

A CRITICAL APPRAISAL OF DISTRESS AS A MECHANISM FOR TAX ENFORCEMENT IN NIGERIA

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ABSTRACT

The power of distress constitutes one of the mechanisms available to tax authorities for the recovery of unpaid taxes in Nigeria. It provides a relatively less expensive and expeditious means of enforcing tax debts without the delays ordinarily associated with litigation at the Tax Appeal Tribunal and the Courts. However, the extensive powers conferred on tax authorities in the exercise of distress have raised concerns regarding procedural fairness, abuse of administrative powers and the protection of taxpayers' constitutional right to fair hearing. This article examines the origin and development of distress as a tax recovery mechanism and critically analyses its application under Nigerian tax law. Using a doctrinal research methodology, it analyses the considers the statutory conditions for the exercise of the power, the scope of the authority conferred on chairman of the relevant tax authority, and the judicial attitude towards distress proceedings, particularly the use of *ex parte* procedures and the requirement that an assessment must have become final and conclusive before enforcement. Against the background of the enactment of the Nigeria Tax Act, 2025, Nigeria Tax Administration Act, 2025, Nigeria Revenue Service (Establishment) Act, 2025 and Joint Revenue Board (Establishment) Act, 2025, the article further examines the current statutory framework for tax debt recovery and the extent to which the reforms address the deficiencies identified under the repealed legislation. The article concludes that while an effective distress mechanism remains necessary for tax administration, its exercise must be accompanied by adequate procedural safeguards capable of preventing arbitrary assessments, disproportionate enforcement and the protection of taxpayers' rights. The article recommends a more balanced procedure which preserves the ability of tax authorities to recover established tax debts expeditiously while ensuring fairness, accountability and adequate protection of taxpayers' rights.

Keywords: *Distress, Distrain, Tax Enforcement, Taxpayers' Rights, Fair Hearing*

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1. INTRODUCTION

The concept of Distrain has provided a cost-effective and expedient way for tax authorities to recover tax debts from tax delinquents. As a statutory option for tax enforcement, it operates to curb delays that may arise in cases of litigation and provides the tax authorities with overwhelming powers. While this may be an advantage to the tax authority, it places the taxpayer on the receiving end. The procedures may leave the taxpayer without recourse to succour where because the warrant authorising the distress of the taxpayer is issued by a senior official of the tax authority and the taxpayer is not afforded the opportunity to contest the justification for the warrant. To this end, there exists a plethora of cases where the tax official presents inflated figures to the court and obtains such *ex parte* orders, only for the court to find out such errors when the orders are challenged. This work traces the origin of the power to distrain and its application in Nigeria, and makes recommendations for its amendment to ensure fairness, justice and equity for taxpayers which will invariably cause a surge in taxpayer confidence in the tax authorities and will in turn translate into tax compliance.

2. MEANING AND ORIGIN OF DISTRESS

Akinsola defines distrain as the seizure of someone's property to obtain payment of rent or other money owed, especially in common law countries. He went further to state that distrain is the act or process whereby a person (the distrainor), traditionally even without prior court approval, seizes the personal property of another located upon the distrainor's land in satisfaction of a claim, as a pledge for performance of a duty or in reparation of an injury.¹ The Cambridge Dictionary defines the word distrain to mean "to take and sell property from someone who owes you money to pay back their debt"²

Distress as a concept has its origin in the landlord and tenant relationship under common law. According to Shea, it is an ancient remedy whereby the goods of a tenant in arrears were liable to be seized by the landlord in order to pressurise the tenant into paying the overdue rent.³ This provided the landlord with a substitute for the forfeiture of the tenant's estate and a remedy which did not require any recourse to the court⁴. However, the landlord's power to distrain became

¹ Lanre Akinsola, *Personal Income Tax Act: Principles and Cases in Nigeria*. London: Asco Prime Publishers, 2014. p123

² 'Distrain' <https://dictionary.cambridge.org/dictionary/english/distrain> 13 April, 2021

³ Caroline Shea, 'The Abolition of Distress and the new statutory regime of CRAR' https://www.falcon-chambers.com/images/uploads/articles/CRAR_2014.pdf p1

⁴ Ibid.

the means of great oppression in the hands of the barons, and to ease this hardship, successive enactments were passed for the protection of tenants⁵ In the United Kingdom, the Law Commission was established in 1991 to look into the issue of distress and it concluded that “distress was a thoroughly bad thing, and total abolition was proposed.”⁶ Unfortunately, it took about 20 years before a such recommendation was put into practice in the 2007 Tribunals, Courts and Enforcement Act which provides that “the common law right to distrain for arrears of rent is abolished” except in Scotland.⁷

The history of the introduction and application of the power of distrain to tax matters at common law appears hazy,⁸ however, the law which establishes its application in tax matters in the United Kingdom is the Tax Management Act 1970⁹.

3. THE PRACTICE OF DISTRAIN IN TAX MATTERS IN NIGERIA

Nigerian tax legislation provides for the power of distrain.¹⁰ Asada and Jonathan opine that even though distrain has long featured in various tax legislation, it did not gain prominence until its inclusion in the Federal Inland Revenue Service (Establishment) Act, 2007 (FIRSEA)¹¹ now repealed.

Distrain is principally governed by the Nigeria Tax Administration Act, 2025, which consolidates the power of distrain of the Service and other relevant tax authorities.¹² The essential conditions precedent remain the same as the assessment must be final and conclusive, a demand notice must have been served, and the specified payment period must have elapsed. The authority to distrain is now in the statutory form contained in the Third Schedule to the Act. The new

⁵ Ibid.

⁶ Ibid. 2

⁷ S. 71 of the Act,

⁸ Andrew E. Edjeba. ‘The Constitutionality of the Power to Distrain for Non-payment of Tax: Independent Television/Radio v Edo State Board of Internal Revenue in Perspective’ (2016) *AjayiCrowther University Law Journal*, Vol 1, No 2 p3

⁹ Ibid.4 The provisions of s. 61 of the United Kingdom Tax Management Act 1970 are similarly couched with the wordings of the Nigerian provisions on distrain.

¹⁰ Sections 61 of the Nigerian Tax Administration Act 2025 (“NTAA”).

¹¹ Asada D and Jonathan EA, ‘Perspectives on Tax Enforcement Under the Nigerian Income Tax Law’ in Agbonika JAM and others (eds), *Topical Issues on Nigerian Tax Laws and Related Areas* (Salem University 2018) 219

¹² Section 61 NTAA. In the former tax regime, the Personal Income Tax Act 2011(PITA) and the Company Income Tax Act 2007 (CITA) made a similar provision in Sections 104 PITA 2011 and 86 CITA 2007 respectively. These laws together with the FIRSEA are now repealed, and their provisions are currently consolidated under section 61 of the Nigeria Tax Administration Act, 2025. See also section 196 of the Nigeria Tax Act, 2025 (repeal of CITA and PITA) and sections 40-41 of the Nigeria Revenue Service (Establishment) Act, 2025 (repeal of FIRSEA and savings/transitional provisions).

provision also makes an important distinction in relation to sale: assets distrained by the Service may, after 14 days, be sold without an order of the High Court, subject to the protection for immovable property, while assets distrained by any other relevant tax authority may be sold only with an order of the High Court. Any balance of the proceeds is to be refunded to the taxpayer, with or without demand, within 90 days of the sale.

- (a) The assessment must have become final and conclusive.
- (b) The demand notice must have been served on the taxable person, company or its representative/agent
- (c) The time limit for the payment as stated in the demand notice must have lapsed.
- (d) The tax official exercising the power of distrain must be authorised by the requisite warrant. The authority to distrain is in the form contained in the Third Schedule to the NTAA, and is issued by the Chairman of the relevant tax authority¹³
- (e) The things distrained by the tax officials shall not be sold immediately, but shall be kept, albeit at the cost of the taxpayer, for 14 days giving the taxpayer additional time to source money to offset the tax due.

Concerning the power of the tax officials, the law provides that:

- i. The tax official armed with a warrant may enter upon the premises of the taxpayer, and if necessary, break open any building or place in the daytime for the purpose of levying such distress.¹⁴
- ii. the tax official may call the assistance of any police officer for the purpose of levying such distress.¹⁵

¹³The authority of the NRS to distrain is similar to the position applicable to the Service under the previous regime, as provided under sections 86(2) of CITA 2007 and 33(2) of FIRSEA 2007. However, section 104(2) and (3) of PITA 2011 required a tax official to apply to a Judge of the High Court sitting in Chambers for the issuance of a warrant. Upon hearing the application, which may be made ex parte, the Judge may authorise the tax official in writing to execute the warrant of distress. The current position harmonises the authority for the issuance of warrants of distress by both the NRS and the relevant tax authorities. However, while this creates a uniform framework for the exercise of the power of distraint, it has not strengthened the procedural safeguards applicable to the process or introduced any opportunity for the taxpayer to be notified or heard before the warrant is issued.

1461(3) of the Nigeria Tax Administration Act, 2025, which authorises a duly authorised officer to execute the warrant, break open a building or place in the daytime where necessary, and call for police assistance.

¹⁵ Ibid.

- iii. The tax official may distrain any land, premises, place or any asset in respect of which the taxpayer is the owner, and recover the amount of tax due by sale of anything so distrained.¹⁶
- iv. The tax authority may keep the assets distrained at the cost of the taxpayer for 14 days. After the expiration of 14 days, the NRS has the power to sell off the assets upon which distress was levied,¹⁷ except for immovable properties which require the order of a court of competent jurisdiction.¹⁸ Any other relevant authority requires the order of a court before the sale of such an asset is carried out, whether the asset is movable or not.¹⁹ The NTAA defines the court as the Federal High Court (FHC), the State High Court (SHC), or the High Court of the Federal Capital Territory (FCTHC).²⁰

The management of the proceeds of sale of distress property shall be done in the following manner: in the first instance, payment is made to discharge the cost of incidental charges of the sale and of keeping the distress. Secondly, where there is any amount remaining, it shall be used to offset the tax debt.²¹ The balance of the proceeds, if any, shall be refunded to that person with or without a demand made within 90 days of the date of the sale.²² The former regime provided under the PITA for the payment of the balance, if any, to the owner of the things distrained or the appropriate court where the owner cannot be traced within 30 days of such sale²³. However, the repealed CITA²⁴ and FIRSEA²⁵ provided that any balance shall be payable to the taxpayer upon his or her demand, within one year of the date of the sale. No provision was made to provide for what happens afterwards. The new position is a welcome development which mandates the payment of any balance of the sale proceeds to the taxpayer with or without demand within 90 days of the sale. This removes any delay in payment and any uncertainty regarding where demand

¹⁶S.61(1)(a)-(b) of the NTAA, which authorised distraint against goods, chattels, bonds or other securities, and against land, premises, place or other assets owned by the person or corporate body. S. 61(9) NTAA, which permits distraint of assets, goods, chattels and effects belonging to the debtor wherever they may be found.

¹⁷ S.61(4) of the NTAA

¹⁸ S.61(8) of the NTAA

¹⁹ S.61(5) and (8) of the NTAA

²⁰ S. 147 of the NTAA

²¹ S.61(6) of the NTAA

²² S.61(7) of the NTAA

²³S.104 (6) of the PITA 2011.

²⁴ S.86 (5) of the CITA 2007

²⁵ S. 33 (5) of the FIRSEA 2007

for payment is not made. What remains as a concern is where the taxpayer is not found or available. The current legal regime is silent as to what happens to the balance. The position under the repealed PITA on this issue may remain the best position and we recommend that the law be amended to reflect same.

4. A TAXPAYER FOR DISTRAIN PURPOSES

The NTAA²⁶ provides that where an assessment has become final and conclusive and a demand notice has been served on a person or company, or on the person or company in whose name that person is chargeable and the payment of the tax is not made within the time specified by the demand notice, the relevant tax authority may in the prescribed form, for the purpose of enforcing payment of the tax due. For the purpose of levying distress, it is clear that the taxpayer against whom distress may be levied may be an individual, a company, or a person or company in whose name another person or company is chargeable to tax. The issue of who is a taxpayer for the purpose of levying distress came up for determination in the case of *NDDC v. Rivers State Inland Revenue Service (RSBIRS)*.²⁷ The Court of Appeal held that the statutory power to distrain can only be enforced against a taxable person, that is, the employees in this case, and not against the employer in the circumstances of the case. That section 104 cannot be invoked against an employer whose obligation is merely to deduct/withhold PAYE tax from employees' emoluments and remit the same to the relevant tax authority. In that case, the appellant assessed itself as owing the Respondent the sum of N671,887,890.33 with respect to withholding tax for the period of 2013 to 2016. The Respondent agreed to collect the said amount subject to verification. The appellant made a part payment of N671,887,890,33.00 leaving a balance of N415,255,289.82 which it failed or refused to pay. The Respondent in 2018 sought the order of the lower Court to distrain the property of the Appellant with a view to recovering the balance. The Appellant then paid the balance. Thereafter the Respondent wrote a letter to the Appellant dated 16/10/2018 informing the Appellant of its intention to conduct "a Field Tax Audit Exercise" for the period covering 2012 - 2017 which was to commence 2 weeks after the receipt of the letter by the Appellant. On receipt of the letter on 12/11/2018, the Appellant replied that the suggested two weeks from the date of receipt would not be convenient because their books were open to the Office of the Auditor General of the Federation for their statutory Audit and they may not conclude until the end of the year. The

²⁶ Section 61(1) of the NTAA

²⁷ (2020) 3 NWLR (Pt. 1711)371) CA

Appellant went on to suggest a different date in April the following year, to enable them to prepare for the audit. The Respondents refused the terms of the letter and wrote to the Appellant of their intention to come for the audit as earlier scheduled; the Appellant ignored the letter of the Respondent. The Respondent then went ahead to use Best of Judgment (BOJ) to assess the Appellant and charged them with fifty billion naira as withholding tax from PAYE and other taxes. The Respondent then served the Appellant with a demand notice on 11 November 2018, and a Final Demand Notice on 8 February 2019. The Appellant failed and/or refused to reply to these letters or pay the stated amount, this led to the filing of the Originating Motion *Ex parte*, where the trial judge issued the Tax Default Order on 17 April 2019.

The pronouncement as to the fact that the Appellants were not taxpayers,²⁸ we hold the view that the court in this instance is misguided as to the obligations of employers as agents under the PAYE scheme under sections 81 & 82 of PITA. Furthermore, the Court does not, in this instance, appreciate the peculiarity of the tax system. The employer is burdened by law to deduct the tax chargeable on employees: The duty to file a return on the employees, make the required deductions and account to the relevant tax authority for the deductions made, and failure to do so attracts an administrative penalty of 40% of the amount collected, or 10% of the amount collected and not remitted and interest at the prevailing CBN rate.²⁹ In this case, even though the employer does not bear the burden of the tax because, obviously, the tax is an indirect tax, it bears the burden of compliance, and as such, it is the taxpayer for that purpose.

The standard practice, even in other jurisdictions, is that employers who fail to deduct and/or remit withholding taxes are proceeded against personally as though they are liable for the taxes themselves. For example, in the United States, an employer is required to withhold federal income and payroll taxes from its employees' wages and pay to the IRS. S. 6672(a) of the Internal Revenue Code provides that:

Any person required to collect, truthfully account for, and pay over any tax imposed by the Internal Revenue Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal

²⁸ As envisaged by the repealed s. 104 of the PITA

²⁹ The employer's PAYE obligations formerly discussed under sections 81 and 82 PITA are now principally reflected in sections 14 and 51(6)-(7) of the Nigeria Tax Administration Act, 2025. Failure to deduct is addressed by section 105, while failure to remit tax deducted at source is addressed by section 107.

to the total amount of the tax evaded, or not collected, or not accounted for and paid over.

The law allows the IRS to lift the veil of a corporation and proceed against any person responsible for the corporation's failure to pay the tax due, thus making him/her personally liable for the unpaid payroll taxes.³⁰ Payroll taxes account for nearly 70% of all revenue collected by the IRS in the United States³¹. The US Justice Department works with the IRS to prosecute cases of employment tax non-compliance and failure to remit trust fund taxes, which is a culmination of withholding taxes including payroll, taxes, pension and health contributions³².

The recovery of PAYE and withholding taxes records the most success in all tax jurisdictions, Nigeria inclusive. This is solely because of the implementation procedure of the said taxes. To suggest otherwise and require that the tax authority chases every taxpayer for the recovery of chargeable tax is absurd and almost impossible to implement and would negate the cardinal principle of taxation of simplicity of taxes, convenience and administrative efficiency. The decision in this case, if not overturned, will set the tax authority on a wild goose chase and diminish the already low compliance level in Nigeria. Assuming the tax authority sets out to implement same, the manpower required to implement, audit, investigate and enforce compliance will be overwhelming for the tax authorities, especially considering Nigeria's population. Furthermore, an attempt at this will marginalise administrative costs.

5. DISTRESS AND FAIR-HEARING

The authority to levy distress through an administrative warrant may expose the taxpayer to the risk of abuse of the process by tax officials, particularly where the taxpayer is not afforded an opportunity to verify or contest the tax authority's claim before the warrant is executed. In such circumstances, the application presented by the tax authority may not reflect the true position of the matter, while the court is required to act without the benefit of the taxpayer's account.

In the previous dispensation, where the tax authorities in states were required by the Act to obtain authority to levy distress through an *ex parte* order, the Court have found in various cases

³⁰ Vani Murthy. 'The Consequences of Willful Failure to Pay Payroll Taxes' Journal of Accountancy <https://www.journalofaccountancy.com/issues/2014/jun/20149645.html> 1 May, 2021.

³¹ US Department of Justice, Tax Division. 'Employment Tax Enforcement' <https://www.justice.gov/tax/employment-tax-enforcement-010> 10 May, 2021.

³² The summaries of prosecutions, indictment and guilty pleas are available at the official website of the US Department of Justice 'The Recent Criminal Employment Enforcement' <https://www.justice.gov/tax/recent-criminal-employment-enforcement-news11> 11 May, 2021.

that the figure presented before it to make such determination was incorrect. See for instance the decision of the Court of Appeal in *NDDC v. Rivers State Inland Revenue Service (RSBIRS)*³³ where the Court held that:

the tax officials fixed an arbitrary amount which the lower court acted upon in issuing the warrant when it held that ‘a requisite breakdown of figures every year is also necessary as failure to do so amounts to fixing an arbitrary amount, which is a non-compliance with the provisions of the Act. It is therefore my holding that the Demand Notice and the Best of Judgment assessment contained therein issued to the Appellant by the Respondent are invalid for failure to comply with the provisions of the Personal Income Tax (Amendment) Act, 2011.’³⁴

It is also our view that the process of obtaining the warrant for distress through *ex parte* (under PITA) and issued under the hand of the Executive Chairman of FIRS is subject to abuse, and because of the manner in which tax authorities use it, it denies the taxpayer fair hearing and, as such, it is unconstitutional and void. The amended law has removed the requirement for an *ex parte* order, and currently, the authority to levy distress is obtained administratively, which makes the taxpayer’s position worse. It is our recommendation that all warrants for distress should be applied for before the FHC, the SHC or FCTHC as the case may be through motions on notice, so that taxpayers may be heard if they have any reasons as to why the order should not be given. This is to avoid such a situation that arose in the case of *Access Bank v Edo State Board of Internal Revenue*³⁵ Where the tax officials omitted the fact that the taxpayer had paid part of the assessment sum claimed in their *ex parte* application. The Court of Appeal, as per Chukwudumebi Oseji, JCA, citing the decision in *Chief G.O. Igbiniedion Cfr v. Edo State Board of Internal Revenue*.³⁶ held that

Notwithstanding the disagreement over the actual liability of the Appellants, and the fact that the sum of N7,719,929.99k was paid then to the Respondent, it still proceeded by way of an *ex-parte* application before the trial court to obtain an order of distrain against the moveable and immovable properties of the Appellant. This to my mind is a case of gross breach of the Appellant’s right to fair hearing and accordingly, the said order *ex parte* made by the trial Court on the 21st day of July, 2015 cannot stand having been made in violation of the provisions of section 36(1) of the Constitution of the Federal Republic of Nigeria,

³³ (2020) 3 NWLR (Pt. 1711) 371 (CA)

³⁴ Pp 25-45, paras. E-A.

³⁵ J(2018) LPELR-44156(CA)

³⁶ J(2017) VOL. 265 LRCN 69 at 85 – 86

1999 (as amended) the whole proceedings become vitiated, null and void.

In *Independent Television/Radio v Edo State Board of Internal Revenue*³⁷ an earlier case, the court held otherwise, while the Court of Appeal in *NDDC v RSBIR*³⁸ refused to comment on the constitutionality or otherwise of the provision. Thus, the constitutionality or otherwise of the ex-parte procedure for obtaining the distress warrant in the PITA and consequently the warrant issued under the hand of the Executive Chairman of the FIRS as provided under CITA and FIRSEA was not resolved by the courts

The enactment of the new regime of tax laws has not improved the position of the taxpayer with the warrants now issued under the hand of the Chairman of NRS and the SBIRS. The continued retention of this position without any avenue for checks is subject to abuse and robs taxpayers of their constitutional right to a fair hearing. Although we appreciate that provisions of the Acts are to expedite recovery of tax revenues from recalcitrant taxpayers, it is obvious that the tax officials have resorted to acting ultra vires and abusing this power given to them, by violating the provisions relating to Best of Judgment, final and conclusive assessment and wrongful assessment, while taking advantage of the absence of the taxpayers when the distress authority is issued to rely on erroneous or unverified information.

Unfortunately, the positions in the cases discussed above are decisions of the Court of Appeal of different judicial divisions and are yet to be resolved by a decision of the Supreme Court, neither did the legislature resolve it when the opportunity to do so presented itself with the repeal and the enactment of the new tax laws. Therefore, we are of the strong view that the provision cannot be retained as it is. Tax officials already have a bad image before taxpayers because of such abuses of power. Provisions giving unfettered powers to act, without qualifications, should be expunged or qualified to avoid abuses, and instil confidence in taxpayers.

Furthermore, while the law as to the procedure for the levying of distress is clear as concisely discussed above, it is unfortunate that the tax officials have taken to the abuse of such powers in practice. Erstwhile, it is the prevalent practice of the tax authorities to seal off the premises of taxpayers in the erroneous exercise of the power of distress. The law authorises the seizure of goods and chattels of taxpayers, as well as distraining the premises of business and

³⁷ (2015) NWLR Pt. 1474 pp 442-494

³⁸ (2020) 3 NWLR (Pt. 1711) 371 (CA)

selling anything distrained. It is our opinion that it is antithetical to the purpose of the tax authority, which is the generation of revenue, to seal up businesses or sell off premises used for business by the execution of the distress warrant. If the business owners have other property or immovable property apart from that which they use for their day-to-day business, then there is no problem with the sealing and sale of such property. However, it is our opinion that there are other options available for recovery of tax which will not adversely affect the business and the source of livelihood of the employees. Sealing off businesses causes enormous financial losses and affects business reputation, which will in turn affect their productivity and employees. It is trite that taxation does not kill the goose that lays the golden egg; thus, sealing off businesses or selling off business premises will amount to destruction of the means of generating wealth or profit and hence have negative implications for the economy. It is our recommendation that the tax authority can also proceed personally against persons responsible for such deductions and remittance as provided under section 126 of the NTAA.³⁹

6. CONCLUSION/RECOMMENDATIONS

6.1 Conclusion

Distress is an extraordinary recovery mechanism because it permits interference with the property and business of a taxpayer before the ordinary process of debt recovery is exhausted. It is therefore imperative that the conditions precedent to the exercise of the power are strictly complied with and that the amount sought to be recovered truly represents a final and conclusive tax liability. The decisions in *NDDC v Rivers State Inland Revenue Service* and *Access Bank Plc v Edo State Board of Internal Revenue* demonstrate the consequences of arbitrary assessments, non-disclosure of material facts and the use of enforcement powers without sufficient regard to the taxpayer's right to a fair hearing.

The new statutory framework improves aspects of the former regime, particularly by consolidating the power of distrain, providing a uniform statutory warrant, distinguishing the powers of the Service from those of other relevant tax authorities in relation to sale, and expressly requiring the refund of any balance of sale proceeds within 90 days. However, the continued administrative character of the warrant makes transparency, proportionality and strict statutory compliance indispensable. The power to distrain should remain a measure of last resort for the

³⁹Section 105 and 107 on failure to deduct and failure to remit tax deducted at source.

recovery of an established tax debt and should not become a substitute for proper assessment, objection and dispute resolution procedures provided in the extant tax legislation.⁴⁰

6.2 Recommendations

In view of the foregoing, it is recommended that the exercise of the power of distrain under section 61 of the Nigeria Tax Administration Act, 2025, should be subject to strict internal verification that the assessment has become final and conclusive, that a valid demand notice has been served and that the period for payment has expired. A warrant should state with particularity the assessment periods, the amount due and the property against which enforcement is proposed, to reduce the possibility of arbitrary figures and abuse. Tax authorities should, as a matter of administrative practice, give the taxpayer a final written opportunity to demonstrate payment, and view details of the claim used as a basis for the distress warrant, any material error in the amount demanded before physical distrain is executed, except where there is a demonstrable risk that assets will be dissipated. This will not defeat the expeditious nature of distress but will strengthen procedural fairness and taxpayer confidence.

Furthermore, the sealing or sale of premises used as a going concern should be approached with restraint where other sufficient assets or statutory recovery mechanisms are available. Enforcement should be proportionate to the tax debt and should, as far as possible, avoid destroying the source from which future tax revenue is generated. The 90-day obligation under section 61(7) of the Nigeria Tax Administration Act, 2025 to refund the balance of sale proceeds should be strictly enforced, and the tax authority should render a written account of the costs of keeping and sale, the tax discharged and the balance refundable. Finally, tax authorities should strengthen accountability for officers who misstate liabilities, conceal material facts or otherwise abuse enforcement powers.

⁴⁰ See section 195 of the Nigeria Tax Act, 2025; sections 40-41 of the Nigeria Revenue Service (Establishment) Act, 2025; and section 61 of the Nigeria Tax Administration Act, 2025. The Joint Revenue Board of Nigeria (Establishment) Act, 2025 establishes the Joint Revenue Board, Tax Appeal Tribunal and Office of the Tax Ombud within the reformed dispute-resolution architecture