# JURISPRUDENTIAL FOUNDATION FOR EMPLOYER AS AGENT TO TAX AUTHORITY UNDER THE NIGERIA TAX ADMINISTRATION ACT 2025

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## Abstract

*Before the advent of the new Tax Act 2025, the relationship between Taxpayer, Employers and Tax authorities has been that of social contract as well as strict individual liability in case of inadequate tax filing and compliance. A taxpayer that fails to comply promptly faces severe sanctions from the tax authority. However, with the advent of the new Tax Administration Act, 2025, that has changed. In the new Act, the employer in the corporate organisation now turns to Agent of the tax authority and jointly liable for some of the act of the taxpayer in the event of lack of adequate compliance and inapt filing of tax returns; an act that was purely a statutory function of the taxpayers. Using doctrinal research method, this paper appraises the new Tax Administration Act, 2025, looking at the imbroglio in the provision on filing of tax returns to diagnose the jurisprudential foundation for making employer to now be jointly liable with the employee for an offence committed by employee personally. From the analysis, the paper finds that, making employer to now be an agent to tax authority as done in the new Tax Administration Act, 2025 is an aberration of tax principles of personal responsibility and liability. The paper also finds inconsistencies in the categories of tax stakeholders designated to be carrying out such function as agent to tax authority as provided in sections 51, 81, 105 and 107 of the Act. Nonetheless, the paper concludes that, even though making employer of labour to function as agent to tax authority in personal responsibility of an employee is an aberration, doing so may likely promote transparency, strengthens accountability and encourage tax compliance in personal income tax administration in Nigeria. To achieve this, the paper recommends for the amendment of sections 51, 81, 105 and 107 of the Act to reflect and name a specific office/tax stakeholders that will be saddled with the responsibility of collecting, remitting and filing of tax returns as agent of tax authority aside from taxpayers himself as envisaged under the Nigeria Tax Administration Act, 2025.*

**Key words**: *The Jurisprudential Foundation, Employer, Agent, Tax Authority, The Nigeria Tax Administration Act 2025*

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## 1. Introduction

On 26, June 2025 President Bola Tinubu granted assent to the following four landmark tax reform bills: Nigeria Tax Bill, Nigeria Tax Administration Bill, Nigeria Revenue Service (Establishment) Bill, and Joint Revenue Board (Establishment) Bill (now Acts). The Acts have been published in the Official Gazette Numbers 26, 24, 23 and 25 of 2025 respectively with commencement date of 1st, January 2026. The assent by the President is a culmination of efforts by the Presidential Fiscal Policy and Tax Reforms Committee to reshape the landscape of Fiscal/Economic governance and tax administration in Nigeria, with a view to supporting the economic policy of the Administration.

The Nigeria Tax Administration Act marks a decisive step toward building a more transparent, efficient, and technology-driven tax system. It contains all the administrative provision on collection, registration of taxpayer, returns and assessment (where applicable), enforcement, offenses, and penalties. By harmonising processes for assessment, filing, collection, and enforcement, it aims to ease compliance for taxpayers while strengthening the government's capacity to mobilise revenue. It also has provisions for establishment, composition and functions of State Internal Revenue Service and Local Government Revenue Committee. However, the overall success of this framework will depend heavily on consistent implementation, institutional capacity and stakeholder cooperation, especially on the level of compliance.

The Nigeria Tax Administration Act[1] requires every employer of labour, also known as statutory agent, to deduct personal income tax from the emoluments paid to its employee,[2] remit the deduction made every month to the relevant tax authority within its jurisdiction and also file a tax return of all emoluments paid to its employees in the preceding year not later than 31st January of every year of assessment. This makes every employer of labour a statutory agent for the government, though with some variations from the normal principal/agent relationship. The germane issue calling for discussion therefore is that, what is the main jurisprudential foundation for employer acting as agent to tax authority as reflected in the Nigeria Tax Administration Act 2025 since employer under normal circumstances are the principal while the employee is the

[1]Nigeria Tax Administration Act, 2025, s.14
[2]See *Lagos State Board of Internal Revenue v. Jenkins Investment Ltd* (2013) 10 TLRN p.148 at 151.

agent working for the employer? Why the joint liabilities on the part of an employer and employee on a crime committed personally by an employee?

Divided into six sections, brief literatures were reviewed in section two to show the *lacuna* and conflicts the enactment of the new Nigeria Tax Administration Act 2025 has created in tax administration with regard to employer and employee relationship in Nigeria. A detail examination of the Nigeria tax administration Act, 2025 as well as some flash points in the Act follows in section three. In section four, the detail analysis of the jurisprudential arguments for employers as an agent to tax authority is ventured into, while in the fifth chapter, the paper examines the imbroglio in the jurisprudential foundation for employer as agent to tax authority in Nigeria. It is in the sixth chapter that the paper ends with the conclusion and recommendations.

**2.0 Literature Review**

The legitimacy for imposition of personal income tax in Nigeria is found in the provisions of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the Nigeria Tax Act, 2025;[3] Operation of Pay As You Earn (PAYE) Regulations 2002; and the Revenue Administration Laws of each state in Nigeria and the Federal Capital Territory.

The Constitution vests in the National Assembly, the power to legislate on taxation of incomes, profits and Capital gains.[4] Every eligible taxpayer is obliged to honestly declare his / her income to the relevant tax authority and promptly pay tax on the income declared[5]. It is instructive to note that the 1999 Constitution places the responsibility for legislating on income tax, Capital gains and Stamp duty on the federal government.[6] In addition, the fourth schedule of the 1999 Constitution highlighted the nature of revenue and rates to be collected by local government. Lately, the Nigeria Tax Administration Act, 2025 (NTAA) which came into effect in January, 2026 is now the principal law that regulates the procedure for a taxpayer to self-assess and compute his tax liabilities, pay the tax due and file tax returns to the relevant tax authority.[7]

[3]Act No. 7 of 2025
[4]See Section 4 (2) and Item 59, Part I, Second Schedule to the 1999 Constitution of Nigeria (CFRN).
[5]See Section 24 (f), 1999 CFRN
[6]See generally Section 162, 1999 CFRN.
[7]See Sections 34 and 107 (b), NTAA, 2025

Under normal circumstances, sharing as well as execution of statutory responsibilities of tax stakeholders in tax jurisprudence is personal and the liability of failure on the part of the stakeholders is also personal. However, under the new tax law, personal responsibility and liability is been vicariously imposed on another person-the employer; especially in the corporate world. Thus, in the new Nigeria Tax administration Act, 2025, employers are now obliged to register with the relevant tax authority for the purposes of deducting income tax from its employees with or without formal notification or direction by the relevant tax authority. In other words, every employer of labour is mandated, within six months of commencing a business, to deduct tax from emoluments of its taxable employees and remit to the relevant tax authority. A person who has an obligation to collect, deduct or withhold any tax under the relevant tax laws, and fails to collect, deduct or withhold the tax due is liable to an administrative penalty of 40% per annum of the amount not deducted.[8] The Regulations combined and criminalised failure to properly deduct tax and failure to properly account for deductions made. A defaulting employer is liable on conviction to a penalty of the total sum of taxes due and 10% per annum thereon.[9] Given the above scenario, the emerging provision in the Nigeria Tax Administration Act 2025 seems more of a strange way to hold a non offender as an offender thereby eroding the criminal jurisprudence of personal liability in taxation.

When talking about agency relationship, a person called the agent has the authority to act on behalf of another called the principal,[10] but the way and manner the latest tax provision fussed agency responsibility on the employer is devoid of express approval by the principal; in this case the taxpayers; thus, it's an indirect agency creation. However, either direct or indirect, the requirement of the law is that, an agent must have the authority to act on behalf of another called the principal.[11] And, generally, an agent cannot act beyond the powers given to him by his principal. The issue now is with the enactment of Nigeria Tax Administration Act that an employer is an agent without the authority of the employee (the Taxpayers), can that be said to be in conformity with statutory agency formation and relationship?

[8]Nigeria Tax Administration Act, 2025, s.105

[9]However, the NTAA, 2025 separates failure to deduct tax under Section 105 from failure to remit tax deducted at source or self-account under Section 107. While failure to remit tax deducted is a crime under the NTAA, failure to deduct tax is not as defaulters are only liable to payment of penalties.

[10] See *Paul E.E. & Cannon Ball Ltd v. Felix Okonsemo* (2005) NSCQR 22 (pt 1) at 811

[11] As held in *Bamigboye v. University of Ilorin* (1991) 8 NWLR (pt 108) at 415

Similarly, when talking about rights and obligation in taxation, according to Olokooba[12], every stakeholder in taxation, be it the taxpayers, the tax administrators, the tax adjudicators have distinct roles. Now that the new law is compelling a stakeholder to perform the function of another stakeholder, will that not lead to conflict and negativity in tax compliance.

In Nigeria, while tax authorities comprise the institutional bodies responsible for the supervision of tax matters such as Minister of Finance, Joint Revenue Board (JRB) amongst others, tax administrators on the other hand are the Nigeria Revenue Service (NRS) and the various States Internal Revenue Services (SIRS).[13] To simplify the function and responsibilities of each stakeholder, the Collection of taxes from the taxpayers and remission of same to the government are the main statutory function of the tax administrators; however, with the new Nigeria Tax administration Act, 2025, a *lacunae* has been created by fussing function of taxpayers with the tax administrators.

### 3.0 The Nigeria Tax Administration Act, 2025

The Nigeria Tax Administration Act, 2025 (NTAA) introduces a unified procedural framework for the assessment, collection, enforcement, and administration of taxes across all levels of government.[14] It responds to years of fragmented tax administration by offering consistency, clarity of roles, and a rules-based system that aligns with global good practice. At the heart of the Act is a redefinition of jurisdictional administrative boundaries between Federal and State tax authorities. The Nigeria Revenue Service (NRS) is accorded exclusive authority to administer taxes on companies, persons employed under the Nigerian Armed Forces other than in civilian capacity, non-residents (individuals or businesses that earn income or profits from employment or services performed in Nigeria even if they do not reside in Nigeria); and to administer VAT, stamp duty, tax incentives, income tax etc[1]

[12] Olokooba S.M. *Nigerian Taxation: Law Practice and Procedures Simplified* (Springer Publishers Singapore), 2019 pp. 72-81

[13] See Section 147 of the NTAA which defines "Tax Authority" as the Nigeria Revenue Service, or the Revenue Authority of a State or the Federal Capital Territory in Nigeria

[14]Nigeria Tax Administration Act, 2025, s.1

The NTAA provide for the establishment and functional scope of the State Internal Revenue Service.[15] Each State is required to establish an autonomous State Service, empowered to assess and collect taxes such as Personal Income Tax for residents, Pay-As-You-Earn (PAYE), and Stamp Duties etc.[16] State tax authorities are barred from taxing non-residents or cross-border transactions. Furthermore, the NTAA promotes collaboration between tax authorities by allowing them exchange information and collaborate on audits and allows tax authorities delegate their functions to another tax authority to administer taxes within its jurisdiction with necessary approvals. These provisions promote joint administration and enable tax authorities to share resources, especially in areas with limited capacity, fostering better cooperation and more efficient tax enforcement.

The Act promotes fiscal federalism by clearly distinguishing the tax jurisdictions of different tiers of government.[17] The Nigeria Revenue Service (NRS) is responsible for administering corporate income tax, value-added tax (VAT), taxes on petroleum operations, non-resident taxation, and national tax incentives. State and Federal Capital Tax authorities retain powers over personal income tax for resident individuals (excluding military and diplomatic personnel) and local taxes.

### 3.1 Analysis of the Nigeria Tax Administration Act, 2025

#### Digital Identity and Compliance

The Act mandates the issuance and use of a Taxpayer Identification ("Tax ID") for every taxable person. This Tax ID must be linked to all tax transactions and financial activities, reinforcing the integrity of taxpayer records.[18] Non-resident businesses and digital service providers deriving income from Nigeria must also register and obtain a Tax ID.[19]

To support transparency in the digital economy, Virtual Asset Service Providers (VASPs), including crypto exchanges and financial institutions, are required to report significant

[15]Nigeria Tax Administration Act, 2025, ss. 8 and 88

[16]See *Ikeja Hotels Plc v. Lagos State Board of Internal Revenue Service* (2005) 17 NWLR (Pt. 954) 343

[17]Nigeria Tax Administration Act, 2025, s.3

[18]*ibid, s.4*

[19]*ibid, s.6*

transactions.[20] Banks must provide annual returns on customer data and cumulative inflows or outflows exceeding ₦50 million (for individuals) and ₦250 million (for corporate bodies).[21]

The law also introduces a mandatory disclosure regime for tax planning arrangements, especially those structured primarily to obtain a tax advantage.[22]

**Assessments, Returns and Refunds**

The NTAA formalises Nigeria's self-assessment regime, empowering taxpayers to file their own returns and calculate tax liability.[23] However, tax authorities retain the right to issue administrative assessments where returns are not filed or appear inaccurate.[24]

Assessments must generally be made within six years of the relevant tax period — unless there is fraud, wilful default, or gross misstatement, in which case there is no time limit. All taxes are payable in the currency of the transaction,[25] with petroleum taxes payable in US Dollars.

The Act provides for tax refunds to be processed within 90 days[26] (or 30 days for VAT),[27]and also allows taxpayers to apply overpaid taxes to future liabilities (set-off). Claims must be made within six years and must be accompanied by proper documentation.

**Audit, Enforcement and Penalties**

Tax authorities are granted broad investigative powers. These include the right to:

1. Call for documents and inspect books and records, both physical and electronic;[28]
2. Enter premises (with judicial warrant for private residences);[29]
3. Remove or copy evidence;[30]

[20]Nigeria Tax Administration Act, 2025, s. 25
[21]*ibid, s.29*
[22]*ibid, s.47*
[23] *ibid, ss. 13(1)(a)*
[24]*ibid, s.35*
[25]*ibid, s.39(3)*
[26]*ibid, s.55(3)*
[27]*ibid, s. 56(3)*
[28]*Ibid, s.57*
[29]*Ibid, s.58*

4. Appoint third-party collection agents where necessary;[31]
5. Distrain (seize and sell assets) of defaulting taxpayers, with court approval required for immovable property.[32]

Penalties are significantly enhanced. Late filing attracts a ₦100,000 penalty in the first month and ₦50,000 for each subsequent month,[33] while interest accrues at the Central Bank's Monetary Policy Rate[34] (or SOFR for foreign-denominated taxes). Non-compliance with technology deployment, planning disclosure, or dealing with unregistered vendors can attract fines of up to ₦5 million.[35]

**Mandatory Tax Registration for All Taxable Persons and Government Entities**

The NTAA makes tax registration compulsory for all taxable persons, including Ministries, Departments, and Agencies (MDAs) at the Federal, State, and Local Government levels. [36]Notably, the NTAA extends this obligation to non-resident persons earning business income (excluding passive income) from Nigeria, regardless of whether they have a physical presence or permanent establishment in the country.[37] This marks a significant shift from the previous framework and ensures a broader tax net that captures both local and foreign entities engaged in taxable activities within Nigeria.

**Obtaining Tax Identification**

The Act establishes a comprehensive and structured regime for the issuance, update, suspension, and deregistration of Taxpayer Identification Numbers (Tax IDs). The Tax ID is to be issued upon application by the taxpayer and unilaterally by the tax authority where a taxable person fails to apply.[38]If the Tax Authority refuses to issue a Tax ID, it must notify the applicant of the

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[30] *Ibid, s.59*
[31] Nigeria Tax Administration Act, 2025, s.60
[32] *Ibid, s.61*
[33] *Ibid,* s. 101 (a) and (b)
[34] *Ibid, s.104*
[35] *Ibid, ss.*100 (2) and 103
[36] *Ibid, s.5*
[37] *Ibid, s.6*
[38] *Ibid, s.10*

denial and state the reasons within five working days.[39] This process enhances taxpayer identification, brings more informal sector actors into the tax net, improves record accuracy, curbs evasion, and supports a more digital, integrated tax system. Under the new Act, Tax Identification is mandatory to open or operate any bank, insurance, stockbroking, or financial institution account, expanding the current TIN requirement beyond corporate or business accounts to include individual personal accounts, similar to frameworks in countries like South Africa and Kenya. The Tax ID is non-transferable and a prerequisite for entering government contracts.[40] Financial institutions are also required to verify Tax IDs from clients and to report high-value transactions to the relevant tax authorities to aid in tax enforcement and income profiling. Furthermore, taxable persons must notify the tax authority of any changes in their particulars within 30 days, including changes in ownership, business structure, or contact details.

**Anti-avoidance and Disclosure Framework**

A significant anti-tax avoidance measure aimed at improving tax transparency, record keeping and accountability is introduced under the Act. It mandates any individual or entity involved in a transaction primarily intended to gain a tax advantage, such as a reduction, deferral, or exemption to proactively disclose the arrangement to the tax authority, even if not specifically requested.[41] This is guided by a new "principal purpose" test, which allows tax authorities to assess the intent behind transactions and detect aggressive tax planning early. Also, the Act holds liquidators personally liable if tax debts, including withheld taxes, are not settled before asset distribution and allows recovery of unpaid petroleum taxes from asset transferees in cases where the transfer was used to evade tax.[42]

In addition, all persons including those normally exempt from tax are required to keep accurate, detailed records of their financial transactions in English (or with a certified translation) for a minimum of six years, regardless of their tax liability.[43] Taxpayers can file their returns directly

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[39] *Ibid,s.*7 (2)
[40] Nigeria Tax Administration Act, 2025, s.8 (c)
[41] *ibid*, s. 47
[42] *ibid, s.53*
[43] *ibid, s.31*

or through certified tax agents, who must meet regulatory standards and declare that each filing is accurate, ethical, and professionally competent.[44]

**Disputing Tax Assessments: Objections and Appeals**

The Act set out how tax assessments and disputes should be handled. Once an assessment is made, the tax authority must issue a notice[45] to the taxpayer, stating how much is due and how the taxpayer can object. If the taxpayer disagrees, they must file a written objection within 30 days,[46] clearly explaining the reasons and providing supporting figures. If both parties agree, the assessment is adjusted. If not, the taxpayer can appeal to the Tax Tribunal or relevant court of competent jurisdiction for further resolution.[47]

An appeal against an Assessment or demand notice is only a temporary stay of payment and it does not by itself extinguish the right to such payment.[48] If the taxpayer's appeal succeeds, the tax liability together with the interest and penalty are forever foreclosed.[49] However, if the appeal failed, the tax liability, the interest and penalty all become payable from the due date. In other words, the fate of the tax liability, the interest and penalty are tied together, they fail or succeed together.

**Withholding Tax /Deduction at Source on Certain Payments**

The NTAA provides that tax must be deducted at source when specified payments such as dividends, interest, rent, royalties, directors' fees, and payments to entertainers or sportspersons are made, with such deductions constituting final tax for non-residents.[50] Dividends received after deduction are treated as franked investment income and are exempt from further tax. Similarly, interest on short-term securities and corporate bonds earned by individuals is not subject to additional tax once withheld. Employers must deduct income tax from employee emoluments such that total annual deductions match the employee's tax liability.[51] A 5% final

[44]Nigeria Tax Administration Act, 2025, s.33
[45]*ibid, s.40*
[46]*ibid, s.41(2)(a)*
[47] See Joint Revenue Board of Nigeria (Establishment) Act, 2025, s.29
[48]*Nigeria LNG Ltd v. FIRS* (2022) 5 NTTLR, 342.
[49]*ibid*
[50]Nigeria Tax Administration Act, 2025, s.51
[51]See *ibid, ss. 14,28 and 105*

withholding tax also applies to non-resident companies providing specified services to labelled start ups.

**Tax Enforcement and Recovery**

The Act allows tax authorities to ask taxpayers to show up for questioning or to provide documents and digital or cloud-based records, with court approval they can also enter private homes if needed for investigations in collaboration with law enforcements.[52] Tax officials are authorised to appoint third parties like banks or employers to pay a taxpayer's unpaid taxes directly from funds they hold on behalf of the taxpayer.[53] If the third party fails to do this, they become liable for the tax.[54] Tax authorities are also allowed to recover unpaid taxes by seizing a taxpayer's property (both movable and immovable) if the person fails to pay after a final assessment and demand notice.[55] They can sell the moveable distrained assets / properties after 14 days,[56] (but immovable assets like buildings or landed properties can only be sold with an order of a court[57]) using the proceeds to cover recovery costs and the tax owed. Any leftover amount must be returned to the taxpayer. This helps curb tax evasion.

The Act also introduces innovative tools like third-party tax debt assignment[58] allowing accredited agents such as banks and other financial institutions, debt recovery practitioners, or any other person accredited by the relevant tax authority to recover significant and long-outstanding debts. There is a provision for monetary rewards for whistleblowers who provide tax intelligence, with guaranteed confidentiality and legal protection.[59]Sections 100-127 of the Nigeria Tax Administration Act, 2025 provides for general offences and penalties.

[52]See *ibid, ss.57, 58 and 59*
[53]*ibid, s.60*
[54]*ibid, s.60(3)*
[55]*ibid, s.61*
[56]*ibid, s.61(4)*
[57]*ibid, s.61(5)*
[58]*ibid, s.68*
[59]Nigeria Tax Administration Act, 2025, s.69

## 4.0 EMPLOYERS AS AN AGENT TO TAX AUTHORITY

Agency is not a pure contractual relationship but rather a combination of contractual as well as consensual one[60]. The Black's Laws Dictionary[61] defines agency as a fiduciary relationship created by express or implied contract or by law, in which one party, agent, may act on behalf of another party, the principal, and bind that other party by words or actions.[62] Based on this definition, it is worthwhile to examine the relationship between the directed employers and Tax Authorities as provided under the Nigeria Tax Administration Act. In other to fully appreciate the relationship, it is germane to examine some relevant provisions of the Nigeria Tax Administration Act, particularly relating to payment of personal income tax. Section 51 of the NTAA, for instance states as follows:

> *"Where any payment is made to a person, the person making the payment shall, at the date when payment is made or otherwise settled, deduct the tax at the rate prescribed in regulations relating to deduction of tax at source"*

Also, Sections 105 and 107 of the NTAA state as follows:-

"A person who has an obligation to collect, deduct or withhold tax under the relevant tax laws, and fails to collect, deduct or withhold the tax due is liable to an administrative penalty of 40% of the amount not deducted"

> *"A person, that deducts, collects or withholds any tax under this Act, and fails to remit the amount deducted, collected or withheld by the 21st day of the month immediately succeeding the month in which the amount was deducted, collected or withheld is liable to pay-*

*(a) the amount deducted, collected or withheld but not remitted;*

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[60] Olokooba S.M. *Essentials of Nigerian Agency Law,* (Malthouse Law Books, Lagos), p.17

[61] Bryan A.G *Black's Law Dictionary* (7th edition, West Group, St. Paul, Minn, 1999), p.62

[62] See *Eyiboh v. Mujaddadi* (2022)7 NWLR (pt. 1830) 381 and also *Asafa Foods Factory v. Alraine (Nig) Ltd* (2002)12 NWLR (pt. 781) 353 where the Supreme Court held that a person may decide to act by another as his agent and get the benefit or bear the liability of that arrangement. One who authorises is the principal while the one authorised is the agent. The agent acts as if it is the principal who does the act. In case of default, the agent normally becomes directly liable.

*(b) an administrative penalty of 10% per annum of the tax deducted, collected or withheld but not remitted; and*

*(c) interest at the prevailing Central Bank of Nigeria monetary policy rate.*

A community reading of the above provisions of the Act place some statutory obligations on the directed employers or employers of labour generally (public and private sectors) to make certain deductions (PIT, WHT and other relevant taxes) from emoluments paid to their employees.[63] These deductions so made by the employer must be remitted to the relevant tax authority before the 21st day of the month following the month of deduction.[64] This extended time frame, as accommodated under the new reform, for remittance to tax authority, is prone to abuse by the employer as deducted tax will be retained by directed employers longer than necessary.[65] This extension appears curious especially when it is measured against the level of compliance by directed employers under the old regime. Many employers engage in under deduction or outright non-deduction of the required taxes from the emoluments paid their employees. The few ones that deducted correct tax failed to comply to the remittance date time frame as required by Regulation 7 (1) of the Operation of Pay As You Earn (PAYE) Regulations, 2002.

The employer / tax authority agency relationship is a creation of law.[66] In *Vulcan Gases Ltd v. G.F Industries Gasvenwertung A.G* the Nigerian Supreme Court held that the relationship of principal and agent may arise in five ways, namely, by express appointment, whether orally or by letter of appointment or indeed, by a power of attorney;[67] ratification of the agent's acts by the principal; through the doctrine of estoppel; by implication of law in the case of agency by necessity; and by presumption of law in the case of co-habitation. Subsequent court decisions have, through the doctrine of judicial precedent, echoed and applied this overriding decision of the Supreme Court as, for instance, in *Takum Local Government vs. United Community Bank*

[63]See also the repealed Personal Income Tax Act, s.81.

[64]See Nigeria Tax Administration Act, 2025, s.107(1)

[65]By Regulation 7 (1) of the Operation of Pay As You Earn, an employer shall, within ten days of the end of every month, pay to the nearest tax office or to any bank (as may be prescribed or designated by the relevant tax authority) all taxes deducted under these Regulations

[66]See Nigeria Tax Administration Act, ss. 51, 105 and 107

[67]The Court noted that where the authority of the agent is to execute a deed on behalf of a principal, the agency itself must be created by deed.

*Nigerian Ltd*,[68] in relation to agency by ratification where the Court of Appeal held that where the principal acknowledges the act of his agent it constitutes evidence that it has ratified the action of the agent; and in *Incar Nigerian plc &Anor v. Bole Enterprises Nigerian Ltd,*[69]the Court of Appeal stated the scope of the authority of an agent thus:

> ''Every agent, who is authorise to do any act who is in the course of his trade or profession or business as an implied authority to do whatever is usually incidental to the execution of his express authority in the ordinary course of such trade or profession or business''

Leveraging the above judicial and statutory authorities, it would appear uncontroverted to assert that directed employers are statutory agents of the Tax Authorities with express authority to deduct tax at the rates prescribed by law and remit same to the relevant Tax Authority within the time frame as provided under the relevant tax laws. However, what would appear recondite is the degree of liability of the employer to tax authority within the scope of the provisions of the NTAA. Where, for instance, an employer fails to deduct, or deducted but fails to remit, can the tax authority hold the employer liable for the tax not deducted or remitted? This question is germane because one of the basic principles of agency is that, the acts of an agent is deemed that of the principal if the agent acts within its express, implied or ostensible authority.[70] In *Summit Finance Co. Ltd v Iron Baba & Sons Ltd*,[71] the court took a further step to hold that the principal of an agent is stopped from denying the action of the agent done within the scope of his authority.

The scope of an employer authority as provided under the Nigeria Tax Administration Act is to deduct accurate taxes from all emoluments paid to its employees and remit the deducted taxes to the relevant tax authority within the prescribed period. All the cases cited on this matter illustrate that the acts or actions of an agent effectively bind the principal, but the agent must always act within the scope of his express authority. An agent must not allow his own interest to conflict with his own obligation to the principal.[72] By implication, where the agent (for example, the

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[68](2003)16 NWLR 288. In *New Nigeria Bank Ltd v. Odiase* (1993)8 NWLR 235, the Court of Appeal earlier held that an informal appointment of an agent may be ratified subsequently.

[69](2003)6 NWLR 288.

[70]See *Vinz International Nigeria Ltd v. Morohundiya,* (2009)11 NWLR 563

[71](2003)17 NWLR 89

[72]See *Odudu v. Onyibe* (2001)13 NWLR (pt, 729) at 140

directed employer) steps outside his actual or ostensible authority, he would bear the legal consequences of his misdemeanor and any negative outcome of his unauthorised action shall rest squarely on his shoulder.[73] The express authority of a directed employer is to, on monthly basis, deduct all relevant taxes based on the prescribed rates, from the emoluments paid to its employees and remit all the taxes to relevant Tax Authority within the prescribed time frame. Accordingly, an employer that fails to deduct, collect or withheld appropriate tax from the emoluments paid to its employees would be considered to have stepped out of the scope of the authority given by the Tax Authority just like one that deducts appropriate tax but fails to remit within the prescribed period.

However, where the directed employer acts within the scope of its authorities by deducting appropriate taxes and remittance is done as prescribed by law, its actions will, in law, be deemed that of the principal (for instance, the Tax Authority). This position is an adoption and validation of the common law principle expressed in the Latine maxim that *Qui facit per aluimfacit per se, a sum facereindepur,* meaning he who does an act through another is deemed in law to do it himself.

The Tax Authority as principal cannot be said to be liable for the tortuous or criminal conduct of the directed employer (agent) committed in the course of his duties. Agents by law owe a number of duties to their principals.[74] The courts have over time been able to articulate some of these duties and they include the duty of performance;[75] duty of obedience or loyalty;[76] duty of care and skill;[77] duty of personal performance;[78] duty to act in good faith;[79] and most importantly, duty to account.[80]

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[73]See Sections 105 and 107 of the NTAA for the negative consequences of the employers' failure to deduct, collect, withheld and / or remit taxes.

[74]See *Procter Gamble Co. v. G.S.D Ltd* (2013)1 NWLR (pt. 1336) 409, *Nsirim v. Omuna Construction Co. Ltd* (1994)1 NWLR (pt. 318)1, *A.N.P.P v. I.N.E.C* (2010) 13 NWLR (pt. 1212) 549.

[75]See *Hamman v. Senbanjo& Anor* (1962)2 ANLR 139 where the court held that "it is the duty of an agent to carry out the business he had undertaken.

[76]*Esso West Africa Inc v. Ali* (1968) NMLR 414.

[77]*Spiropolous Co. Ltd v. Nigerian Rubber & Co. Ltd* (1970) NCLR 94.

[78]*Bamgboye v. University of Ilorin* (1991)8 NWLR 1.

[79]*Igben v. Etawarie* (1971)1 NCLR 85

[80]*Majekodunmi v. Joseph DaboulLtd*(1975) CCHJ 161.

The duty to account is the most valuable and fundamental of all duties an agent owes to his principal. As such an agent is bound in law to make full disclosure to his principal of the details and outcome of his service of agency and deliver up to his principal all proceeds, financial or otherwise, arising therefrom.[81] The directed employer is also, as an agent of the Tax Authority, mandated to file a return with the tax authority for all emoluments paid to its employees, not later than 31January of each year in respect of all employees in its employment in the preceding year.[82] The corollary of this duty is the directed employer's obligations to deduct PAYE and other relevant taxes from the emoluments paid to its employees under Sections 51, and 105 in the Nigeria Tax Administration Act. The duty of the directed employer to account and remit deducted tax to the relevant Tax Authority within the legal time frame is an important responsibility of the directed employer and the breach or contravention of the duty considered a crime under the Nigeria Tax Act.[83] The liability for failure to collect, deduct or withhold taxes under the relevant tax laws by directed employer under the new tax laws is an administrative penalty of 40% of the amount not deducted. However, a person that deducts, collects or withholds any tax and fails to remit the amount deducted, collected or withheld by the 21st day of the month immediately succeeding the month in which the amount was deducted, collected or withheld is liable to pay:-

a) the amount deducted, collected or withheld but not remitted;
b) an administrative penalty of 10% per annum of the tax deducted, collected, or withheld but not remitted; and
c) interest at the prevailing Central Bank of Nigeria monetary policy rate.

The criminal element in failure to remit tax deducted by the directed employer is amplified by the provisions of Section 107 (3) which stipulates a term of imprisonment not exceeding three years, or a fine of not less than the principal amount due plus penalty of not more than 50% of the sum, or both. This position aligns with the decision of the court in *First Bank Nigerian Ltd v. African Petroleum Ltd*[84]where the Court of Appeal put it succinctly that when an agent is

[82]See the Nigeria Tax Administration Act, 2025, s.14(1)
[83]See *ibid, s.107(3)*
[84](1996) 4 NWLR 439. See also *Messrs MIZP (Nigeria) Ltd v. Ibrahim* (1974) 5 SC 55.

employed to carry out any transaction which involves payment to him on his principal's behalf, all moneys received on the principal's behalf must be paid over and accounted for to the person from whom he received them. Failure to pay renders the agent liable to an action for money had and received. The court further pointed out that the relational basis of an action for money had and received is unjust enrichment.

It is apparent from the foregoing analysis that directed employers owe fiduciary and sundry other duties to Tax authorities as far as deduction and remittance of PAYE and other taxes from the emoluments of their employees, and these duties they must discharge with integrity and transparency. In *Iyere v. BFFM*,[85] the Supreme Court clarified the role of an agent in situations where an employee or servant becomes an agent for the employer.[86] The Court held that:

> "The general disposition of the law is that an employer is liable for the wrongful acts of his employee authorized by him or for wrongful modes of doing authorized acts if the act is one which, if lawful, would have fallen within the scope of the employee's employment, as being reasonably necessary for the discharge of his duties or the preservation of the employer's interest or property, or otherwise incidental to the purposes of his employment, the employer must accept responsibility in as much as he has authorized the employee to do that particular class of act and is therefore precluded from denying the employee's authority to do the act complained of. If, on the other hand, the act is one which, even if lawful, would not have fallen within the scope of the employee's employment, the employer is not bound unless the act is capable of being ratified and is in fact ratified by him"

[85](2009)37 NSCQR 290.

[86]M.C Okany, has made a distinction between agent and a servant to the effect that a servant is a person employed to render services under the instructions or directions of his master who is not liable for the contract of his servant while an agent is a person appointed to arrange contracts between the principal and third parties- see Okany, Martin Chukwuka (1992), *Nigerian Commercial Law*, (Onitsha: Africana-FEP Publishers Ltd)., p.52

In summary, the analogical deduction from the above analysis is that, the through the new tax regime in Nigeria, the Nigeria Tax administration Act, 2025 has introduce a dual reporting obligation under the Pay-As-You-Earn (PAYE) system, requiring both employers and employees to file annual returns.[87]In parallel, employees are now required to independently file returns disclosing their income from all sources, including employment; and employer doing the same.[88] However, while doing that, the Act has indirectly made the employer to be an agent to the tax authority. With the new Nigeria Tax Administration Act, 2025, eemployers" must, by 31st January each year, submit a return to the relevant tax authority detailing for each employee, the gross emoluments (including allowances and benefits in kind), total deductions, net emoluments, and tax deducted for the preceding year, while also ensuring that the amount remitted accurately reflects the employee's tax liability;[89]a clear departure from what was obtainable in the old Personal Income Tax Act[90].

## 5.0 IMBROGLIO IN THE JURISPRUDENTIAL FOUNDATION FOR EMPLOYER AS AGENT TO TAX AUTHORITY IN NIGERIA

It is important to note that the taxable person under the PAYE system is the employee, not the employer and any notice of assessment required to be given under the provisions of the NTA or NTAA is to him. Assessment for tax of the taxable person is preceded by return of income made by him to the Tax Authority.[91] In such return of income, the taxable person is obliged to calculate the amount of tax which is payable by him[92] and provide evidence of payment of the tax due.[93] No assessment of income tax for a year shall be made by the relevant tax authority on an employee with respect to his emolument or other income if that tax is recoverable by deduction under Section 51 of the Nigeria Tax Administration Act.

[87]*ibid, s. 14(1)*
[88]*ibid, s.14(3)*
[89]See *Niger Delta Development Commission v. Rivers State Board of Internal Revenue* (2020) 3 NWLR (Pt. 1711) 371
[90] See Personal Income Tax Act, s. 81
[91]See the Nigeria Tax Administration Act, 2025, s.13(1)(a)
[92]*ibid,* s.13(2)(b)
[93]*ibid,* s.13(2)(e)

However, the Nigeria Tax Administration Act treated failure to deduct tax, collect tax or withhold tax from emoluments paid differently from failure to remit.[94] While failure to deduct attracts an administrative penalty of 40 % of the amount not deducted in addition to payment of the tax not deducted, failure to remit the tax deducted, collected or withheld by the 21st day of the month immediately succeeding the month in which the amount was deducted, collected or withheld attracts payment of the amount deducted, collected or withheld but not remitted; administrative penalty of 10% per annum of the tax deducted, collected or withheld but not remitted and interest at prevailing Central Bank of Nigeria monetary policy rate (MPR).[95] Unlike failure to deduct tax which only attracts administrative penalty, the Act treats failure to remit tax and failure to Self-account as criminal acts with defaulters liable on conviction to a term of imprisonment not exceeding 3 years.

From the above therefore, it does appear that the Act did not place the obligation to deduct and remit on a specific individual rather than the employer based on the wordings of the relevant provisions in the Act.[96] In particular, Section 28 of the Act reads:

> *"Every person[97] who has an obligation to deduct and remit tax under this Act or any other tax legislation shall render monthly returns to the appropriate tax authority, as specified in the Regulation issued for that purpose"*[98]

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[94]See the Nigeria Tax Administration Act, s.105 and 107; and compare with the repealed Personal Income Tax Act, s. 82 where failure to make deductions from emoluments paid or properly account thereof attracted penalty of 10 % per annum of the amount not deducted plus interest at the prevailing commercial rate. Employer was to be answerable for tax deducted or failed to deduct and account for.

[95]See *N.D.D.C v. Rivers State Board of Internal Revenue* ((2020) 3 NWLR 371 where the Court of Appeal (Port Harcourt Division) at pg 402 held that failure by the employer to make the deductions or, after making same, to properly account for it will attract a punishment of the amount collected or supposed to be collected by the employer plus ten percent interest per annum at prevailing commercial rate.

[96]See the Nigeria Tax Administration, 2025, s. 145 and the Nigeria Tax Act, 2025, s.201 (3)

[97]See and compare with Section 82 of the repealed PITA which used the wordings "An Employer..."

[98]See Section 147 of the Nigeria Tax Administration Act, 2025 which defines "person" to include individuals, body of individuals, executor, trustee, family, community, a company, or body corporate, corporation sole and any unincorporated body of persons etc.

Despite the above, the employer is also expected to file tax returns in respect of each of its employee within 30 days after the end of each year in FORM H1[99] and in the event of default, the relevant tax authority may also give notice for such return to be rendered or filed.[100] Failure to file the tax return is an offence that attracts a fine of Five Thousand Naira (N5,000) upon conviction.[101]The court held in the case of *Saydoun Limited v Edo State Board of Internal Revenue*[102] that Paragraph 13 of the Operation of Pay-As-You-Earn Regulations, 2002 does not make it mandatory or impose a duty on the relevant tax authority to notify an employer to render tax returns of its employees. It held further that it is the duty of the employer to file tax return of its employees before 31 January of every year to enable the tax authority verifies claims in the tax returns.[103]

It is pertinent to note that personal representatives or successors of an employer taxpayer may perform the latter's duties in the event of death, incapacitation or liquidation.[104]Every employer is expected to keep records of wages, tax deduction cards, vouchers and other relevant documents relating to payment of emoluments to its employees within its premises for inspection, as an authorised tax officer may enter any business premises within working hours to ascertain compliance with the tax regulations.[105]Failure to keep such record is an offence liable to a penal sum of Five Thousand Naira (N5,000) upon conviction.[106]It is pertinent to note that under the PAYE scheme, it is not enough for an employer to merely deduct tax and remit same to a tax authority. The Regulation expects that the appropriate tax should be deducted and properly accounted for by the employer, that is, there must not be under-deduction or over-deduction of tax by the employer. An improper deduction and account is an offence liable to a penalty of payment of total tax due and 10% per annum of such tax due upon conviction.[107]

Where the employer is a body corporate or an association of individuals, their liability under the Regulation is "several liability" This implies that where the employer consists of two or more

[99]See Operation of Pay as You Earn Regulations, 2002, paragraph 10
[100]See Operation of Pay as You Earn Regulations, 2002, paragraph 13
[101]See Operation of Pay as You Earn Regulations, 2002, paragraph 18
[102][2019] 41 TLRN 1,
[103]*Saydoun Limited v Edo State Board of Internal Revenue* [2019] 41 TRN 1 at 27 - 29.
[104]See Operation of Pay as You Earn Regulations, 2002, paragraph 12
[105]See Operation of Pay as You Earn Regulations, 2002, paragraph 20(1)
[106]See Operation of Pay as You Earn Regulations, 2002, paragraph 18
[107]See Operation of Pay as You Earn Regulations, 2002, paragraph 19

natural persons, each is fully held responsible for the PAYE obligations individually and each may be liable for a default of the obligation to the extent of individual degree of culpability. In other words, each may be sued for his or her own specific share of default but cannot be held responsible for the default of others. The Operation of Pay As You Earn Regulations 2002 also provides for the institution of civil action in Court against an employer in default as legal measure for recovery of arrears of tax due and outstanding.[108]

An employer is to maintain and record particulars of emoluments paid to each of its employees on a tax deduction card or any other form authorised by the tax authority. The employee tax deduction card or form must contain the: month of payment; amount of emolument paid; pension funds deduction; cumulative net emoluments in relation to the said date; cumulative taxable emoluments in relation to that date; cumulative free emoluments in relation to that date; corresponding cumulative tax; deducted tax or tax repayment.[109]

Once an employee, previously issued a tax deduction card, ceases to be in the employment, the employer must send a certificate in the prescribed form to the tax authority, containing the name of the employee; employee's identity number; employee's address; date of appointment of the employee; date of resignation/retirement of the employee; income tax relief specific to the employee's case; cumulative emoluments at the date of leaving and corresponding cumulative tax.[110]The certificate is to be made in duplicate, to be given to the employee resigning/retiring on the date he leaves and if he is taking up another employment, he will deliver same to the new employer, who will send an updated copy to the collector of taxes for tax deductions and retain the other copy. A new tax deduction card will also be issued to the employee by the new employer.[111] If an employee dies, the employer will send the certificate of cessation of employment, to the tax collector, containing the name and address of the personal representative of the deceased employee, and if any emolument is paid to the deceased employee's next of kin by the employer, tax is to be deducted from such emolument paid.[112]

[108]See Operation of Pay as You Earn Regulations, paragraph 21
[109]See Operation of Pay as You Earn Regulations, 2002, paragraph 3
[110]See Operation of Pay as You Earn Regulations, 2002, paragraph 4(3)
[111]See Operation of Pay as You Earn Regulations, 2002, paragraph 5
[112]See Operation of Pay as You Earn Regulations, 2002, paragraph 6

### 5.1 The Imbroglio

However, despite the novel idea of making employer to serve as agent to tax authority, it is the finding of this paper that, there are still some confusion on who should actually, collect and remit such tax in the corporate settings. For instance, in Section 51 of the Nigeria Tax Administration Act, 2025, the responsibility to deduct is placed on ***"the person making the payment"***; a literary interpretation of this could mean, either the employer or the schedule officer (for example the Accountant, Bursar or biometric officer) while Section 81 specifically placed the obligation to deduct on the '***employer'***. In contrast, Sections 105 and 107 of the same law, used the word ***"person"*** rather than ***"employer***" as the one with obligation to collect, deduct, withheld and remit taxes to the relevant Tax Authority. A combined analysis of these provisions may reflect a strict liability on the person saddled with the responsibility or obligation to deduct.[113]But who is that person; hence the clarification of the type of agent an employer is/are to the tax administration.

The Supreme Court in trying to clear this ambiguity in *Iyere v. BFFM*[114] held that the combined effects of provisions of Sections 51, 105 and 107 of the NTAA appears to mean that the schedule officer(s) in charge of payment of emoluments to employees (who is / are also responsible for deduction and remittance of taxes to relevant Tax Authority) and the employer shall be jointly and severally liable for any failure or negligence to carry out the requisite obligations contained in those provisions of the law.

## 6.0 CONCLUSION AND RECOMMENDATIONS

From the aforesaid, it is very clear that while the main jurisprudential reason for the infusion of/transferring the statutory function of the taxpayer to the employer is for increase revenue generation since failure of as well as proper remittance and filing of returns will easily be detected once there are inconsistencies in what the employee as against what employers filed. It is however trite to note that, section 51 of the new Nigeria Tax Administration Act (NTAA) that provide for employer to now carry out the personal function of the employee as an agent of the

[113]See the Nigerian Tax Administration Act, s.147 and the Nigeria Tax Act, s.202 which defines "person" to includes individuals, executor, trustee, family, community, a company or body corporation sole and any unincorporated body of persons, including a trust or any legal arrangement.

[114] (2009)37 NSCQR 290.

tax administrator is a clear departure from the wordings of the Section 81 of the repealed Personal Income Tax Act[115] which mandated each stakeholders to perform their statutory duties separately especially with regards payment and filling returns.

Based on the above, it is the position of this paper that, making employer to now serve as agent to tax authority as done in the new Tax Administration Act is a sort of vicarious liability of tax responsibility and an aberration of tax principles of personal responsibility and liability. However, even though making employer of labour in corporate organisation to function as agent to tax authority in the affairs that should have been purely of the employee is an aberration, doing same is likely to promote transparency, strengthens accountability and encourages tax compliance in personal income tax administration in Nigeria. Nonetheless, for seamless execution and application of the new provision, this paper recommends that a specific position be maintained on who should actually be collecting, remitting and filing tax returns on behalf of the employee; thus, sections 51, 81, 105 and 107 be amended, reframed and harmonised to reflect and name a specific tax stakeholders that will be saddled with the responsibility of collecting, remitting and filing of tax returns as agent of tax authority as envisaged under the Nigeria Tax Administration Act, 2025.

[115]Cap. P8, Laws of the Federation of Nigeria, 2004.