



## **An Empirical Study of Criminalizing Minor Infractions of Tax Laws in Nigeria: The Need for Negotiated Punishments**

ODETOKUN OLUKAYODE OLADELE  
J. O. Baiyeshea & Co.

PAUL ATAGAMEN AIDONOJIE  
Edo University, Iyamho, Nigeria

JAMES EMOKHAI UZUALU  
Edo State University Uzairue, Nigeria

OLUWASEYE OLUWAYOMI IKUBANNI  
Joseph Ayo Babalola University, Ikeji-Arakeji, Osun State, Nigeria.

ADEFISAYO IFEOLUWA OYEDEJI  
Federal University, Oye-Ekiti, Nigeria

**Abstract.** Nigeria's Constitutions have always recognized the need for tax, and have empowered the legislature to make laws on taxes. However, it has been observed that there are civil and criminal sanctions for certain minor infractions of tax laws, and the usage of specific terms like 'offences,' 'guilty,' 'conviction' and 'imprisonment' conveys the idea of criminality. Therefore, the pertinent question is, what are the objectives of the punishments stipulated by the various statutes on tax? To be able to answer this, we made use of online questionnaires sent to 432 respondents residing in the various states of the Federal Republic of Nigeria. The essence of the empirical study is to ascertain the perspective of the general public in criminalizing minor infractions of tax laws and if any of ADR processes are preferably in resolving minor infraction. Descriptive and analytical statistic was use in analyzing the data generated from the questionnaire. The study therefore found that penalties imposed by the tax statutes with regard to minor infractions, are expected to produce common good than inflicting pain. That minor infraction of tax laws should not be criminalized. It

was therefore recommended that negotiation (a form of Alternative Dispute Resolution), which is regarded as being more advantageous than the conventional quasi-criminal litigation process, should be adopted in resolving minor infraction of tax laws.

**Keyword:** Tax, Laws, Minor-infractions, Negotiation, Criminal, Punishment

### **1. Introduction**

Taxation is a fundamental contributor to revenue generation for the governments of most nations worldwide, and Nigeria is not an exception. The administration of taxes cut across various fields of endeavor and sub-sectors of the Nigerian economy. According to Ola, no major accountancy or tax legal problems can be satisfactorily solved without considering its tax aspects. This has necessitated the formulation of policies, legal and institutional framework for a successful tax administration. Since the inception of independence, Nigeria's Constitutions have always recognized the need for

tax and have empowered the legislature to make laws on tax. In Nigeria, taxation is a shared concern between the Federal and State governments, and it is also one of the matters slated under the concurrent legislative list for both the National Assembly and the State Houses of Assembly to legislate on, although each has its delimitations. In enacting tax legislation, the drafter of the law provides provisions that criminalize an act of tax infraction and instill punishment for such infractions. By paragraph 12 of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act empowers the Attorney-General of the Federation or the Attorney-General of any State of the Federation or any relevant enforcement agency prosecute criminal tax offence. When a tax offender is prosecuted in criminal court conferred with criminal jurisdiction by the relevant laws, it often amounts to the imposition of the appropriate criminal sanctions on them, which will inflict pain and sad effect on the taxpayers.

It is apt to state that tax law is a technical area of law that most taxpayers do not have a comprehensive knowledge of their rights and duties as embedded in the various tax laws. However, it is very apt to state that the payment of tax is compulsory, but there are certain acts of infractions of tax laws that should not be criminalised, such as; failure to file a return, failure to meet-up with the payment of taxes. Furthermore, Failure to furnish a statement or information or to keep required records and Failure to comply with the requirement of a notice served on a taxpayer or failure to attend in answer to a notice served on taxpayer. In this regard, such minor infractions of tax laws can be best settled amicably by utilising an alternative method of dispute resolution, instead of criminalising such infractions to inflict pain on the tax offender.

Given the above, this study tends x-ray an empirical study of some infraction of tax laws in Nigeria and exponent the need for an alternative dispute resolution. However, before venturing into the discussion, some tax laws in Nigeria will be briefly discussed.

### 1.1 Methodology

Doctrinal and non-doctrinal methods of survey research approach were adopted for this study. The theoretical session is aimed at analyzing and theorizing various provisions of tax law that criminalized and provide for imprisonment as a punishment of infractions of tax laws. Furthermore, I also utilized descriptive and analytical quantitative research methods to gather data that is objective,

statistical, and numerical for analysis. These data were obtained through online questionnaire surveys. The quantitative method enable the collection and analyzing extensive data (respondents' responses to the questionnaire) to reach a specific generalization in ascertaining the level of taxpayer view concerning the provisions of the tax laws that criminalize the default of tax payment and providing for imprisonment as a punishment for tax defaulter.

### 1.2 Research Questions

- Does the Nigerian citizen pay tax?
- What are the various taxes (that criminalize minor infraction) often paid by taxpayers?
- What is the reaction of taxpayers towards criminalizing minor infraction of tax laws?
- Does the taxpayer prefer that minor infraction of tax laws be resolved via Alternative Dispute Resolution (ADR)?
- Which of the various types of ADR and quasi-criminal proceedings will a taxpayer prefer in resolving tax disputes?

### 2. Theoretical Framework: The Jurisprudence of Punishment

The word 'punishment' has been aptly given its meaning by the Black's Law Dictionary as a sanction such as a fine, penalty, confinement, or loss of property, right, or privilege – assessed against a person who has violated the law and most especially criminal law. In further explanation of the term, it suffice to state that Punishment in all its forms is a loss of rights or advantages consequent on a breach of law. When it loses this quality, it degenerates into an arbitrary act of violence that can produce nothing but harmful social effects.

It is often said that where there is no law, there is no sin. That is, where no law describes a particular act or omission as an offence for which a penalty is stipulated as punishment, such act or omission cannot be called an offence. Concerning the jurisprudence of punishment, several scholars opinions or perceived rationale for stipulating or imposing punishments for certain conducts or misconducts in the society or any organization, to wit, what is the justification for punishments? had been similar and consistent that it should be aimed at producing good or corrections instead of instilling pain. Jeremy Bentham believes that "all punishment is mischief, all punishment in itself is evil". His theory is based on deterrence and that where the evil of punishment exceeds the evil of the offence, the punishment will not be profitable. As suggested in his Principle of 'Laissez-Faire,' the

purpose of punishment is to produce corrections and not instill pain. However, since most punishment is in itself a pain, it suffices to say that most punishment is in itself harm. Therefore, punishment can only be justified if this particular pain is outbalanced by reducing the pain (or increase of pleasure) it causes. In summary, punishment should not be more painful than the crime committed by the wrongdoer. The pleasure it produces for correction purposes should outweigh the pain.

Furthermore, Bentham also believed in Rehabilitation or Reform as one of the purposes of punishment. Under the concept of rehabilitation, the perpetrator of a crime is expected to know that what he did was wrong, and in order to remove the deviant in him, rehabilitation is imperative. Therefore, the essence of punishment should hinge on how such rehabilitation or reform can be achieved. Another aim of punishment is retribution; Kant and H.L.A. Hart believe in this theory to be punishment. This theory sees the primary justification in that an offence has been committed, which deserves the punishment of the offender. Kant was quoted thus:

Judicial punishment can never be used merely as a means to promote some other good for the criminal himself or civil society, but instead, it must in all cases be imposed on him only on the ground that he has committed a crime; for a human being can never be manipulated merely as a means to the purposes of someone else ... He must first of all be found to be deserving of punishment before any consideration is given of the utility of this punishment for himself or his fellow citizens.

Given the above statement and the opinion of Bentham, as stated earlier, the essence of punishment when there is an infraction of tax laws should aim at correction and rehabilitation, and it should outweigh the pain for an offence to be justifiable. Therefore, the penalties imposed by the tax statutes are expected to produce common good than inflicting pain on the offender. There are civil sanctions for certain infractions under the tax laws in Nigeria, and they deal with additional assessments and interests. However, the usage of specific terms like 'offences,' 'penalties,' 'guilty,' 'conviction' and 'imprisonment' conveys most of the idea of criminality in the sanctions prescribed by those statutes. Therefore, one needs to ask, what are the objectives of the punishments stipulated by the various statutes on tax?

### **3. Some of Nigeria Tax Laws that Criminalized (Offences and Punishments) Minor Tax Default**

Generally, the infraction of tax laws is often aimed at preventing tax evasion and avoidance, although none of the legislations defines what tax evasion is except where it is mentioned in section 26 of the Value Added Tax Act. Tax evasion has, however, been defined as the deliberate act of non-compliance with the law to pay less than the actual tax owed, as at when due or in order to escape payment completely. However, It is not all the legislation relating to taxation or revenue that expressly makes non-compliance with the laws an offence or infraction that attracts punishment. However, some relevant provisions in some tax legislation refer to some minor infractions of tax laws as an offence and therefore prescribe criminal sanctions on such infractions. Some of these tax laws that provide for offences and punishment will be considered as follows;

#### **3.1 Companies Income Tax Act**

The Companies Income Tax Act is a tax law that regulates the payment of company income tax by companies operational in Nigeria, and it is collectible by Federal Inland Revenue. The current legislation was enacted to consolidate the Companies Income Tax Act of 1961. The former provisions under Part 1 of the Companies Income Tax Act 2004, has been repealed in 2007. By section 9 of this Act, tax is imposed on incomes and profits of the companies derived from various sources that include trade, rent, dividends, interests, royalties, fees, and allowances for services, among others. However, sections 92-95, the Companies Income Tax Act provides for offences that constitute infractions and penalties therein. It is relevant to state that some of the infractions that constitute a criminal offence are minor inaction offence. For example, section 92 of the Companies Income Tax Act stipulated for some of these offences, which are:

*Where a company failed to furnish a statement or information or to keep required records of their income generated, it is deemed to be an infraction of the Companies Income Tax Act, which upon conviction, attracts a fine of ₦ 2,000.00 for the day of such failure occurred, and six months imprisonment in case of default of payment.*

The Companies Income Tax Act also provides that if a company failed to comply with a notice tax assessment and demand notice or failed to attend to a

notice served on the company under the Act, shall be guilty of an offense and liable upon conviction.

Furthermore, section 92(1) of the Companies Income Tax Act generalize any infractions of the Companies Income Tax Act as a crime by providing that failure for a company to comply with the provision contain in the Companies Income Tax Act or any rules made there under for which no other penalty is expressly provided amount to an infraction, which upon conviction attracts a fine of ₦20,000.

### 3.2 Personal Income Tax Act

Personal income tax is very prominent; this is not far-fetched because of the subjects or targets of the tax. Section 1 of the Personal Income Tax Act provides for the imposition of tax on individuals, communities, and families and on income arising or due to a trustee or estate. By section 3 of the Personal Income Act, the income chargeable on every person includes (but is not limited to) gain or profit from any trade, business, profession or vocation, salary, wage, fee, allowance, or other gain or profit from employment including compensations, bonuses, premiums, dividend, interest or discount, any pension, charge or annuity, among others.

However, the Personal Income Tax Act provides for some minor infractions that constitute offences, and they include the following:

*The Personal Income Tax Act stipulates that where a taxpayer failed to furnish a statement of account or failed to keep proper records of his business, such actions constitute an infraction. The taxpayer shall, upon conviction, be paid a fine of ₦ 100.00 fine for every day of such failure and six months imprisonment in case of default of payment.*

*Also, where a taxpayer failed to comply with the requirement of a notice served on him/her or failure to attend answer to a notice served on the taxpayer, such failure constitutes an infraction of the Personal Income Tax Act, and the taxpayer shall be held guilty of an offence upon conviction.*

The Personal Income Tax Act also stipulates that if a taxpayer makes incorrect returns or giving incorrect information concerning the liability of tax, the taxpayer shall be held guilty upon conviction by a criminal court.

Section 94(1) of the Personal Income Tax Act further provides a general provision in criminalizing any act of infractions as an offence. The provision state that where a taxpayer failed to comply with any provision of the Act or any rules related to the *Personal Income Act*, such failure shall constitute an infraction and the taxpayer shall, upon conviction, be liable to a fine.

However, the payment of personal income tax is mainly divided into pay-as-you-earn (often paid by individual employed) and direct assessment on the profit made by large and small scale businesses. However, most businesses in Nigeria are mainly small or petty businesses that their profit is not even enough to cater to their personal need. Given this, the idea of criminalizing trivial or minor infractions will do more harm than correctional measures.

### 3.3 The Capital Gains Tax Act

Capital gains tax is profits realized from the disposal of any capital asset where the sale price exceeds the purchase price of the particular investment, and the regulation of such transactions is the objective of the Capital Gains Tax Act. The tax chargeable on such gains is 10%. The Capital Gains Tax Act does not expressly create offences under its Schedule. Reference is made to Part XIII of the Companies Income Tax Act, which provides for offences and penalties. Those provisions which have been stated above in Part XIII section 92-95 of the Companies Income Tax Act is also applicable to capital gains tax.

### 3.4 Stamp Duties Act

The Stamp Duties Stamp Duties are taxes paid to the Federal or State Government on documents. Stamp duty is a tax on commercial and legal documents that record and gives effect to specific transactions. However, where a taxpayer defaults in the payment of stamp duties, such infraction is enforceable. By, Sections 110, 111, 112, and 114 of the Stamp Duties Act, the Attorney General at the federal or state level is empowered to institute a summary criminal suit in recovery all duties, fines, penalties, and debts that are due to the government as specified under the Stamp Duties Act. In this regard, where there is a minor infraction, a criminal suit will be instituted against the offender, and if convicted by the court, the taxpayers become an ex-convict.

### 3.5 Tertiary Education Trust Fund (Establishment, Etc) Act, 2011

The extant law on the tertiary education trust fund is the Tertiary Education Trust Fund (Establishment, Etc) Act, 2011 (hereafter the TETFund Act). The Act was enacted to establish the TETFund Act charged with the responsibility for imposing, managing, and disbursing the Education Tax to public tertiary education institutions in Nigeria, and for other related matters. The Act imposes a tax on the assessable profit of a company at an annual rate of 2%, and such

assessable profit shall be ascertained in the manner specified in the Companies Income Tax Act or the Petroleum Profits Tax Act. The tax imposed by the Act becomes payable in 60 days after the Federal Inland Revenue Service (FIRS) has served a notice of the assessment on a company.

However, section 10 (1) of the TETFund Act provides for a general provision that criminalises action or inaction that contravenes or lead to an infraction of the act as an offence. Section 10 (2) and (3) of the TETFund Act expressly provide that it is a criminal offence for a company to fail to pay educational tax when due and failure to comply with demand notice of payment of educational tax. Furthermore, TETFund Act provides that a company that is guilty of an offence as contained or provided for by the provisions of the Act shall upon conviction be held guilty of an offence and shall be liable to 6 months imprisonment or with an option of fine of ₦ 1,000,000.00 for a first offence.

### 3.6 Federal Inland Revenue Service Act

The Federal Inland Revenue Service Act (hereafter the FIRS Act) established the body known as the Federal Inland Revenue Service saddled with the powers to assess, collect and account for revenues accruable to the government of the Federation and other related matters. The FIRS Act is also one of the tax laws that regarded minor tax default as a criminal offence and therefore prescribed harsh punishment for such infraction. However, some of the offences provided for by the FIRS Act, among others, are as follows:

*Failure to deduct or remit tax by a person obliged to do so, which upon conviction makes the person liable to pay the tax withheld or not remitted in addition to a penalty of 10 percent of the tax not remitted per annum and interest at the prevailing Central Bank of Nigeria re-discount rate and imprisonment for a period not exceeding three years.*

Given the above tax laws that criminalize minor tax infractions and thereby prescribe harsh punishment such imprisonment, it is apt to state that is against the intendment of the jurisprudence of punishment as emphasize by Jeremy Bentham and Hart. They stated that the essence of punishment is to instill correction rather than inflicting pain. Therefore, the punishment that ought to be prescribed for any minor infraction of any Tax laws should be civil and amicable concerning the fact that payment of tax by citizens and foreigners is just a civil responsibility and duties.

## 4. Preferable Alternative(s) to Litigation of Tax Cases: The Preferable ADR Method

The desire for alternatives to litigation, also known as Alternative Dispute Resolution (ADR), has been on the increase for a long. Various ADR processes of arbitration, mediation, and negotiation are being presented as being more advantageous than the conventional dispute settlement process via litigation in the courts and tribunals. Litigation as a method of dispute resolution is rigorous, too formal or official and time-wasting. For example, an interlocutory appeal in the case of *Amadi V NNPC* lasted for 13 years before the Supreme Court ordered the case to be sent back to the trial court for hearing on its merit. Litigation is also expensive (in the long run), archaic, and most unsuitable, especially in resolving disputes in modern times.

Furthermore, litigation usually resulted (and still results) in a win-lose situation, even after the matter had been ‘settled’ there is still a scar and infliction of pain left in the mind of the parties involved, and the case may not be different in tax matters. These flaws, among others, have led to the emergence and adoption of alternatives, now referred to as Alternative Dispute Resolution, also known as ADR. However, it will, therefore, not be out of place to examine the concept of negotiation which is a form of ADR processes and which is also consider best that can be adopted in resolving tax controversies as an alternative to criminal litigations.

### 4.1 Negotiation as a basis for Resolving Minor Infraction of Tax Laws

Negotiation is a form of ADR that mostly involves direct discussions or communication (as it could be oral or in writing) between the concerned parties to resolve their differences or at least understand their different position. This method of dispute resolution does not involve any third party, unlike in mediation. Negotiation has been described as the basis of all consensual ADR activities. This is because it is usually held on a confidential basis and “without prejudice” to any legal recourse to which the parties may have a right. It also enjoys flexibility as parties can generally schedule negotiations on their own, avoiding the adversarial way of resolving their dispute. Parties to investment disputes would generally prefer first to explore negotiation, as their disputes may be resolved at that stage.

Furthermore, negotiation serves as a precursor to other settlement procedures, as the parties at that stage decide amongst themselves how best to settle their differences. It is, however, to be noted that

negotiations sometimes fail, as they depend on a certain level of mutual goodwill, flexibility, and sensitivity. Thus, a party to the dispute may be unyielding and maintain its position through the period of negotiation, and in such a situation, the negotiation is most likely to fail as the parties may not come up with any acceptable negotiable agreement.

Given the above relevance of negotiation, there is likelihood for the applicability of negotiation to resolving controversies arising from minor infractions of tax laws, especially with issues over the assessment of taxable income, filing of a return, and compliance with the notice of assessment. Disputes on assessments are bound to occur, especially in Nigeria, for an apparent reason(s). This is concerning the fact that Nigeria is at its early stage of economic development and the majority of owners of a business in Nigeria are predominantly small enterprises struggling with little or no profit. Furthermore, given the fact that most business enterprise in Nigeria is in a small scale with little or no profit, tax authority are often forced to assessed taxpayers based on a presumption of profit accruable in their business. Therefore, since some tax assessments are based on presumption, the affected taxpayers may express dissatisfaction with the tax authorities and challenge the basis for such assessments. It is in reconciling accounts with the reality of the actual income of the particular enterprise that negotiation may be employed in arriving at the actual tax due amicably, and the tax authorities collect the same without inflicting pain on the taxpayers. That is the ultimate of negotiation, that is, arriving at a win-win situation, considering the ultimate aim of taxation in *Independent Television/Radio v. Edo State Board of Internal Revenue*, Ogunwumiju, JCA noted thus; The importance of taxation cannot be overemphasized, as it is a significant source of revenue for both Federal and State governments, thus being a financial source of many government projects and a chunk of its budget.

Given the above statement of Ogunwumiju, it simply implies that imposition of taxes is meant for the overall good of the citizenry, there is no direct victim in the event of infractions of the law, given the fact that the government is the receiver of the tax. Imposing punishment like fine and imprisonment may not be appropriate. What would be appropriate in the public interest is negotiation by reconciling accounts and arriving at the figure to be assessed for payment and remittance of the correct tax.

## 5. Data Presentation and Analysis

The following data below was obtain from respondents residing in the various states of the federal republic of Nigeria via the use of Google form given the social distancing observed in this Covid19 pandemic.

### 5.1 Sampling Technique and Sample Size

The researchers designed an online questionnaire (using Google form, which suits the purpose of ensuring social distancing due to the Covid19) distributed to respondents via various internet means of communication. 432 respondents were randomly picked from various states of the Federation Republic of Nigeria to provide both predetermined options and free opinions response. However, a simple random technique was used in selecting the respondents as it is considered best for this study, in order to arrive at a general conclusion, given the fact that the sample size focus is targeted at respondent within the various states of the Federation Republic of Nigeria, which is homogenous. According to Prof. (Dr.) G. S. Bajpai *et al.*, in their research work “Law Research Methodology: ‘Sampling Techniques’ stated that the advantage of simple random sampling techniques is:

- It is a hassle-free method of sampling population. It is homogeneous.
- There is no chance of a personal bias of the researcher to influence sampling.

However, to successfully arrive in an unbiased general conclusion, this study used a sample size of 432 respondents from the various states in Nigeria.

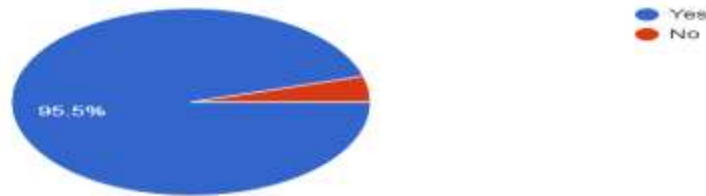
**5.2 Data Analysis**

The following research questions have been formulated for this study and data obtained are analysed as follows;

**Research Question One:** Does the Nigerian citizen pay tax?

Are you a taxpayer?

424 responses:



**Figure 1:** Respondents’ response as a taxpayer

	Responses	Percent
Valid Yes	405	95.5
Valid No	19	4.5
<b>Total</b>	<b>424</b>	<b>100%</b>

**Table 1:** Valid response of respondents’ responses if they are taxpayers

Figure 1 and Table 1 is a reflection of the respondents’ response on whether they are taxpayer. In ascertaining if they are taxpayer it will enable the researcher to appreciate the fact that the respondent can give an informed response to question required of them to answer.

**Research question Two:** What are the various taxes (that criminalise minor infraction) often paid by taxpayers?

Which of the following types of taxes have you paid? You can tick more than one

423 responses



**Figure 2:** Respondents’ responses to the various types of taxes often paid

S/N	Cluster of Responses	Response	Percentage
1	Personal Income Tax	342	80.9%
2	Capital Gains Tax	140	33.1%
3	Stamp Duties	241	57%
4	Value Added Tax	327	77.3%
5	Withholding Tax	83	19.6%
6	Company Income Tax	194	45.9%

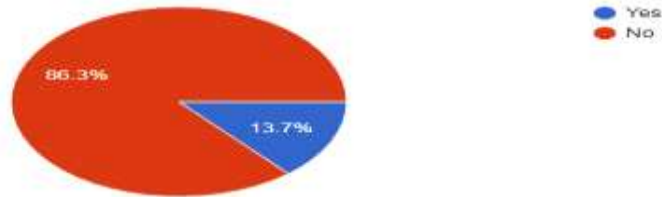
**Table 2:** Valid cluster of response from respondent stating the various taxes often paid to Nigerian

Figure 2 and Table 2 reflect a cluster of respondents’ responses identifying the various common types of taxes they often paid to the Nigerian government.

**Research Question Three:** What is the reaction of taxpayers towards criminalizing minor infraction of tax laws?

Do you agree with the provisions of the tax laws that criminalise minor infraction of tax laws and provide for imprisonment as a punishment for such infraction?

431 responses



**Figure 3:** Showing Respondents advocating against criminalising minor infraction of tax laws

	Response	Percent
Valid Yes	59	13.7
Valid No	372	86.3
<b>Total</b>	<b>431</b>	<b>100%</b>

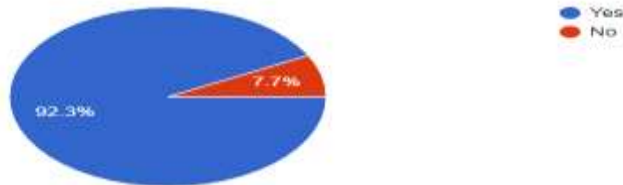
**Table 3:** Valid response of respondents’ preference of non-criminalising minor infraction of tax laws

Figure 3 and Table 3 is representation of the respondents’ response to research question three (3) stating whether they agreed to the provisions of tax laws that criminalise some minor infraction of tax laws.

**Research Question Four:** Does the taxpayer prefer that minor infraction of tax laws be resolved via alternative dispute resolution (ADR)?

Do you prefer that tax defaulting dispute should be settled out of court via Alternative Dispute Resolution (ADR), rather than instituting a quasi-criminal suit against tax defaulters?

431 responses



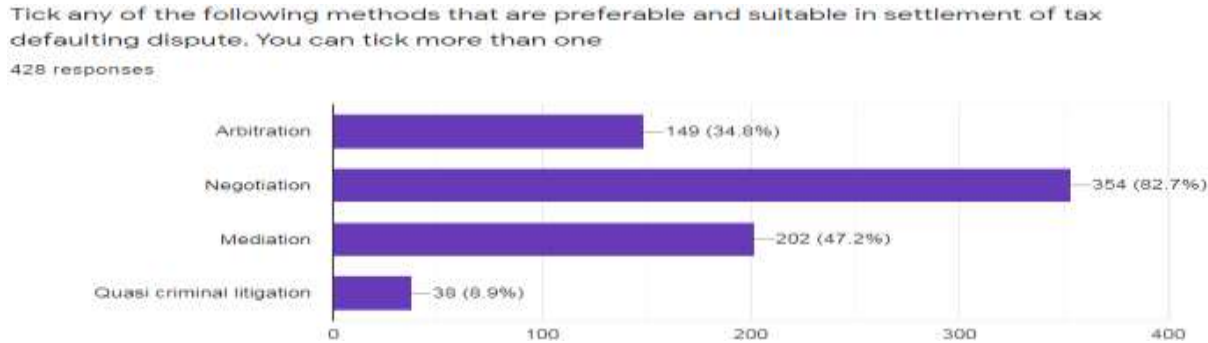
**Figure 4:** Showing respondents’ preference of ADR in resolving minor infraction of tax law dispute

	Response	Percent
Valid Yes	398	92.3
Valid No	33	7.7
<b>Total</b>	<b>431</b>	<b>100%</b>

**Table 4:** Valid response of respondents’ preference of ADR as an effective means for resolving minor infraction of tax laws

Figure 4 and Table 4 is a representation of the respondents’ response to question four (4), in stating if alternative dispute resolution is preferable in resolving minor tax infraction.

**Research Question Five:** Which of the various types of ADR and quasi-criminal proceedings will a taxpayer prefer in resolving tax disputes?



**Figure 5:** Respondents’ response to the preference of any of ADR method or quasi-criminal litigation in resolving minor infraction of tax law

S/N	Cluster of Response	Response	Percentage
1	Arbitration	149	34.8%
2	Negotiation	354	82.7%
3	Mediation	202	47.2%
4	Quasi-criminal litigation	38	8.9%

**Table 5:** Valid cluster of respondent stating their preference to any of the ADR method or quasi-criminal proceeding in resolving minor tax infraction

Figure 5 and Table 5 is a representation of respondents’ response to question 5, which requires the respondent to state their preference of any of the types of alternative dispute resolution process to be adopted in resolving minor infraction of tax laws or the usual quasi-criminal litigation.

**6. Discussion of Findings**

Given the above data presentation, it is evident that the respondents’ response as represented in figure 1 and table 1 shows that 95.5% (405 of the respondents) agreed that they are taxpayers, which is a reflection of the fact that an absolute majority of the respondents that responded to the questionnaire are taxpayers and they had a good understanding of the study being research. Furthermore, it also reflects the fact that they are well informed of the various tax laws that regulate the various taxes imposed by the Nigerian government. However, from data presented in figure 2 and table 2, it shows that majority of the respondents are not just taxpayer but reflect the various types taxes often paid by the respondents and these taxes are often criminalize. Furthermore, figure 2 and table 2 shows most of the respondent are involve in the payment of personal income tax (80.9 % of the respondents), capital gains tax (33.1% of the respondents), stamp duties (57% of the respondents), value-added tax (77% of the respondents) and

companies income tax (45.9% of the respondent). However, as discussed above, most of these taxes criminalize minor infraction and prescribe harsh punishment such as the imprisonment of such infractions. Given this harsh criminal punishment concerning minor infraction of tax law, the research question aims to ascertain if taxpayers prefer criminal sanction for minor tax law infraction.

Given the response of most of the respondents in stating the fact that they are taxpayers and the various types of taxes often paid to the Government. figure 3 and Table 3 which is a representation of the respondents’ response to research question three (3), shows that an absolute majority of 86.3% (431 respondents) prefer that minor tax law infraction such as; failure to file or submit a return, keep proper records of a statement of account, and to comply with a notice of assessment of tax or demand notice, should not be criminalized. This is because such infraction may not be deliberate, there may be a low return of income generated, and taxes are generally paid by taxpayers to the government for the provisions of basic needs and development of the society. In this regard, criminalizing minor infractions of tax laws contradict the sole aim and purpose of payment of taxes, and against Jeremy Bentham, Halt and Kant believe that where the evil of punishment exceeds the evil of the offence, the

punishment will not be profitable and the purpose of punishment is to produce corrections and not to instill pain.

Furthermore, having disregarded the criminalizing of minor infractions of tax laws as represented in figure 3 and table 3. Figure 4 and table 4 is a representation of the respondents' response to question four (4), which requires the respondents to respond in a yes or no if they prefer the resolution of minor infraction of tax laws to be resolve via alternative dispute resolution (ADR). In response, 92.3% (398 of the respondents) of the respondents prefer alternative dispute resolution as the most reliable means that should be adopted in resolving minor infraction of tax laws. This is concerning the fact that the use of alternative dispute resolution (ADR) had been adjudged to have many advantages over litigation. Some of this advantages include; it produces common good than inflicting pain on a tax defaulter, it avail both the Government and tax defaulter to decide amongst themselves how best to settle tax dispute by reaching an amicable settlement, it saves time and cost in resolving tax defaulting dispute when compared to quasi-criminal litigation. Furthermore, it accommodates the particular needs of the Government and the taxpayer in reaching common agreements, and it is usually held on a confidential basis and "without prejudice" to any legal recourse to which the parties may have a right.

However, given the fact that in figure 4 and table 4 shows that majority of the respondents' prefer ADR in resolving minor infractions of tax laws. The respondents were required to respond to question five (5) in stating which of the types of ADR or if it is the usual quasi-criminal litigation process will be preferable in resolving minor infraction of tax laws. Figure 5 and Table 5 which is a representation of the respondents' response to question five (5) shows that from the response of the respondents, 82.7% (354 respondent) representing majority of the respondents prefer "Negotiation" as one of the reliable means or methods that can be employed in resolving minor infraction of tax laws in Nigeria, 47.2% (202 respondents) and 34.8% (149 respondents) also prefer Arbitration and Mediation, respectively. However, a meager percentage of 8.9 (38 respondents) prefer a quasi-criminal method. It is apt to state that the essence of most taxpayer preference of the various ADR method, most especially negotiation, is concerning the fact that most taxpayers are aware of the various advantages of ADR in resolving tax disputes.

Given the above findings it will be apt to state that the criminalization of minor infraction of tax laws is generally not acceptable as a good and viable way of resolving minor tax dispute. This is given the fact that it inflicts more pain.

## 7. Conclusion and Recommendations

In this study, we have considered the various tax laws that criminalize minor infractions of tax laws vis-à-vis the need to adopt a subtle method (such as alternative dispute resolution) in resolving a minor infraction of tax laws. Furthermore, from the analysis of data gathered, it is very emphatic from the findings that the majority of the respondent would have preferred an amicable method of resolving minor infraction of tax laws such as the assessment of taxable income, filing of a return, and compliance with the notice of assessment, that may not be deliberate. Given the legal backing for taxation in Nigeria and the recognition of certain acts or conducts as offences, and the stipulation of punishments, it becomes a duty for every person (including a company) to comply with the provisions of the law. Despite the criminal nature that the infractions of many of the tax laws have in matters of minor infractions, it has not in any way ensured that there is due compliance with the tax law by the taxpayers. Given this, it is very relevant to state that the civil aspect of prosecuting minor infraction of tax laws by the taxpayer should be sustained, as civil prosecution will admit for negotiation more easily than in the criminal prosecution. In this regard, in allowing a civil method of resolving minor infractions of tax laws, a negotiation, which is an ADR method, can be allowed to resolve minor infraction of tax cases, especially when considered in the overall social and economic interest of the society.

Furthermore, It is also necessary to review the extant tax laws vis-à-vis the provisions on offences and penalties on minor infraction of tax laws and to possibly remove, as much as practicable, the criminal terms like 'conviction,' 'offence,' 'guilty,' 'imprisonment' and the likes to reflect the civil nature that taxation is meant to have in the resolution of minor infractions of tax laws. Finally, while it would be better to adopt a mild way of resolving tax issues through negotiations, retaining the criminal sanctions may still be necessary as a punitive measure for potential tax evaders who deliberately refuse to comply with the law and therefore exhibit some criminal act which grossly condemnable.

**References**

- Abdulrazaq M. T. (1992), “ Nigerian Taxation and Fawehinmi v. Akilu: Spreading the Dragnet of Tax Compliance”, *Kwara Law Review*, Vol. 1(1), pp. 93-94
- Abdulrazaq Muhammed Taofeeq (2014) *Nigerian Tax Offences and Penalties* 2<sup>nd</sup> ed. (Lagos: Princeton & Associates) pp. 143-144
- Abdurrahman A. P. and Muzainah M. (2017). “Correlating with Tax Administration Environment to Improve Tax Authority’s Revenue Generation”, *International Journal of Business and Management*, Vol. 1(2), pp. 117-124.
- Abiola J. and Asiwah M. (2012), “Impact of Tax Administration on Government Revenue in a Developing Economy: A Case Study of Nigeria” *International Journal of Business and Social Science*, Vol. 3(8), pp. 99-113.
- Agbonika J. (2015). “An Appraisal of the Law Regulating the Assessment and Collection of Personal Income Tax in Nigeria” *Journal of Law, Policy and Globalisation*, Vol. 37, pp. 169-170
- Agbonika J. (2015). “Tax Amnesty for Delinquent Taxpayers: A Cliché in Nigeria” *Global Journal of Politics and Law Research*, Vol. 3(3), p. 105.
- Aidonjio P. A. & Egielewa P. (2020). “Criminality and the Media: Perception and Legality of the Amotekun Security Agency in Nigeria” *International Journal of Comparative Law and Legal Philosophy*, Vol. 1 (3), pp. 47-56
- Aidonjio P. A. & Odojor O. A., (2020). Impact and Relevance of Modern Technological Legal Education Facilities amidst the Covid-19 Pandemic: A Case Study of Law Students of Edo University Iyamho”, *KIU Journal of Humanities*, Vol. 5(4), 7-19
- Aidonjio P.A., Odojor A. Oyemwen., and Agbale Patience Omohoste, (2021). The Legal Impact of Plea Bargain in Settlement of High Profile Financial Criminal Cases in Nigeria, *Sriwijaya Law Review*, 5(2), 161-174,
- Aidonjio PA, Ikubanni OO, Okoughae N, Ayodeji AO, (2021). The challenges and relevance of technology in administration of justice and human security in Nigeria: Amidst the Covid-19 pandemic, *Cogito Multidisciplinary Journal*, Vol. 13(3), 149 – 170
- Aidonjio, P.A.; Anne, O.O., and Oladele, O.O, (2020). An Emperical Study Of The Relevance And Legal Challenges of An E-contract Of Agreement In Nigeria, *Cogito Multidisciplinary Research Journal*, Vol. XII. No. 3, P. 170
- Aidonjio P. A., Odojor O. A., Ikubanni O. O., Oyebade A. A., Oyedeji A. I. and Okuoghae N. (2022). ‘The Challenges and Impact of Technological Advancement to the Legal Profession in Nigeria given the Covid-19 Pandemic’ *KIU Journal of Humanities* 6 (4), pages 5-19
- Aidonjio P. A., Okuoghae N., Agbale O. P. and Idahosa M. E. (2022). ‘Supervisor and Supervisee Relationship: The Legal and Ethical Issues Concerning Academic Theft in Nigeria Tertiary Institution’ *Euromentor Journal* Vol. 13(1), pages 113-138
- Akhideme A. and Abusonwan R. (2013). “Nigeria Personal Income Tax (Amendment) Act 2011: Implications for Tax Administration and Enforcement” *International Journal of Arts and Humanities*, Vol. 2(4), 217-232, at pp. 220-221
- Augustine A. E. and Auquasama V. (2020). “Effect of Alternative Dispute Resolution Dimensions on Employees’ Performance in Nigeria Work Organizations: A Theoretical Perspective” *American International Journal of Business and Management Studies*, Vol. 2(2) p 32
- Ayua I. A. *The Nigerian Tax Law*, (Ibadan: Spectrum, 1996) pp. 4-6
- Boniface E. E. and Ezenwa-Ohaeto N., (2017). “Alternative Dispute Resolution Mechanisms, Plea Bargain and Criminal Justice System In Nigeria” *NAUJILJ*, Vol. 8(2), pp. 120-121
- El-Maude J. Gambo B., Ahmed B., Mohammed J. and Pate H. (2018). “Impact of Capital Gains Tax Awareness on Revenue Generation in North-Eastern Nigeria” *International Academy of Science, Engineering and Technology*, Vol. 7, pages 21-32, at p. 22
- Enahoro J. and Jayeola O. (2012). “Tax Administration and Revenue Generation of Lagos State Government, Nigeria” *Research Journal of Research and Accounting*, Vol. 3(5), pp.133-139.
- Hamish S., (1999). “Legality and Morality in H.L.A. Hart’s Theory of Criminal Law”, *SMU Law Review*, Vol. 52(1), p. 204
- Egielewa P. and Aidonjio P.A., (2021). ‘Media and Law: An Assessment of the Effectiveness of the Freedom of Information Act by Journalists in Nigeria using Auchu, Edo State as a Case Study’ *International Journal*

- of Current Research in Humanities* Vol. 25, pages 415-434
- Ige A. Y.i (2017). "Alternative Dispute Resolution and Collective Conciliation in Nigeria: A Review of Contemporary Literature" *International Journal of Business and Management*, Vol. 12(8), pp. 261-262
- Masajuwa F. and Aidonjio P. A. (2020). 'The Challenges of the Plain and Unambiguous Legal Interpretation of some of the Provisions of Nigeria Stamp Duties Act', *KIU Journal of Humanities* Vol. 6(3), p 1-20
- Noone M. A. and Ojelabi L. A. (2020). "Alternative dispute resolution and access to justice in Australia" *International Journal of Law in Context*, Vol. 16(2), pp. 108-127
- Nwazi J. (2017). "Assessing the efficacy of alternative dispute resolution (ADR) in the Settlement of environmental disputes in the Niger Delta Region of Nigeria" *Journal of Law and Conflict Resolution*, vol. 9(3), pp. 26-41
- Obadina, D.A. (2013). "Interpretation of Tax Statutes and Development: the Place of Purposive Interpretation". *Babcock University Socio-Legal Journal* Vol.1 No. 3, pp. 155-157
- Odorige C. E. "E-Governance and the Nigerian Tax Administrative System" (2017) *CEE eDem and eGov Days*, pp. 317-330
- Ola C. S. *Income Tax Law for Corporate and Unincorporated Bodies in Nigeria* (Ibadan: Heinemann, 1981) p. 7
- Oseni M. (2014). "Multiple Taxation as a Bane of Business Development in Nigeria", *Academic Journal of Interdisciplinary Studies*, Vol. 3(1), pp. 121-128
- Osho A. and Ilori F. O. (2019). "Influence of Transaction Transfer Pricing Policies on Corporate Organisations Tax in Nigeria", *Internation Journal of Accounting Research*, Vol. 4(3), pages 34-43, at p. 36
- Robert M. (1998) "Introduction: Dispute Resolution in the Law School Curriculum: Opportunities and Challenges" *Florida Law Review*, Vol. 50, p. 583
- Shavell S. (1995) "Alternative Dispute Resolution: An Economic Analysis" *The Journal of Legal Studies*, Vol. 24(1), pp. 1-28.
- Spencer D., (2008). 'Liability of Lawyers to Advise on Alternative Dispute Resolution Options', *Australian Dispute Resolution Journal*, Vol. 9(2), pp. 27-46
- Thomas M. (2005). "ADR: The New Equity" *University of Cincinnati Law Review*, Vol. 74, p. 329
- Tony D. (2002). "An Introduction to Jeremy Bentham's Theory of Punishment" *Journal of Bentham Studies*, Vol. 5, p. 3
- Uwazie E. (2011). "Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability" *A Publication of the Africa Center for Strategic Studies*, pp. 3-5