

**SELF-CERTIFICATION AS A TOOL UNDER THE COMMON REPORTING STANDARD (CRS) IN TAX ADMINISTRATION FOR ALIENS AND NON-RESIDENTS<sup>1</sup>**

**Abstract**

*The migrant and technological transition of mankind tends to eliminate boundaries and undermine sovereign taxation and fiscal administration among countries. The problem is universal, although developed nations with diversified economic arrangements seem not affected and paid little attention. However, developing countries cannot take the same measure of attitude. The intrinsic norm of Co-operation among nations through platforms like the Organization for Economic Co-operation and Development (OECD), has initiated the Common Reporting Standard (CRS) to allow member nations obtain information from their financial institutions and automatically exchange those information with other jurisdictions on an annual basis. This reportable information includes account statements and details of accounts holders. Financial institutions and other service providers are required to obtain information from their customers to comply with regulatory mandates. The Self-Certification becomes a necessary tool in meeting the Common Reporting Standard obligations. This paper examines the possibility of enunciating Self-Certification as a local legal concept and international instrument for tax administration in achieving local and global integrated tax administration. It further elaborates the efficacy of deploying the Common-Reporting-Standard-Self-Certification in the elimination of tax evasion and double taxation by aliens and non residents under the regional African Continental Free Trade Area (AfCFTA).*

**Keywords:** Common-Reporting-Standard (CRS), Self-Certification, Double Taxation, Aliens, and Non-Residents.

**1. THE CONCEPT OF SELF-CERTIFICATION:**

**1.1. Introduction:**

The word Self-Certification is not new to business environment, it is however generally new to the tax theoretical framework. According to the World Customs Organization, “self-certification of origin” means a type of certification of origin which utilises a declaration of origin or a self-issued certificate of origin as a means to declare or affirm the originating status of goods.<sup>2</sup> In Vietnam, Self-certification of product origin (C/O) means traders may declare the origins of exported goods on their commercial invoice.<sup>3</sup> The term is peculiar among the Association of Southeast Asian Nations (ASEAN) which was primarily introduced to facilitate intra-ASEAN trade. The scheme provides “certified economic operators” (i.e. exporters, traders, and manufacturers) who have demonstrated their capacity to comply

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<sup>2</sup> Anon. Guidelines on Certification of Origin. *World Customs Organization*. Revenue Package, 2014; Updated June, 2018: Pg 4. Retrieved Feb. 28, 2021, from <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/key-issues/revenue-package/guidelines-on-certification.pdf?la=en#:~:text=%E2%80%9Cself%2Dissued%20certificate%20of%20origin,iii>.

<sup>3</sup> Dezan Shira & Associates. Nov. 12, 2015. Vietnam’s Product Self-Certification Pilot Scheme Explained. *Vietnam Briefing*. Phuong Anh Le *et al*, “Ed.” Retrieved Feb. 28, 2021, from <https://www.vietnam-briefing.com/news/vietnams-selfcertified-origin-goods-pilot-program-explained.html/>.

with the origin requirements (i.e. ATIGA ROO), to self-certify the originating status of goods.<sup>4</sup> The Rule of Origin (ROO) self-certification facilitates trade by enabling exporters or producers to self-declare the origin of their goods without presenting a certification of origin issued by designated regulatory authorities.<sup>5</sup> The term has also been very instrumental in the facilitation of the ASEAN-USAID trade relationship.<sup>6</sup> The term is domesticated by the United Nations Conference on Trade and Development (UNCTAD) as part of the international trade norms. According to Azzam, considering the increasing volume of preferential trade and recognizing the need for the facilitation of origin-related procedures, self-certification of origin by a producer, manufacturer, exporter and/or importer shall be utilized to the maximum extent possible while recognizing the specificities of domestic business environment.<sup>7</sup>

However, earlier in the United Kingdom, the concept of self-certification appears to be more of medically related. According to research, where an employee is absent from work for 7 days or less, he or she need not give the employer a certificate of ill-health condition issued by a medical professional. However, upon resumption the employer may require submission of document as a proof of their absence from work due to ill-health. This is called 'self-certification.'<sup>8</sup> The employer and employee will agree on how the employee should do this.<sup>9</sup> They might need to fill in a form or send details of their sick leave by email.<sup>10</sup> According to the Collins Online English Dictionary, self-certification simply means a formal assertion by a worker to an employer that absence from work for up to seven days was due to sickness.<sup>11</sup> From 1982 this replaced a doctor's certificate for the purposes of paying sickness benefit.<sup>12</sup> According to Google English Dictionary, self-certification has two interpretations. The first defines it as the practice of making an official declaration that something complies with regulatory standards or procedures without independent substantiating evidence.<sup>13</sup> While the second interpretation holds that it is the practice put in place for the purpose of claiming sick pay, by which an employee rather than a doctor formally declares that an absence from work was due to illness.<sup>14</sup> Interestingly based on the recent update on the Cambridge Online Dictionary, the term self-certification received a different definition. It was defined as an official statement that you make about yourself, especially in connection with tax or illness.<sup>15</sup>

<sup>4</sup> Anon. Rules of Origin and Self-Certification Simplified Rules toward Greater Market Access. *Building the ASEAN Community*. Retrieved Feb. 28, 2021, from <https://www.asean.org/wp-content/uploads/images/2015/October/outreach-document/Edited%20ROO%20Self%20Certification.pdf>.

<sup>5</sup> Ibid.

<sup>6</sup> Desy Fatimah. 2019. Facilitating Trade through Self-Certification of Origin. *USAID/ASEAN*. November, 2019. Retrieved Feb. 28, 2021, from <https://asean.usmission.gov/wp-content/uploads/sites/77/IGNITE-Policy-Continuum-Self-Certification.pdf>.

<sup>7</sup> M.W. Azzam. 2015. Certification of Origin. *UNCTAD Executive Training Florence, Italy 7-9 October 2015*. World Customs Organization Guidelines on Certification of Origin. Pg. 19. Retrieved Feb. 28, 2021, from [https://unctad.org/system/files/non-official-document/aldc2015\\_08-coo\\_wco\\_en.pdf](https://unctad.org/system/files/non-official-document/aldc2015_08-coo_wco_en.pdf).

<sup>8</sup> Anon. Taking sick leave. *United Kingdom Government*. Retrieved Feb. 28, 2021, from <https://www.gov.uk/taking-sick-leave>.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> Collins Dictionary. Definition of 'self-certification'. Retrieved Feb. 28, 2021, from <https://www.collinsdictionary.com/dictionary/english/self-certification>.

<sup>12</sup> Ibid.

<sup>13</sup> Google online English Dictionary. Google's English dictionary is provided by Oxford Languages. Oxford Languages is the world's leading dictionary publisher, with over 150 years of experience creating and delivering authoritative dictionaries globally in more than 50 languages.

<sup>14</sup> Ibid.

<sup>15</sup> Cambridge English Dictionary. Retrieved on Feb. 28, 2021 from <https://dictionary.cambridge.org/dictionary/english/self-certification>.

## **1.2. Self-Certification under the Common Reporting Standard (CRS):**

Sometime mid-September, 2020, Mr. Bill Gates, the co-founder of the Microsoft in an exclusive interview he granted to the Cable had said “...do a comparison of Nigeria tax collection to whatever country you think is comparable. The taxes are too low to fund the infrastructure, education system, and the health system...Nigeria has about the lowest domestic tax collection of any country in the world, so it is very tough to fund infrastructure and education.”<sup>16</sup> This spurred the Nigerian Government on the 17<sup>th</sup> September, 2020, using its official twitter handle to announce to the general public that all account holders in Financial Institutions (Banks, Insurance Companies, etc) are required to obtain, complete and submit Self-Certification Forms to their respective Financial Institutions. Shortly after, the Federal Tax Authority released a Public Notice titled Completion of Self-Certification Forms by Reportable Persons and dated Thursday, the 17<sup>th</sup> September, 2020. The Notice signed by the Chairman of the agency partly reads: “This is to notify the general public especially holders of accounts in Financial Institutions (Commercial Banks, Merchant Banks, Discount Houses, Mortgage or Development Banks, Insurance and Life Assurance Companies, Investment Advisers, Trustees, Asset Management Companies, Issuing Houses, Brokers/Dealers etc) that all account holders are required to obtain, complete and submit to their respective Financial Institutions Self-Certification Forms. The Self-Certification Forms are required by the relevant financial institution to carry out due diligence procedures in line with the requirements of the Income Tax (Common Reporting Standard) Regulation 2019. The Self-Certification forms are to be administered by Financial Institution in order that the account holders may clearly document their respective jurisdictions of tax residence...note that failure to comply with the requirement to administer or execute the self-certificate form attracts sanctions which may include monetary penalty or inability to operate the account.”<sup>17</sup> Since after the publication, the word self-certification has gained preeminence among tax administrators and financial institutions in Nigeria. It also brought to limelight an existing Nigerian Income Tax (Common Reporting Standard) Regulation.<sup>18</sup> This regulation was put in place to give effect to the provisions of Multilateral Convention on Mutual Administrative Assistance in Tax Matters, Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information; the Common Reporting Standard and its Commentaries of the Standard for Automatic Exchange of Financial Account Information in Tax Matters; Sections 8(1)(i), 8(1)(t), 8(2), 27(1) and 29 of the Personal Income Tax Act; Sections 58 and 60 of Companies Income Tax Act.

There is no precise definition of the term Self-Certification among all the instruments, laws, handbooks and commentaries on the common reporting standard. Although there is no specific definition, it is however agreed that the self-certification can be provided in any form, it must be signed either by the Controlling Person(s) or the Entity Account Holder, it must be dated, and must include each Controlling Person’s: name; residence address; jurisdiction(s) of residence for tax purposes; TIN(s) and date of birth.<sup>19</sup> More so, for the self-certification to be valid the Standard sets out that it must be signed by a person authorized to sign on behalf of the Entity, be dated, and must include the Account Holder’s:

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<sup>16</sup> M. Tijani. Sept. 16, 2020. EXCLUSIVE INTERVIEW: Bill Gates on polio, COVID-19 vaccine, conspiracy theories and Nigeria’s fuel subsidy. *The Cable News*. Retrieved Feb. 28, 2021, from <https://www.thecable.ng/exclusive-interview-bill-gates-on-polio-covid-19-vaccine-conspiracy-theories-and-nigerias-fuel-subsidy>.

<sup>17</sup> Anon. 2020. FIRS Issues Public Notice on Completion of Self-Certification Forms By Reportable Persons. *Proshare Intelligent Investing*. Retrieved Feb. 28, 2021, from <https://www.proshareng.com/news/Taxes---Tariffs/FIRS-Issues-Public-Notice-on-Completion-/53310>.

<sup>18</sup> Income Tax (Common Reporting Standard) Regulation, 2019 which was gazetted 8th July, 2019.

<sup>19</sup> OECD. 2018. *Standard for Automatic Exchange of Financial Information in Tax Matters - Implementation Handbook* – Second Edition. OECD Publishing Paragraph 200.

name; address; jurisdiction(s) of residence for tax purposes and TIN(s).<sup>20</sup> It is settled that there can also be verbal Self-Certification. Thus provided a self-certification contains all the required information and the self-certification is signed or positively affirmed by the customer, the Standard foresees that a Financial Institution may gather verbally the information required to populate or otherwise obtain the self-certification.<sup>21</sup> If an Account Holder has provided that another person has legal authority to represent the Account Holder and make decisions on their behalf, such as through a power of attorney, then that other person may also provide a self-certification.<sup>22</sup> The self-certification has the form of a declaration under oath. This is why certain jurisdiction has provisions for perjury in the event of false information being given by the Account Holder. Thus “Penalty of perjury” in this context is meant to include all situations where a jurisdiction has included a penalty of a criminal nature for providing a false declaration in its law.<sup>23</sup>

### 1.3. Common Reporting Standard (CRS) and Global Taxation:

The Common Reporting Standard (CRS), developed in response to the G20 request and approved by the OECD Council on 15 July 2014, calls on jurisdictions to obtain information from their financial institutions and automatically exchange such information with other jurisdictions on an annual basis. It sets out the financial account information to be exchanged, the financial institutions required to report, the different types of accounts and taxpayers covered, as well as common due diligence procedures to be followed by financial institutions. Clearly there is a requirement of exchange of information among members. This exchange of information is about achieving global tax co-operation through the implementation of international tax standards and other instruments to put an end to bank secrecy and tackle tax evasion.<sup>24</sup> To this end, one of the instruments put in place is the Standard for Automatic Exchange of Financial Account Information in Tax Matters. In order to achieve implementation of the reporting obligation among member nations, the Common Reporting Standard Implementation Handbook was introduced to assist government officials in the implementation of the Standard for Automatic Exchange of Financial Account Information in Tax Matters and to provide a practical overview of the Standard to both the financial sector and the public at-large.<sup>25</sup> The Handbook serves as a roadmap for the technical, regulatory and operational guideline for the implementation of the Standard for Automatic Exchange of Financial Account Information in Tax Matters (“Standard”). The Handbook is divided into two; first and second editions. The second edition of the Handbook introduced further and updated guide towards implementing the Book. There are provisions for data protection, Automatic Exchange of Information (AEOI) as well as other Information Technological infrastructures. These pertinent initiations of the new edition of the Handbook clearly are necessary to put in place the legal framework for implementation of the Common Reporting Standard (CRS) among nations.

One of the fundamental problems the Common Reporting Standard has come to solve is tax evasion. The Standard intends to equip tax authorities with an effective tool to tackle offshore tax evasion by

<sup>20</sup> Ibid Paragraph 209.

<sup>21</sup> Ibid Page 144.

<sup>22</sup> Ibid FAQ No. 12 Page 152.

<sup>23</sup> Ibid FAQ No. 18 Page 154.

<sup>24</sup> Anon. Exchange of information. *OECD Homepage*. Retrieved March 5<sup>th</sup>, 2021, from <https://www.oecd.org/ctp/exchange-of-tax-information/>.

<sup>25</sup> Anon. Standard for Automatic Exchange of Financial Account Information in Tax Matters. *OECD Homepage*. Retrieved March 5<sup>th</sup>, 2021, from <https://www.oecd.org/ctp/exchange-of-tax-information/standard-for-automatic-exchange-of-financial-account-information-for-tax-matters-9789264216525-en.htm>.

providing a greater level of information on their residents' wealth held abroad.<sup>26</sup> As the world has become increasingly globalised it is easier for all taxpayers to make, hold and manage investments through financial institutions outside of their country of residence.<sup>27</sup> Vast amounts of money are kept offshore and go untaxed to the extent that taxpayers fail to comply with tax obligations in their home jurisdiction.<sup>28</sup> Offshore tax evasion is a serious problem for jurisdictions all over the world, OECD and non-OECD, small and large, developing and developed. Countries have a shared interest in maintaining the integrity of their tax systems.<sup>29</sup> Co-operation is critical in the fight against tax evasion and in the protection of the integrity of tax systems.<sup>30</sup>

More so, with the incidences of migration, expanded tax regime and diversified tax administration schemes, there is bound to be double taxation problems. Accordingly, other alternative legal instruments that can provide legal basis for information exchange under the Standard include Double Tax Treaties ("DTTs") or Tax Information Exchange Agreements ("TIEAs") as long as these allow the automatic exchange of information.<sup>31</sup>

## **2. PRINCIPLES AND CHALLENGING CONCEPTS OF INTERNATIONAL TAXATION:**

### **2.1. Double Taxation:**

Locally, double taxation can be ascribed in two dimension, to wit; territorial and subject matter. The explanation on the basis of subject-matter has received judicial interpretation in Nigerian case of *ATTORNEY GENERAL LAGOS STATE v EKO HOTELS LTD*.<sup>32</sup> In that case, the Court held: "...The actual beast of burden of the Value Added Tax/sales tax is the consumer and the tax is charged on consumable items. Value Added Tax and sales tax are same, therefore the imposition both Value Added Tax and sales tax will create double taxation."<sup>33</sup> Moving further to the Apex Court, in *AG LAGOS STATE v. EKO HOTELS LTD & ANOR*,<sup>34</sup> the Supreme Court held that "...There is no doubt in my mind that it would amount to double taxation for the same tax to be levied on the same goods and services, payable by the same consumers under two different legislations."<sup>35</sup> However, for the purpose of the subject of discuss, the double taxation contemplated by the Common Reporting Standard of the Organization for Economic Cooperation and Development is the International Double Taxation.

International juridical double taxation can be generally defined as the imposition of comparable taxes in two (or more) States on the same taxpayer in respect of the same subject matter and for identical

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<sup>26</sup> OECD. 2018. *Standard for Automatic Exchange of Financial Information in Tax Matters - Implementation Handbook* – Second Edition. OECD Publishing.

<sup>27</sup> OECD. 2014. *Standard for Automatic Exchange of Financial Account Information in Tax Matters*. 1<sup>st</sup> ed. OECD Publishing. ISBN 978-92-64-21652-5 (PDF).

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> OECD. 2018. *Standard for Automatic Exchange of Financial Information in Tax Matters - Implementation Handbook* – Second Edition. OECD Publishing.

<sup>32</sup> (2008) ALL FWLR (Pt. 398) 235.

<sup>33</sup> Per Dongban-Mensem, JCA at 259, Paras. D – E.

<sup>34</sup> (2017) LPELR-43713(SC).

<sup>35</sup> Ibid Per KEKERE-EKUN, JSC.

periods.<sup>36</sup> Generally, the most identified medium of exchange that determines taxable income or products is called trade. It is a known fact that trade has gone beyond borders and boundaries. However, technology and globalization in all ramifications have limited the territorial powers to control trade by geographic states. This modern trade system and the attendant tax regimes have influenced the policies and regulatory frameworks of countries. The African Continental Free Trade Area (AfCFTA) Agreement recently signed by Nigeria is a clear example that the incursion of globalization has torn down the barriers of walls and boundaries in trades among nations and individuals. According to the operational phase of the AfCFTA launched during the 12<sup>th</sup> Extraordinary Session of the Assembly on the AfCFTA in Niamey in July 2019, the AfCFTA will be governed by five operational instruments, i.e. the Rules of Origin; the online negotiating forum; the monitoring and elimination of non-tariff barriers; a digital payments system and the African Trade Observatory.<sup>37</sup> Also the European Union has been described as “one of the most outward-oriented economies in the world.<sup>38</sup>” The Union in itself is a market and capable of being described as the world’s largest single market area. The founding principle of the EU is free trade among its members. The EU statistics for the period of 1999 to 2010 has it that EU foreign trade accounts for over 30% of the EU’s gross domestic product (GDP). It is responsible for the trade policies and contracts for its member countries. Another element of bridge across countries using trade is the global World Trade Organization (WTO). By its objective document, the WTO is a forum for international trade negotiations, resolving trade disputes, setting legal rules for trade in the form of trade agreements as well as monitoring members’ trade policy through the Trade Policy Review Mechanisms. It is therefore very usual for persons including companies and individuals who are not resident in a jurisdiction to make taxable income in another jurisdiction.

As much innovative as these new frontiers to trade may appear, they pose massive threat to tax administration. Thus except strategies are put in place, there are bound to be incidences of double taxation and tax evasion. There is tendency of paying taxes on an income locally (Country of resident) and also in the country in which it was made (Country of source). This anomaly is simply double taxation. It means imposition or collection of taxes on an income or assets by two or more jurisdictions. Various jurisdictions have made strong attempts to put in place various instruments to aid in avoiding incidences of double taxations.

In the European Union, member states can comfortably and confidently share vital information under a platform called Tax information exchange agreements (TIEA). This platform enables each member state to report or make available to one another list of persons claiming exemption from local taxation (not being a resident of the state where the income arises). There are diverse models that are available for countries to adopt in negotiating Tax Treaties with other nations. Among the known models of such treaties include the OECD Model, UN Model, US Model,<sup>39</sup> etc. Countries are also at liberty to combine different models to achieve comprehensiveness and adequacy for their own unique purposes. The

<sup>36</sup> OECD, 2014. Model Tax Convention on Income and on Capital: Condensed Version 2. Retrieved March 5<sup>th</sup>, 2021, from [https://www.oecd-ilibrary.org/docserver/mtc\\_cond-2014-2-en.pdf?expires=1614981768&id=id&accname=guest&checksum=E6602A83B4B0F631B77FD42D78773228](https://www.oecd-ilibrary.org/docserver/mtc_cond-2014-2-en.pdf?expires=1614981768&id=id&accname=guest&checksum=E6602A83B4B0F631B77FD42D78773228).

<sup>37</sup> Sahel and West African Club (SWAC/OECD). 2019. The African Continental Free Trade Area (AfCFTA). *West African Brief Homepage*. Retrieved March 5<sup>th</sup>, 2021, from <http://www.west-africa-brief.org/content/en/african-continental-free-trade-area-afcfta>.

<sup>38</sup> D. Dollar. 1992. *Economic Development and Cultural Change*. The University of Chicago Press. Vol. 40, No. 3 (Apr., 1992), pp. 523-544 (22 pages). Retrieved on March 5, 2021 from <https://www.jstor.org/stable/1154574>.

<sup>39</sup> Donald. R. Whittaker, An Examination of the O.E.C.D. and U.N. Model Tax Treaties: History, Provisions and Application to U.S. Foreign Policy, 8 N.C. J. Int'l L. & Com. Reg. 39 (2016). Retrieved on March 5, 2021 from <http://scholarship.law.unc.edu/ncilj/vol8/iss1/4>.

OECD Model titled Double Taxation Convention on Income and on Capital, was first issued in 1963 through a final Report titled Draft Double Taxation Convention on Income and Capital.<sup>40</sup> Thereafter, a new Model Convention and Commentaries was published in 1977.<sup>41</sup> Furthermore, due to globalization and liberalization of OECD economies led to the publication of the 1992. The Model advocates for residence principle, that is to say, it lays emphasis on the right of state of residence to tax.<sup>42</sup> The United Nations Model Double Taxation Convention between Developed and Developing Countries, 1980 gives more weight to the source principle as against the residence principle of the OECD model.<sup>43</sup> In the United States, treaties are usually influenced partly by the international models outstanding at the time of their negotiation and by the developments in domestic laws. The US Model is on the basis of Citizenship in addition to a residence basis.<sup>44</sup> Also unlike the OECD, in US Model, the federating states and local taxes are not covered, except for the nondiscrimination article.<sup>45</sup> This feature distinguishes the US model from all other international taxation instruments.

In Nigeria, the Minister is empowered to declare the existence of Double Taxation Agreement between Nigeria and any foreign country as regards to the income of any individual.<sup>46</sup> It must be noted that Double Taxation Agreement is supreme over the Personal Income Tax Act.<sup>47</sup> Under a DTA regime, remuneration derived by a resident of a DTA country in respect of an employment exercised in Nigeria shall be taxable only in his country of residence if he can be able to establish certain conditions.<sup>48</sup> The first is that the employer is not resident in Nigeria. The second is that the employee/expatriate is present in Nigeria for a period or periods not exceeding in the aggregate 183 days in a year of assessment. The third is that the remuneration is taxable in the country of residence. With respect to Employees or individuals resident in jurisdictions that have no Double Taxation Agreement with Nigeria, the tax obligation is strictly based on the source of the income. Thus the gain or profit from an employment shall be deemed to be derived from Nigeria if the employment is performed in Nigeria or the employer is in Nigeria.<sup>49</sup> The Act details the natures of incomes that can be attributed to have been derived from the Nigerian jurisdiction.<sup>50</sup>

## **2.2. Tax Evasion:**

Tax evasion is the willful and deliberate violation of the law in order to escape payment of tax which is unquestionably imposed by law of the tax jurisdiction.<sup>51</sup> Tax evasion is an attempt to escape tax liability (wholly or partially) by breaking the tax law and it is a criminal act which is punishable under the law. Tax evasion is achievable principally by making false declarations such as underreporting income or

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<sup>40</sup> Draft Double Taxation Convention on Income and Capital, OECD, Paris, 1963.

<sup>41</sup> Model Double Taxation Convention on Income and on Capital, OECD, Paris, 1977.

<sup>42</sup> R.S. Adukia, 2020. Double Tax Avoidance Agreements & Taxation. Taxguru. Retrieved on March 5, 2021 from <https://taxguru.in/income-tax/double-tax-avoidance-agreements-taxation.html>

<sup>43</sup> Ibid.

<sup>44</sup> H. David Rosenbloom and Stanley Langbein, United States Tax Treaty Policy: An Overview, 19 Colum. J. Transnat'l L. 359 (1981).

<sup>45</sup> Ibid.

<sup>46</sup> Section 38(1) of the Personal Income Tax Act and Section 45(1) of the Company Income Tax Act.

<sup>47</sup> Section 38 of the Personal Income Tax Act and Article 15(1) and (2) of the Nigerian DTAs with various countries.

<sup>48</sup> Section 10(1)(a)(i-iii) of the Personal Income Tax Act.

<sup>49</sup> Section 10(1)(a-b).

<sup>50</sup> Section 10(2-6).

<sup>51</sup> Adebisi, J.F and Gbegi D.O. 2013. Effect of Tax Avoidance and Tax Evasion on Personal Income Tax Administration in Nigeria. *American Journal of Humanities and Social Sciences*. Vol. 1, No. 3, 2013, 125 – 134. P. 125.

over reporting relieves and allowances. It can also occur by an act of total failure to report at all. The following conducts can amount to tax evasion: Failure to deduct or remit tax under any tax laws within the due date; Declaring untrue/false statement with intent to reduce tax liability; Declaring untrue/false statement with intent to increase expenses and reduce tax liability.

### 2.3. Residency, Fixed, Significant Economic Presence, Income and Profits for Tax Base Rules:

It was Adam Smith, the renowned 18<sup>th</sup> Century Economist and Philosopher who first identified four major Principles of taxation in his book titled the Wealth of Nations. According to him, “the subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion to their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state.<sup>52</sup> The tax which each individual is bound to pay ought to be certain, and not arbitrary.<sup>53</sup> The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person.<sup>54</sup> Under the 1999 Constitution (as amended), the right to own property is guaranteed. This property refers to the profits and monies realized from investments. No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law.<sup>55</sup> This manner and purposes prescribed by a law includes imposition of any tax, rate or duty.<sup>56</sup>

It must earlier be corrected that the impositions or better still collection of taxes are not limited to citizens and their companies only. Taxes are extended to non-citizen to and their companies who are deemed resident in Nigeria and derive their income respectively from Nigeria. This perhaps may have inspired the practical definition of taxation offered by Richard Toby that taxation may result from the carrying on of business activity or trading within the borders of the country; and taxation may result by reason of the fact that a particular payment is derived from the country.<sup>57</sup> A closer introspection of the opinion offered by Richard, we can safely add that tax liability may arise in Nigeria either because the taxpayer is resident in Nigeria or because he has his source of income in Nigeria. Where local residence is established, such a person whether alien or citizen is taxed on his entire earnings, whether or not all his sources of income are in Nigeria.<sup>58</sup> In contrast, non-residents are also liable only where the source of their income is in Nigeria.<sup>59</sup> There is no express provision in the act that differentiates between a person resident in Nigeria and a non-resident. In *DASHE & ORS v. JATAU & ORS*,<sup>60</sup> the court described residence while quoting from Blacks Law, thus “*A resident means inter alia, persons dwelling in a place other than one’s home on a long-term basis. 1. A person who lives in a particular place. 2. A person who has a home in a particular place. In sense 2, a resident is not necessarily either a citizen or a domiciliary.*”<sup>61</sup>

<sup>52</sup> Smith, Adam, 1723-1790. The Wealth of Nation/Adam Smith; Introduction by Robert Reich; Edited, with Notes, Marginal Summary, and Enlarged Index by Edwin Cannan. New York: Modern Library, 2000.

<sup>53</sup> Ibid.

<sup>54</sup> Ibid.

<sup>55</sup> Section 44 of the 1999 Constitution of Nigeria as Amended.

<sup>56</sup> Section 44(2)(a).

<sup>57</sup> Richard Toby, 1979. Theory and Practice of Income Tax. *Sweet and Maxwell: London.*

<sup>58</sup> Section 3(1) of the Personal Income Tax Act.

<sup>59</sup> Section 6.

<sup>60</sup> (2016) LPELR-40180(CA).

<sup>61</sup> Per TUR, J.C.A.

**OGUGBARA: *Self-Certification as A Tool under the Common Reporting Standard (CRS) in Tax Administration for Aliens and Non-Residents***

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While residency and income are the basis for the determination of tax liability or obligation of individual and natural persons, the determining factors for corporate entities are physical presence and significant economic presence. The profits of a Nigerian company shall be deemed to accrue in Nigeria wherever they have arisen and whether or not they have been brought into or received in Nigeria.<sup>62</sup> The profits of a company other than a Nigeria company from any trade or business shall be deemed to be derived from or otherwise taxable in Nigeria if that company has a fixed base in Nigeria to the extent that the profit is attributable to the fixed base.<sup>63</sup> Also another determining factor is when such company habitually operate a trade or business through a person in Nigeria authorized to conclude contracts on its behalf or on behalf of some other companies controlled by it or which have controlling interest in it or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company to the extent that the profit is attributable to business or trade or activities carried on through that person.<sup>64</sup> Again if the company transmits, emits, or receive signals, sounds, messages, images or data of any kind by cable, radio, electromagnetic systems or any other electronic or wireless apparatus to Nigeria in respect of any activity, including electronic commerce, application store, high frequency trading, electronic data storage, online adverts, participative network platform, online payments and so on, to the extent that it has significant economic presence in Nigeria and profit can be attributable to such activity.<sup>65</sup> Furthermore where the trade is between the company and another person controlled by it and conditions are made or imposed between that company and such persons in their commercial or financial relations which in the opinion of the board is deemed to be artificial or fictitious, so much of the profits adjusted by the board to reflect arms length transaction.<sup>66</sup> Finally where the trade is of technical or professional service imported in favour of a person resident in Nigeria, to the extent that the provider has significant economic presence in Nigeria and profit can be attributable to such activity.<sup>67</sup> Although the provisions of the CITA and CAMA have consistently conflicted on the effect of doing business in Nigeria by a non-Nigerian Company without proper registration, but for the purpose of taxation, the innovative provisions of the Finance Act, 2019 provides the navigation route. The court has held that if a company carries on trade illegally and makes a profit; such profit is taxable.<sup>68</sup>

Having determined, the residency rule, it is also good to examine the taxable income as basis for taxation. The Black's law dictionary defined income as the gain derived from capital, from labour or effort, or both combined, including profit or gain through sale or conversation of capital.<sup>69</sup> Revenue has been described as income which the Federal Government collects and receives into its treasury, and is appropriate for the payment of its expenses.<sup>70</sup> Individual taxes can only be paid for each year of assessment on the aggregate amounts each of which is the income of every taxable person, for the year, from a source inside or outside Nigeria, including, without restricting the generality of the foregoing: gain, profit, salary, wage, fee, allowance, compensations, bonuses, premiums, benefits, dividends, interests, discount, annuity, charge etc.<sup>71</sup> This also includes "earned income" from trade, business,

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<sup>62</sup> Section 13(1) of the Company Income Tax Act.

<sup>63</sup> Section 13(2). There are some modifications to Subsection 2 to be in line with the Finance Act, 2020.

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

<sup>68</sup> Lord Morrison in *Ministry of Finance v Smith* (1927) AC 193 at 193.

<sup>69</sup> Garner, B. A., & Black, H. C. (1999). *Black's law dictionary*. 7th ed. St. Paul, Minn.: West Group.

<sup>70</sup> Per EKANEM, J.C.A. in *AWAN v. ZENON PETROLEUM & GAS LTD & ORS* (2014) LPELR-23206(CA).

<sup>71</sup> Section 3 of the Personal Income Tax Act.

profession, vocation or employment.<sup>72</sup> On the other hand, corporate taxes payable for each year of assessment includes the payable sums upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria.<sup>73</sup>

### **3. CONCLUSIONS**

Self-Certification will in no small way assist to streamline a successful international tax system. For countries with Double Taxation Agreement, the provisions of the DTA will always prevail. In this case, the Self-Certification exercise will strengthen transparency, maximum taxation and prudence on the part of the country of residence. There would be no room whatsoever for tax evasion. The cooperation will totally eliminate the practice safe havens for illicit wealth especially in countries with minimum tax obligations. For the countries without DTA, but are members of the OECD, the self-certification exercise will be an inevitable tool to achieve the common reporting standard obligation. In that case, the local legislations and international taxation instruments on taxation of aliens and cross-border transaction will be followed. But the self-certification will be a major tool in achieving the required successes.

Finally for countries where there are no DTA and one or both do not belong to the OECD, each will be determined by the agreement of such participants on the applicable modalities for effective taxation between them. In such situation they are at liberty to adopt any of the modern models that suits their peculiar relationship. However it will be noted that self-certification is an instrument of the OECD. In such situation, except there is an instrumental obligation to report in which case a template having the nature of self-certification will be expressly adopted by the countries, otherwise, international taxation and other similar cross-border fiscal activities may be impossible within such countries.

### **4. RECOMMENDATION**

Self-Certification will in no small way assist to streamline a successful international tax Common Reporting to be an Act and not Regulation. After examining the WTO International taxation principle, UN, USA etc, it becomes incumbent to suggest that the self-certification tool be independently adopted as an international instrument for nations in their cooperative arrangement in levying international taxes in cross border transaction between their respective citizens. Having associated self-certification with such words like perjury, false information, jurisdiction; also being an information that requires the receiver of such information to act on it in a common reporting obligation; and being such that can only be supplied by the a reportable person or a controlling person as such information within the exclusive knowledge of the giver, it is therefore very incumbent that such information must be under an oath administered by a designated commissioner for oath of any reportable jurisdiction.

Drawing from the overview of the subject matter as well as the various legal instruments that have attempted to coin a meaning out of the existing theoretical and legal framework, it is the honest view of this writer that all definitions must necessarily contain the basic ingredients of the term in all ramifications. Hence it suffices to define it as a voluntary declaration of the primary and secondary data of the declarant, usually an alien, non-resident or dual resident, to a financial institution in a reportable jurisdiction for the purpose of record keeping or exchange in aid of prudent cross-border tax administration.

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<sup>72</sup> Section 3(2).

<sup>73</sup> Section 9 of the Company Income Tax Act.