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Taxation of Illegal Businesses: A Clog in the Wheel of Crime?

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Taxation, according to the Business Dictionary is defined as "a means by which governments finance their expenditure by imposing charges on citizens and corporate entities". The term "taxation" is said to however apply to all involuntary levies, from income to capital gains to estate taxes irrespective of whether they are legal or not.

As a matter of fact, in some countries, with specific reference to the United States of America, there are laws that are to the effect that a person's taxable income will generally be subject to the same Federal Income Tax rules regardless of whether they are obtained or earned legally or not. This signifies that this practice has been institutionalized in some jurisdictions although it is still a matter subject to policy decision in Nigeria.

Although, numerous arguments, have been given by different writers concerning taxation of illegal incomes and even several court decisions given in support of same, the writer is of the firm but not infallible position that such incomes should not be taxed as it forms a clog in the wheel of crimes control.

Vital to the arguments proposed in support of taxing illegal incomes is the rule against self-incrimination. It is defined by Black's Law Dictionary as "the act of indicating one's own involvement in a crime or exposing oneself to prosecution, especially by making a statement."

The purport of this rule is that accused persons cannot be compelled to disclose any such information which is capable of incriminating them. Such laws include but not restricted to the Fifth Amendment of the United States Constitution barring that government from compelling suspects to testify against themselves.

Compelling however, is the provision of the S.

36(11) of the 1999 Constitution of the Federal Republic of Nigeria which provides that a person shall not be compelled to disclose any piece of information which tends to show that he has committed an offence.

In a recent report on Punch Metro specifically on the 15th day of March 2018, a group of hoodlums were said to have attacked an area of Akoka in Lagos State leaving a lecturer of the University of Lagos and an a final year student of the same school dead. The report has it that the mastermind behind the crime is a drug dealer known to the police. Imagine such drug dealing business being taxed. It would only be partnered and encouraged thereby aggravating the level of crime of subject to taxation instead of prosecution.

Is it even feasible that an illegal income earner would be open to tax agencies when they are not open to law enforcement agencies? The writer therefore humbly opines that taxing such incomes will not only constitute state

partnership with crime but also further the proliferation of shades of crime. The point being such earner is very much unlikely to file a complete tax return thereby committing another crime. This position is similar to that of **Boris I. Bittler** of **Yale Law School** while commenting on the decision in the case of **United States** when he suggested that income from unlawful businesses are reported in part as some information are not supplied.

S.15(1) of the Code of Conduct Bureau and Tribunal Act mandates every Nigerian public servant to declare their assets upon resumption of office and subsequently as provided for in the provisos a, b and c while 15(2) is to the effect that statement in any declaration that is found to be false by any authority or persons authorized in that behalf to verify it, shall be deemed to be a breach of this Act. It is noteworthy that the essence of this law is to address the issue of corruption among public officials.

Note that such enrichment gotten from this kind of source also forms vital part of what can be categorized as illegal. It is understood that no public officer except one who intends to surrender himself, which is most unlikely, will include such incomes in his tax returns filing and as such could not be taxed.

Conclusion

The question that begs for answer is whether it would be proper to tax an illegal activity thereby creating a notion of government partnership with crime and even getting just a fraction of such income or prosecuting such law breakers as proper proceeding could see to the forfeiture of all such accrued income back to the government and further subjecting such persons to necessary punishment. And as for the question as to whether it is normal to tax legal businesses and leave illegal ones untaxed just as suggested the learned judge in **Sullivan's** case.

It should not even be a point of controversy. Taxes are meant for legal businesses while punishment is most suitable for unlawful ones.

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