the tune of over N1 billion.⁴⁸

The Role of Nigerian Officials in promoting Money Laundering and Tax evasion

The Nigerian officials we are referring to here include, but are not limited to the Nigerian Customs Service (NCS) officials, Port Authority officials, Maritime Authority officials, Police officials, Department of Petroleum officials, Immigration Authority officials, and National Agency for Food and Drugs Administration and Control officials. It is a fact that between 2002 and 2007, Panalpina through Panalpina Nigeria paid over a hundred bribes to Nigerian government officials on behalf of Panalpina's customers to improperly secure Temporary Import Permits, (TIPS) and TIP extensions. During this period, Panalpina paid over \$30 million in bribes to Nigerian government officials to assist some of its customers to circumvent TIP regulations. Specifically, Panalpina Nigeria made payments to NCS officials on behalf of customers, to extend TIPS without complying with Nigerian TIP regulations.⁴⁹

By engaging in the above corrupt conduct, the company gains the following advantages:

1. It avoids the costs of physically moving the rigs.
2. It avoids paying relevant importation taxes, duties and charges due to the government of Nigeria.
3. It gains revenues from not interrupting operations to move the rigs.
4. It gains competitive advantage over other law-abiding companies

⁴⁷ *Ibid.*

⁴⁸ Available at: www.nigeriannewsworld.com/content (assessed on 16/11/2011).

⁴⁹ *Ibid.*

which would have had to stop production and remove their rigs and re-import them as the case may be.⁵⁰

Tax officials double as consultants to whoever wants to evade tax; they help them to compromise the books and they collect a handsome fee for their services.⁵¹ In 1996 alone, conspiracy between revenue officials and Chevron led to the replacement of Assessment Notice for a higher amount of \$21,838,977 with that of \$12,005,455. The difference of \$9,833,492 denied the federation has been established to be a fraud actualised by duplicating an expense or licences and miscellaneous taxes.⁵² There were cases where FIRS credited Chevron with payments which it never made. An example was the \$22,400,000, vide Treasury receipt No. PP036337 of August 14, 1997.⁵³ This suggests fund diversion.

Again, in October, 2004, the EFCC invited Chevron to a meeting. The representative of Chevron gave indication that they were unprepared for the meeting, saying, “we did not expect this elaborate meeting, we only wanted to see the Chairman of EFCC, privately”⁵⁴. Nobody knows if Chevron was able to see the executive Chairman of EFCC privately as they desired.

The Modus Operandi of the Perpetrators of Money Laundering and Tax evasion

Most crimes are being committed in the hotels now. Hotels are the easiest places for money laundering because a lot of visitors come in and mostly with cloned identities to operate businesses. Some deposit large sums of money in pretence to take accommodations for longer periods just to conceal the money, just for them to come back later after spending a few days to cancel reservations requesting most part of the money transferred to their foreign accounts.⁵⁵

Criminals who indulge in money laundering and tax evasion formed law firms, accountancy practices, they bought banks, film studios, engineering concerns,

⁵⁰ *Ibid.*

⁵¹ Available at: www.nigeriannewsworld.com/content (assessed on 16/11/2011).

⁵² Available at: Nm.onlinenigeria.com/templates (assessed on 10/12/2011).

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ Available at: www.efccnigeria.org/jm_15/Index.php (assessed on 24/12/2011).

and even governments.⁵⁶ If they did not buy the whole organisation, they in some other way obtained the cooperation of someone within the company.⁵⁷ Money laundering was merely developed in order to unduly facilitate trade.

Factors responsible for Money Laundering and Tax evasion

There are many factors responsible for money laundering and tax evasion. Some of the factors can be summarized as follows:

- Absence of a strong deterrent/punishment regime;
- Low level of patriotism among citizens.;
- High level of corruption;
- Lack of fiscal transparency;
- Cash nature of the Nigerian economy;
- Lack of adequate tax information and functional tax data;
- Complexity of tax laws.⁵⁸

Effects of Money Laundering and Tax evasion

As noted earlier, money laundering and tax evasion remained crimes of global phenomena. However, the magnitude of these crimes may differ from country to country.⁵⁹ Tax evasion is a predicate offence for money laundering. Both deprive government of revenue or resources needed for sustainable development, pose serious challenges to development, cause serious limitation to the revenue mobilization drive of the government and have serious adverse impact on the national/global financial system.⁶⁰ Those engaged in money laundering and tax evasion are corrupt institutions in the country. We have enumerated the activities of Vaswani brothers, Panalpina and Chevron Nigeria Ltd in the course of this article in this regard.

For the Nigerian economy, money laundering and tax evasion have become ills which have come to stay. Financial fraud in itself is not the cause of the retarded economy which Nigeria experiences, but rather the capital flight that occurs when these monies are taken to overseas banks.⁶¹ This is the major reason why we suffer more from financial fraud than the developed nations. For example, if there is a case of financial fraud, with the money still within

⁵⁶ Available at: www.counter.moneyLaundering.com/public (assessed on 24/12/2011).

⁵⁷ *Ibid.*

⁵⁸ Available at: www.tribune.com.ng/Index Php/tribune (assessed on 24/12/2011).

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

⁶¹ Available at: Naijaconomics.wordpress.com/tag/mon (assessed on 26/12/2011).

the Nigerian economy, the beneficiary of the fraud still spends the money in Nigeria when he engages the money in economic activities. When this is done, the aggregate expenditure (GDP) remains relatively the same. This is what occurs mostly in the developed countries and cause much less harm to their economy.⁶² But when there is capital flight (monies taken to overseas banks) the money leaves the Nigerian economy entirely thereby affecting aggregate expenditure and GDP at large.⁶³

One major effect of this capital flight is on interest rates. When there is high level of liquidity in the economy, interest rates naturally drop and people are better placed to loan money both for development and personal welfare purposes.⁶⁴ This is partly one way a country like Switzerland where the majority of these laundered monies are taken to, experience excess liquidity and National Bank interest rates hardly ever get up to 1 %. While in Nigeria,⁶⁵ the Central Bank lending rates are always closer, and in lots of cases exceeding 10 %.

Recommendations

There is need to upgrade the punishments presently in the statute books in favour of more robust, more forward-looking punishments aimed at the deterrence of offenders who indulge in money laundering and tax evasion. The present punishments are inadequate.

The provisions of the Code of Conduct dealing with assets declaration, punishment for non-compliance and maintenance of foreign accounts must be vigorously pursued and implemented. Full and adequate implementation of this will go a long way in stemming the tide of money laundering and tax evasion in Nigeria.

Increased and purposeful inter-agency cooperation in form of intelligence sharing, joint training, seminars, workshops, conferences, joint operations, policy/strategy harmonization, complementary staff secondment and study tours, among others would enhance the effectiveness of the various crime combating agencies in Nigeria, in their quest at fighting money laundering and

⁶² *Ibid.*

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ The victim of unprecedented Money Laundering activities.

tax evasion perpetrated by both individuals and corporate organizations effectively.

The war against money laundering and tax evasion is not what EFCC or any other anti-graft agency can fight alone. It is a battle for all and sundry, both Nigerians and non-Nigerians.

To combat the issue of money laundering and tax evasion, there must be a compulsory registration format for hotels to register and get full identities of all their guests, which will enable organisations like EFCC trace crimes relating to its mandate when they are being committed in such hotels.

The Corporate Affairs Commission (CAC) on its part should make sure that all hotels registered are fully verified and certified before they are issued with the Certificate of Incorporation. Any hotel found operating contrary to this guideline should be closed.

Government should seek measures to totally eliminate capital flight through money laundering, as that would not just help reduce financial crimes, but also checkmate tax evasion which comes along with these money stacked abroad.