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A Critical Analysis of Corporate Tax Planning Under the Nigeria Tax Act, 2025: Doctrinal, Judicial, and Comparative Perspectives

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Abstract. The Nigeria Tax Act (NTA) 2025, enacted by the Nigerian National Assembly marks an important turning point in the reformation of the country's tax system. By harmonising previously different tax laws into a single legislative framework, and by introducing anti-avoidance measures consistent with global standards, the Act aims at improving transparency, accountability, and efficiency in tax administration. This paper considers corporate tax planning in Nigeria by differentiating legitimate tax planning and tax avoidance from unlawful tax evasion, while examining the degree to which the Act limits aggressive tax planning strategies. Using a doctrinal and comparative research methodology, the paper analyses the major reforms introduced by the Act within the broader context of international tax governance. Comparative insights are drawn from the United Kingdom and the United States' tax systems, including the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) framework. The author argues that Nigeria is moving from a permissive tax planning environment to a more substance-based and compliance-driven regime influenced by the BEPS principles. It concludes that the success of the Act will be determined by effective enforcement, institutional capacity, and stronger corporate governance, mandating businesses to embrace sustainable and lawful tax planning strategies.

Keywords: Corporate Tax Planning, Nigeria Tax Act 2025, Critical Analysis, Tax Avoidance, Tax Evasion.

1. Introduction

The enactment of the Nigeria Tax Act (NTA) 2025, ("the Act") with January 1, 2026 effective date, signals a revolutionary turnaround in Nigeria's corporate taxation framework, amalgamating various tax regimes into one statute and incorporating anti-avoidance provisions aligned with international standards.[1]

The reforms aim at increasing revenue mobilisation, curbing base erosion, and standardising tax administration. However, these reforms have fundamentally changed the platform within which corporate tax planning has hitherto operates. In the new Act, conventional strategies—especially those exploiting gaps between domestic law and international tax rules—are constrained through the provisions of anti-avoidance rules, economic substance requirements, and global minimum tax rules.

Tax planning by corporations in Nigeria can be described as a practice of very aggressive minimising of tax liability by exploiting ambiguities in the legislation and inefficacies in its administration, as well as contradictory judicial decisions. The NTA 2025 has fundamentally changed tax planning strategies from those in which there are confusing and overlapping provisions to a tax planning strategy with transparent provisions and anti-avoidance rules, in conformity with international practices. This paper analyses the restructurings of corporate tax planning strategies

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

under the Act, with comparisons drawn from the United Kingdom, OECD and BEPS frameworks.[2]

In general terms, tax planning is a lawful structure or organization of the taxpayer's financial activities in order to reduce the amount of tax payable within the confines of the law. Through the Act, tax planning now appears more formalised, clear, and in conformity with international norms. Tax planning generally can be described as the legal disposition of taxpayers' affairs to reduce the tax payable. Its importance in contemporary fiscal matters is significant. Historically in Nigeria, its disparate structure and system had promoted aggressive tax practices such as profit shifting, thin capitalisation, and unclear accounting practices.

The consolidation of multiple tax statutes into a single framework, the expansion of anti-avoidance provisions, the introduction of minimum effective tax rules, and digital taxation mechanisms have radically altered corporate tax planning from a fragmented, loophole-prone system to a modern, globally aligned tax regime. By incorporating the OECD/BEPS principles, introducing minimum tax rules, and expanding anti-avoidance mechanisms, the Act significantly restricts aggressive tax planning strategies and aligns Nigeria with international tax norms. These innovations raise a fundamental question: What is the extent of permissible tax planning under the NTA 2025? In answering this question, the author compares the Nigerian tax laws with some other jurisdictions, and also considers the doctrinal and judicial perspectives of tax planning law.

2. Conceptual Analysis: Tax Planning vs Tax Avoidance vs Tax Evasion

2.1 Tax Planning, Tax Avoidance, and Tax Evasion

Generally, tax planning involves taking advantage of allowable deductions, reliefs, tax holidays, and other incentives in tax law to pay the least tax possible. It is the structuring of transactions efficiently, timing income and expenses legally, and ensuring compliance to avoid penalties.[3] Under the Act, tax planning is now more compliance-driven and transparent, unlike older regimes where loopholes encouraged aggressive tax avoidance. Simply put, tax planning is the legitimate structuring of transactions to reduce tax liability.

According to studies on the subject, "tax avoidance" refers to any legitimate tax planning technique used by businesses to reduce their taxable profit.[4] Conversely, any strategy employed by taxpayers to lower their tax liability from their source of income in a manner that is against the law is known as tax evasion.[5] Harvey[6] defines tax planning as formulating plans to reduce tax liabilities during the course of the tax year, such as selecting the most advantageous tax filing status for the taxpayer. One way to attain this tax planning position is to defer selling an asset until the following year to realise capital gains. Making an investment choice based on a company's estimated revenue as well as its present and future tax obligations is another strategy of tax planning.

A company's income tax basis and revenues have been impacted by how tax planning adapts to changes in tax law. This argument is supported by a combination of tax avoidance, evasion, and tactics, such as overstating tax deductions or underreporting taxable income. One of the means of achieving this, for example, is to treat non-deductible expenses as if they are deductible, thereby reducing chargeable profit and, by so doing, reducing tax payable. Tax planning techniques are generally legal, although some people may use them to evade taxes by understating their taxable income or overstating their deductions.[7]

Tax planning has been defined in many ways, one of which is "the capacity of the taxpayer to arrange his financial activities in a way that will minimise his

[2] OECD/G20 BEPS Inclusive Framework, Tax Policy Reforms 2025.

[3] CR Harvey, "Tax planning" <http://financial dictionary.thefreedictionary.com/Tax_Plan> accessed 4 July 2025.

[4] A Sanni, 'The Multiplicity of Taxes in Nigeria. Issues, Problems, and Solutions' [2012] IJBSS 3 (17) 3-4. <https://risevest.com/blog/differences-between-tax-avoidance-and-tax-evasion> accessed 25 May, 2025.

[5] A Sanni, Ibid.

[6] CR Harvey, "Tax planning" <http://financial dictionary.thefreedictionary.com/Tax_Plan> accessed 4 July 2025.

[7] D Bruce et al, 'On the extent, growth, and Efficiency Consequences of State Business Tax Planning' in AJ Auerbach et al, (eds.), *Taxing Corporate Income in the 21st Century*. (Cambridge, United Kingdom: Cambridge University Press, 2007) 226-256.

expenditure for taxes."[8] Jeff Pniowsky[9] defined it as "the process of arranging one's affairs to defer, reduce or even eliminate the amount of taxes payable to the government." The best way to lower tax liabilities while staying within the boundaries of the tax law has likewise been determined to be tax planning. This is made possible by the various tax benefits offered by the tax laws and the varying tax rates across different economic sectors and jurisdictions.[10]

In his submission, Hoffman[11] argued that it is essential to distinguish between tax avoidance and tax evasion to comprehend tax planning principles. Failure to do so may result in the discrediting of permissible tax planning, which could have major legal ramifications (such as fines arising from a taxpayer's ignorance of any legal component of tax planning). Thus, it can be said that the phrases "legal" and "illegal" are essential for defining the differences between tax avoidance and tax evasion."[12]

The legal use of the tax law to one's benefit in order to lawfully reduce the amount of tax owed through legal means is known as tax planning, sometimes known as tax avoidance. According to Wheatcraft, it is the art of dodging tax without breaking the law.[13]

A distinction between tax avoidance and tax mitigation can also be drawn in jurisdictions such as New Zealand and the United Kingdom. Tax avoidance is a set of business transactions designed to defeat the intention of the legislature. On the other hand, tax reduction, also known as tax planning, are transactions that mitigate tax liabilities without avoidance. This conduct aligns with the intention of the legislature. Such conduct includes investing in businesses with low tax burden, or in industries that enjoy tax incentives or holidays.

The clear understanding of the distinction between avoidance and mitigation goes back to the 1970s. In the New Zealand case of *IRC v Challenge Corporation Ltd*,[14] the issue of application of double taxation treaties and relief from double taxation came for determination. The facts of the case were that Challenge Corporation Ltd was a New Zealand company that paid dividends to a UK-resident shareholder. Under the UK-New Zealand double taxation agreement, there were provisions regarding relief from double taxation on income, such as dividends. The issue arose as to how much credit (relief) the UK shareholder could claim for tax paid in New Zealand, especially in relation to the underlying corporate tax paid by Challenge Corp in New Zealand. It was held by the House of Lords that the UK taxpayer was qualified to enjoy a tax credit for the underlying New Zealand corporate tax paid by Challenge Corp, because it is not the shareholder but the company that paid the tax, and the treaty did not expressly provide for crediting such tax. The decision indicated that double tax relief is strictly based on the treaty's wordings. This author agrees with the UK tax authorities (IRC) in denying credit for tax paid by the New Zealand company because relief provisions must be clearly expressed.

In practice, there is a very thin line of distinction between tax avoidance and tax evasion. The main factors to consider when deciding if a particular transaction is avoidance or mitigation include whether a particular tax law is applicable, or if transactions have economic value.

Another approach in differentiating tax avoidance and tax mitigation is to determine if the transaction is artificial or not. A transaction cannot be referred to as 'artificial' if it has valid legal basis unless some standards can be set up to establish what is 'natural' in the circumstance. It must be noted that part of the reasons for high tax avoidance can be traced to the

[8] WH Hoffman, 'The Theory of Tax Planning' [1961] TAR 36 (2), 274.

[9] J Pniowsky, 'Aggressive tax planning-How aggressive is too aggressive?' (Thompson Dorfman Sweatman LLP, 3, 2010) 1. <http://www.tdslaw.com/newsletter/2010/Oct/articles/aggressive_tax_planning.pdf.>accessed 18 June 2023.

[10] L Fallan, et al, 'Adoption of Tax Planning Instruments in Business Organizations: A Structural Equation Modelling Approach' [1995] SJM 11(2), 177-190.

[11] WF Hoffman, Op. cit.

[12] NS Abdul Wahab, *Tax planning and corporate governance: Effects on shareholders valuation.* (Thesis for the degree of Doctor of Philosophy, University of Southampton, Southampton UK, 2010) from <http://eprints.soton.ac.uk/> accessed 5 November 2025.

[13] O Oguntokun: 'Global Perspectives in Tax Evasion and Avoidance: The Legal Quagmire in Nigeria,' in (*KWAREVE News*, a monthly publication of Kwara State Internal Revenue Service, 3 (21), August 2017) 7.

[14][1986] NZPC 1; [1986] UKPC 45.

multiplicity of taxes in Nigeria,[15] which the Act has come to correct by consolidating these fragmented laws into a unified Act.[16]

In all, tax avoidance is the undertaking of transactions that align with what the law provides but violate the intent of the lawmakers. On the other hand, tax evasion is used to describe efforts by any person or entity to illegally reduce tax liabilities, or fail to pay tax as and when due or refuse to pay tax at all. Tax evasion involves deliberate manipulation of state of affairs by the taxpayers to the tax authorities to reduce tax liability. Such manipulation includes but is not limited to dishonesty in reporting tax. It may also extend to refusal to pay tax, or failure to pay tax as and when due.[17]

Tax evasion is a crime in most countries, including Nigeria, and subjects the guilty party to fines, imprisonment, or both. Tax aggressiveness is a behaviour of manipulating taxable income that can lead to tax evasion.[18] Tax aggressiveness can also be defined as a deliberate act by taxpayers who adopt aggressive or borderline positions to minimise their tax liabilities in breach of current tax regulations. To sum up, tax avoidance is any lawful act resulting in paying lesser tax.

2.2 Tax Planning vs Tax Avoidance: From Strict Interpretation to Purposive Interpretation

Historically, corporate tax planning has been the lawful arrangement of affairs to reduce tax burden. The distinction between lawful tax planning and unlawful avoidance has been framed by judicial pronouncements.

In *IRC v Duke of Westminster,*[19] the House of Lords affirmed the taxpayer's right to arrange affairs to reduce tax liability. However, modern jurisprudence has moved towards a purposive interpretation. In *WT Ramsay Ltd v IRC,*[20] the UK courts denounced artificial tax schemes lacking commercial value, establishing the *Ramsay principle*, which allows courts to disregard composite transactions designed purely for tax avoidance. Similarly, Nigerian courts have increasingly embraced purposive interpretation, though not yet as robustly institutionalised as in the UK.

2.3 Methodology

The author used a doctrinal and comparative research methodology by researching into the works of previous writers, textbooks and journal articles, reviewing judicial decisions, employing online materials, and comparing tax planning law in Nigeria with those of the US and the UK.

2.4 Legal Framework of Tax Planning under the NTA 2025

The Act introduces several key reforms, especially regarding tax planning strategies. These include the General Anti-Avoidance Rules (GAAR),[21] Enhanced transfer pricing regulations,[22] Mandatory disclosure of aggressive tax arrangements, Digital tax compliance mechanisms,[23] and stringent penalties for infractions. These provisions aimed at aligning Nigeria's tax system with global standards.

The legal framework of tax planning under the Act refers to the body of statutory provisions, administrative structures, and guiding principles that regulate how taxpayers can legally reduce their tax liabilities and still comply with the law. The framework is broader than a single statute—it is built around the NTA 2025 and supporting tax reform laws.

2.5 Consolidation and Harmonisation

The Act consolidates a plethora of tax laws into a single unified framework and simplifies Nigeria's tax structure by mitigating multiplicity of taxes.[24] It expands deductions, incentives, and taxable scope.[25] It also introduces digital taxation and aligns with global standards (e.g., OECD BEPS). This means tax planning is now easier to understand, more regulated, and less prone to abuse. The

[15] A Sanni, 'The Multiplicity of Taxes in Nigeria. Issues, Problems, and Solutions' [2012] IJBSS 3 (17) 3-4.<https://risevest.com/blog/differences-between-tax-avoidance-and-tax-evasion> accessed 25 May, 2025.
[16] Nigeria Tax Act 2025, s 1.
[17] A Sanni, "The Multiplicity of Taxes in Nigeria. Issues, Problems, and Solutions" [2012] IJBSS 3 (17) 3-4. <https://risevest.com/blog/differences-between-tax-avoidance-and-tax-evasion> accessed 25 May, 2025.
[18] MM Frank et al., 'Tax Reporting Aggressiveness and Its Relation to Aggressive Financial Reporting' [2009] TAR 84 (2) 467-496.
[19] [1936] AC 1.
[20] [1982] AC 300.
[21] Nigeria Tax Act 2025, ss 190-193.
[22] Nigeria Tax Act 2025, s 192 (2).
[23] Nigeria Tax Act 2025, s 27 (6).
[24] Nigeria Tax Act 2025, s 1.
[25] Nigeria Tax Act, 2025 s 20.

harmonisation of multiple tax laws into a unified statute has reduced duplication and regulatory arbitrage. This limits planning strategies previously based on jurisdictional inconsistencies and overlapping tax regimes.

3. Anti-Avoidance Provisions

The Nigeria Tax Act 2025 introduces a plethora of anti-avoidance mechanisms, including:

3.1 Minimum Effective Tax Rate (ETR)

Large multinational enterprises shall meet a minimum tax threshold. The Act introduces an ETR of 15% of a company's net income. [26] The Act defines net income as the profits before tax as reported in the Audited Financial Statements, excluding franked investment income.[27] This provision applies to companies with a turnover greater than ₦50 billion, and companies that are part of a multinational enterprise group with an aggregate turnover of at least €750 million or its equivalent.

The provision aligns with the OECD Pillar II framework, which mandates a top-up tax to ensure that large multinational groups with a turnover exceeding €750 million or its equivalent pay tax at an ETR of 15% on the income generated in each jurisdiction in which they operate. This provision under the Act is a significant improvement on the repealed Companies Income Tax Act 2007, as it prevents large multinational companies such as the Nestle Group from profit shifting. Under the OECD Pillar Two, multinationals must pay a minimum 15% ETR globally, and top-up taxes apply where income is undertaxed. This strategically ends the hitherto "stateless income" planning structures and thereby reduces opportunities for tax aggressiveness.

3.2 Controlled Foreign Company (CFC) Rules and Taxation of Nigerian Companies

The significant changes in this area include:

(a) Introduction of Controlled Foreign Corporation (CFC) Rules: The Act introduces CFC rules to prevent profit shifting. Where a foreign subsidiary of a Nigerian company deliberately retains profits that could have been distributed without adversely affecting its operations, with the intention of avoiding tax payment, those profits will be deemed distributed and taxed in Nigeria.[28] This puts an end to the deferral advantage sometimes employed in tax planning and thereby enhances Nigeria's ability to spread its tax net to cover tax offshore profits that economically belong to Nigerian entities.

(b) Anti-base erosion through minimum Effective Tax Rate (ETR): The Act also adopts a top-up tax mechanism aligned with the OECD's BEPS Pillar 2 framework. Profit shifting to low-tax jurisdictions is neutralised, and the use of tax havens becomes ineffective unless justified by substance. If a foreign subsidiary of a Nigerian company pays less than the minimum ETR of 15%, the shortfall must be paid by the Nigerian parent. This provision discourages the use of low-tax jurisdictions for profit shifting and ensures a better allocation of tax income to Nigeria. These measures enhance the robustness of Nigeria's tax system by addressing manipulative tax avoidance strategies, protecting the domestic tax base, and aligning with global standards on BEPS.

(c) Taxation of Non-Resident Persons (NRPs):[29] When determining total profits, only expenses incurred in producing the profits connected to the permanent establishment in Nigeria will qualify for deduction. Put differently, they are expenses wholly and exclusively incurred in producing the profits.[30] However, royalty, fees, or similar payments in return for the use of patents or other rights are not deductible.[31] The Nigeria Revenue Service (NRS) shall apply the applicable profit margin to the total income generated from Nigeria where the total profits of a Non-Resident Person cannot be determined. However, the tax payable by any NRP will not be less than the tax withheld at source.[32] If the NRP does not have any income liable to withholding tax, the tax payable shall not be less than 4% of the total income generated from Nigeria.

(d) Record-keeping: The Act mandates separate record-keeping for priority and non-priority operations, audited independently.[33] Taxpayers are required to maintain accurate books of accounts and financial records, retain records for a specified statutory period and provide supporting documentation for deductions, reliefs, and exemptions. Failure to comply will result in all

[26] Nigeria Tax Act, 2025. s 57.
[27] Nigeria Tax Act, 2025. s 202.
[28] Nigeria Tax Act, 2025. s 6.
[29] Nigeria Tax Act, 2025. s 6.
[30] Nigeria Tax Act, 2025. s 20.
[31] Nigeria Tax Act, 2025. s 21.
[32] Nigeria Tax Act, 2025. s 19.
[33] Nigeria Tax Act, 2025. s 179.

income being treated as non-priority, disqualifying the company from tax credits. It may also result in penalties or additional tax assessments. In addition to annual tax returns, companies are required to submit annual tax incentives returns to the relevant tax authority in the form prescribed by the NRS. The implication of this is that proper record keeping will make business transactions transparent, thereby preventing any form of tax shielding, and thereby preventing tax evasion or aggressive tax planning.

(e) Transitional provisions and anti-avoidance: The Act also prohibits double-dipping as companies granted the Economic Development Tax Credit (EDTC) are barred from accessing similar incentives under any other law.[34] However, businesses currently benefiting from the PSI may continue for the remainder of their approved period. Likewise, EDI benefits granted before a sector's sunset date remain valid until expiry.

(f) Sunset Clause: The Act provides for a "sunset" mechanism setting a timeframe or deadline after which a sector or entity will no longer qualify for EDI, ensuring periodic review and relevance of tax incentives.[35] This prevents uncertainty that characterised indefinite timeline under the old regime. While the former framework allowed for periodic review and deletion from the PSI list (i.e., manufacture of cement), the processes for these were sometimes unclear. With this clear provision under the Act, companies can now take advantage of the incentives within the timeframe to reduce their tax liabilities and avoid tax aggressiveness.

(g) Rescoping the VAT exempt and Zero-Rated Supplies in Nigeria: Sections 185 to 187 of the Act outline the items that make up exempt and taxable supplies that are chargeable at zero percent rate.[36] The Act also allows for the transfer of unutilised capital allowances, unabsorbed losses, and unutilised withholding tax credits from merging entities to the surviving entity in case of mergers.[37] The surviving entity shall make use of the unutilised capital allowance.

This is another incentive which companies can utilise in their tax planning strategies instead of relying on loopholes in tax law to achieve the same objective. As much as possible, the Act has drastically reduced instances of loopholes that encourages tax aggressiveness or manipulative tax avoidance.

3.3 Incentives and Reliefs: From Tax Holidays to Performance-Driven Incentives

The Act replaces traditional tax holidays with performance-based incentives. This restructures tax planning towards investment-driven strategies and compliance-based optimisation. The Act introduces several tax incentives,[38] such as income generated by companies engaged in agricultural businesses, including crop production, livestock, aquaculture, forestry, dairy, cocoa processing and manufacturing of animal feeds. This income will be exempt from income tax for the first five years of starting the business.

Also, a company will be qualified for a further deduction of 50% in the relevant years of assessment regarding costs incurred in any two calendar years from 2023 to 2025 with respect to wage awards, salary increases, transportation allowance, or transport subsidy granted to a low-income worker that brings the gross remuneration of such worker to a maximum amount of ₦100,000. However, any amount above ₦100,000 in this regard shall not qualify.[39]

3.4 Administrative and Compliance Measures

The administrative and compliance measures under the Act is the Nigeria Tax Administration Act, 2025 (NTAA 2025). The NTAA 2025 provides for measures meant to make tax processes simple, enhance enforcement, and ensure taxpayer accountability. Specifically, the NTAA 2025 provides for the disclosure of tax planning strategies employed in the business transactions.[40]

3.5 Harmonised Tax Administration Framework

A central administrative reform is the creation of a uniform tax administration system applicable across federal, state, and local levels in Nigeria. The NTAA 2025 provides for procedures for assessment,[41] collection, and enforcement of taxes.[42] It cancels

[34] Nigeria Tax Act, 2025. s 183.
[35] Nigeria Tax Act, 2025 s 177 (3) and ss 183-184.
[36] Nigeria Tax Act, 2025, ss 185-187.
[37] Nigeria Tax Act, 2025, s 189.
[38] Nigeria Tax Act, 2025, s 166.
[39] Nigeria Tax Act, 2025, s 166 (3) (a).
[40] Nigeria Tax Administration Act, 2025, s 30.
[41] Nigeria Tax Administration Act, 2025, Chapter II, Part II.
[42] Nigeria Tax Administration Act, 2025, Chapter II, Part III.

duplication and conflicting tax provisions, and ensure coherence and predictability in administration. It also makes clear provisions for offences and penalties[43] to enhance compliance.

3.6 Mandatory Taxpayer Registration and Identification

Administrative compliance begins with proper registration. Every taxable person shall register with the relevant tax authority. The use of Tax Identification Numbers (TINs) is mandatory for tracking taxpayers.[44] Tax authorities maintain a centralised taxpayer database. The purpose is to widen the tax net and ensure traceability of taxable persons. Inspired by OECD BEPS Action 12, the NTA 2025 provides for mandatory disclosure rules which mandates disclosure of aggressive tax arrangements.[45] This shifts the compliance burden onto taxpayers and advisors.

(a) Self-Assessment and Filing Obligations[46]
A major compliance measure is the introduction of a self-assessment regime.[47] Taxpayers must file periodic tax returns (usually annually or as prescribed). Returns are deemed to be self-assessed declarations of tax liability. Filing may be done electronically through digital platforms. This encourages voluntary compliance, reduces administrative burden on tax authorities, and aligns with global best practices, such as the OECD model.

(b) Digitalisation of Tax Administration[48]
The Act strongly promotes electronic tax systems through E-filing of returns, digital record-keeping, data integration, and electronic tax assessments and notices. This reform enhances efficient tax planning, transparency, and real-time monitoring of compliance. The inclusion of digital and virtual asset transactions within the tax base expands the scope of taxable income. Companies operating in digital sectors must implement data tracking systems for digital transactions. This aligns with evolving valuation methodologies and ensures cross-border digital income is appropriately reported. These provisions in the Act mirrors OECD BEPS Action 1 addressing the tax challenges of the digital economy.

(c) Powers of Tax Authorities (Audit and Investigation)
To ensure compliance, tax authorities are granted extensive administrative powers, such as the power to audit tax returns and financial records, authority to enter business premises[49] and inspect documents,[50] power to remove books and documents,[51]and power to request information from taxpayers and third parties. Refusal to grant access may attract penalties.

(d) Assessment and Collection Mechanisms

Administrative measures also include structured procedures for tax assessment through the acceptance of taxpayer self-assessment, and issuance of additional assessments where necessary. Enforcement is carried out through demand notices, garnishee orders, and recovery proceedings. The goal is efficient and timely tax collection.

4. Judicial Attitude to Tax Planning in Nigeria

The judicial attitude to tax planning in Nigeria reflects a gradual evolution from strict legal formalism (respect for taxpayer autonomy) to a more purposive and anti-avoidance–oriented approach under the Act. Nigerian courts generally recognise the legality of tax planning but draw a clear line between legitimate tax avoidance and illegal tax evasion.

4.1 Conceptual Foundation: Tax Planning v Tax Evasion

Nigerian courts have consistently distinguished tax planning or tax avoidance, which is the arrangement of business transactions to minimise tax liability within the law, and which is considered legal, from tax evasion, which is illegal because it is the deliberate misrepresentation, concealment, or fraud to escape tax. This distinction underpins judicial reasoning.

4.2 Traditional Judicial Attitude: Strict Legalism

[43] Nigeria Tax Administration Act, 2025, Chapter IV, Part I.
[44] Nigeria Tax Administration Act, 2025. ss 7-8.
[45] OECD, *Mandatory Disclosure Rules, Action 12 – BEPS Project* (2015).
[46] Nigeria Tax Administration Act, 2025 s 11.
[47] Nigeria Tax Administration Act, 2025. s 34.
[48] Nigeria Tax Administration Act 2025. ss 79 and 83.
[49] Nigeria Tax Administration Act 2025. s 58.
[50] Ibid.
[51] Nigeria Tax Administration Act 2025. s 59.

Historically, Nigerian courts adopted the literal rule of interpretation, emphasising that a taxpayer is entitled to arrange his affairs to pay the least tax possible. This approach is rooted in English jurisprudence, particularly in *IRC v Duke of Westminster*. [52] The underline principle in that case is that if a transaction complies with the letter of the law, courts will respect it—even if it reduces tax liability. The Nigerian courts initially followed this approach by respecting corporate structures, upholding artificial but legally valid transactions, and avoiding inquiry into taxpayer motive.

4.3 Shift Toward Substance Over Form

Over time, Nigerian courts began to move away from rigid formalism toward examining the economic reality of transactions, as can be seen in the case of *Ayanwale v FIRS.*[53] Courts may now look beyond legal form, examine the substance and intent, and disregard sham or artificial transactions. This marks a shift toward anti-avoidance reasoning as evident under the Act. In *FIRS v Mobil Producing Nigeria Unlimited,*[54] the court distinguished legitimate structuring of petroleum operations (avoidance) from manipulative accounting practices (evasion). The case emphasised that intention and legality of the arrangement are key tests. Also, in *Oando Plc v FIRS,*[55] the tribunal upheld the taxpayer's right to rely on statutory incentives and allowances. It confirmed that using tax incentives is avoidance and it is lawful, while falsifying claims is evasion and unlawful. The case of *Furniss v Dawson*[56] also reinforced the substance-over-form doctrine.

4.4 Anti-Avoidance Doctrine in Nigerian Jurisprudence

Modern judicial attitude reflects increasing reliance on substance over form principle. Courts now assess the real nature of the transaction to see whether it has commercial purpose beyond tax benefits. Also, the sham transaction doctrine is to the effect that a transaction may be disregarded if it is fictitious and if it lacks economic reality. Furthermore, under the business purpose test, courts usually ask a pertinent question: does the transaction serve a genuine commercial objective? If it does not, then it will be disregarded, and applicable tax will become payable. All of these are judicial interventions to prevent tax evasion.

4.5 Statutory Influence on Judicial Attitude

Judicial reasoning is now heavily influenced by statutory anti-avoidance provisions, such as section 22 of the repealed Companies Income Tax Act. The courts have since been supporting the power of tax authorities such as the Nigeria Revenue Service to disregard artificial transactions and reconstruct tax liability where avoidance is evident.

4.6 Key Nigerian Cases Reflecting Judicial Trends

In *FBIR v Halliburton* (WA) Ltd,[57] the Supreme Court emphasised substance over form in determining tax liability. In *Shell Petroleum Development Company v FIRS,*[58] the court rejected artificial arrangements designed to evade tax obligations and upheld tax authority scrutiny of complex arrangements. Also, in *Abdulrazaq v FIRS,*[59] the court reinforced the distinction between avoidance and evasion. It supported the sanctioning powers of the FIRS where abuse is evident. Furthermore, in *Cadbury Nigeria Plc v FIRS,*[60] the court demonstrated readiness to investigate financial structuring by highlighting the importance of transparency and proper accounting.

4.7 Contemporary Judicial Attitude

The current Nigerian judicial stance can be summarised as balanced and pragmatic because courts will uphold legitimate tax planning, respect corporate personality and legal structures, and apply strict interpretation where statutes are clear. However, the courts will neither allow abuse of legal forms nor recognise sham or fictitious transactions. The court will also not allow tax evasion that has been disguised as tax avoidance.

[52] Ayrshire Pullman Motor Services v IRC (1929)
[53] (2017) 32 TLRN 1 (TAT).
[54] (2016) 28 TLRN 1.
[55] (2014) 1 TLRN 1 (TAT).
[56] [1984] AC 474.
[57] [2016] 4 NWLR (Pt. 1501) 53.
[58] Consolidated Appeals Nos. TAT/LZ/040/2013, TAT/LZ/041/2013 & TAT/LZ/042/2013.

[59] ***Abdulrazaq v FIRS* (2014) 6 TLRN 1 (Tax Appeal Tribunal); Shell Petroleum Development Company of Nigeria Ltd v Federal Board of Inland Revenue *(1996) 8 NWLR (Pt. 466) 256 (SC).***
[60] (2010) 2 NWLR (Pt. 1179) 561.

4.8 Comparative Analysis with the UK and the US

The UK tax system provides a mature model of anti-avoidance regulation. These are the GAAR framework under the Finance Act 2013, the Disclosure of Tax Avoidance Schemes (DOTAS). The Judicial approach in *IRC v Duke of Westminster,*[61] allowing tax planning is giving way to the modern purposive interpretation. The UK experience demonstrates a shift from formalism to substance-over-form analysis.

The UK's CFC regime, particularly under the Finance Act 2012, similarly targets artificial profit diversion. In *Cadbury Schweppes plc v IRC*[62] the European Court of Justice held that CFC rules must target "wholly artificial arrangements." Nigerian law, however, appears broader, focusing less on artificiality and more on effective taxation thresholds, thereby reflecting BEPS-driven substance requirements.

The UK adopts a General Anti-Abuse Rule (GAAR) under the Finance Act 2013. The rule targets "abusive" arrangements and applies a "double reasonableness" test. In the UK, while the *IRC v Duke of Westminster*[63] legitimised tax avoidance, the case of *WT Ramsay Ltd v IRC*[64] introduced purposive interpretation. The US, on the other hand, adopts the economic substance doctrine and the substance-over-form principle. For instance, the US case of *Gregory v Helvering*[65] established that transactions must have economic substance. It is a landmark decision of the US Supreme Court on the distinction between legitimate tax avoidance and impermissible tax evasion, and it established the "substance over form" principle in tax law. The Nigerian situation is quite different from these. Presently, Nigeria is moving from Westminster-style formalism towards the Ramsay-style substance.
Nigeria's CFC rules and minimum tax mirror the US anti-deferral regimes. Unlike the UK's judicially developed doctrines, Nigeria's approach is statutorily codified, reducing reliance on judicial activism. In *IRC v DSG Retail Ltd,*[66] the House of Lords emphasised strict adherence to arm's length standards. Similarly, Nigerian tax authorities, such as the Nigeria Revenue Service, are empowered to re-characterise transactions lacking economic substance.

4.9 Influence of Global Tax Norms and Laws

Nigerian courts are increasingly influenced by international standards, especially by incorporating and complying with the OECD Base Erosion and Profit Shifting (BEPS) principles, and the anti-abuse doctrines such as the General Anti-Avoidance Rules (GAAR), and the economic substance doctrine. This aligns Nigeria with global tax jurisprudence trends, and they are provided for in the Act. The OECD's BEPS project seeks to curb: profit shifting and base erosion. In this regard, there are two key pillars: Pillar One (digital taxation), and Pillar Two (global minimum tax). Nigeria's 15% minimum ETR aligns with OECD Pillar Two. Under the Act, there is now a shift from aggressive to defensive tax planning.

Tax planning now focuses on compliance, risk management, and transparency. The unified tax laws now eliminate multiple taxation loopholes, and drastically reduce jurisdictional inconsistencies. Also, penalties and enforcement powers discourage aggressive schemes. The Act now aligns with Global Standards by transiting toward the OECD-compliant taxation, and by embracing the global transparency norms. For taxpayers and corporations, transactions must have economic reality, and serve business purposes beyond tax reduction. Tax authorities and courts now closely examine aggressive tax planning schemes. Taxpayers must maintain proper records, and justify transactions.

The OECD BEPS project represents the global standard for combating aggressive tax planning. Under the Act, most of the provisions of this project have been incorporated. The key pillars include:

BEPS Action 3 – Controlled Foreign Company (CFC) rules
BEPS Action 4 – Interest limitation
BEPS Action 6 – Treaty abuse prevention
BEP ACTION 12-Mandatory disclosure rules
BEPS Action 13 – Transfer pricing documentation through country-by-country reporting.
Pillar Two – Global minimum tax (15%)

Thus, the NTA 2025 reflects these principles through the introduction of CFC rules, the minimum

[61] *IRC v Duke of Westminster* [1936] AC 1 (HL).
[62] (Case C-196/04).
[63] *IRC v Duke of Westminster* [1936] AC 1 (HL).
[64] *WT Ramsay Ltd v IRC* [1982] AC 300.
[65] 293 U.S. 465 (1935).
[66] [2009] UKHL 4.

effective tax rate of 15% for multinationals, and the expansion of taxing rights over non-resident companies. Nigeria's adoption of these principles under the Act reflects increasing global tax harmonisation.

5. Key Areas of Corporate Tax Planning under NTA 2025

The Act affects companies through a revised corporate tax rule. There is also a broader definition of taxable entities (including foreign-controlled companies), as well as the introduction of global minimum tax concepts. Corporate tax planning strategies under the Act include proper capital structuring (debt vs equity), timing of revenue recognition, use of tax-deductible expenses, and group restructuring to optimise tax exposure. The Act expands allowable deductions such as business expenses, capital investments, and sector-specific allowances. For example, gas reinjection and infrastructure investments are deductible in petroleum operations. Generally, planning focuses on the identification of fully deductible and non-deductible expenses, as well as avoiding disallowed expenses (e.g., penalties).

Investment and Incentive-Based Planning: The Act promotes investment through capital allowances, sector incentives (e.g., energy, infrastructure), and tax reliefs for certain industries. Planning Strategies include investing in tax-favoured sectors, structuring projects to qualify for incentives, the use of capital allowances to defer tax, the use of double taxation treaties, transfer pricing compliance, and avoiding base erosion risks.

General Anti-Avoidance Rules (GAAR): The GAAR empowers tax authorities to disregard artificial or fictitious transactions designed to evade tax liability. This reflects principles established in *WT Ramsay Ltd v IRC*.[67] Under the Act, companies must ensure that transactions have economic substance beyond tax benefits.
Transfer Pricing Regulations: The Act reinforces the arm's length transaction consistent with the OECD Transfer Pricing Guidelines.[68] Multinational corporations are required to justify intra-group transactions with economic evidence.

Digital Economy Tax Planning: There are new provisions in the Act that cover online businesses, remote services, and digital transactions. The planning strategies include proper classification of digital income, ensuring compliance with digital tax rules, and structuring cross-border digital operations efficiently. Under the Act, there is now a mandatory taxpayer registration as well as electronic filing and invoicing, which must strictly be complied with by maintaining accurate records and filing taxes promptly, thereby avoiding penalties and audit. Compliance itself is now a core tax planning strategy.

Anti-Avoidance and Limits to Tax Planning: The Act discourages aggressive tax avoidance through broader tax definitions, anti-avoidance rules, and increased transparency. This creates a distinction between tax planning (legal and acceptable), tax avoidance (exploiting loopholes, which has now been restricted, and tax evasion, which is illegal.

Importance of Tax Planning under NTA 2025: Tax planning is essential because it reduces tax burden legally, improves cash flow, enhances business profitability, ensures compliance with modern tax rules, and minimises the risk of penalties.

Strategic implication: Companies must abandon artificial structuring (e.g., asset disposal schemes) and adopt substance-over-form planning. Tax planning should now focus on operational efficiency rather than transactional re-characterisation.

Anti-Avoidance and Minimum Tax Regime: There is the introduction of a 15% minimum effective tax rate (ETR) for large companies and multinationals. This makes top-up tax applies where profits are shifted to low-tax jurisdictions.[69]

Restructuring Approach: The Act aligns tax strategies with OECD BEPS principles. It reduces reliance on tax havens, transfer pricing manipulation, and profit shifting. It also adopts real economic substance (people, assets, functions) in tax jurisdictions.

Strategic Restructuring: There is now a shift from "location-based incentives" to investment-driven tax planning. There is also the prioritisation of

[67] *WT Ramsay Ltd v IRC* [1982] AC 300.
[68] OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (2022).
[69] Nigeria Tax Act, 2025 s 57.

capital-intensive projects, such as those in the manufacturing, infrastructure, and technology. There is also the structuring of investments to maximise qualifying capex and carry-forward benefits.

Research and Development Deductibility: Research and Development expenses are deductible up to 5% of turnover. This implies that there is now an integration of innovation and tax planning. There are also the establishment of formal Research and Development structures and documentation systems to capture deductions.
Optimising Corporate Structure and Group Tax Planning: Offshore disposals deriving value from Nigerian assets are now taxable. The restructuring strategy includes the re-assessment of holding company structures (especially offshore SPVs), consideration of treaty jurisdictions and double taxation relief mechanisms, and the controlled company rules and ownership.

5.1 Transition from Tax Minimisation to Tax Risk Governance: Under the Act, corporate tax planning must shift from aggressive avoidance structures to risk-managed compliance frameworks. The imposition of minimum tax thresholds and expanded taxable bases (including digital assets) necessitates internal tax control systems that align with statutory thresholds, integration of tax risk into corporate governance structures, and adoption of real-time compliance and reporting mechanisms. All of these align with the OECD's emphasis on co-operative compliance and transparency in tax administration.

5.2 Implications for Corporate Governance: The Act redefines tax planning as a governance issue rather than a purely financial function. Directors may face increased accountability for tax strategies, aligning with global trends in corporate responsibility. The integration of tax planning into corporate governance has gained prominence, particularly following OECD reforms.[70] Boards now oversee tax risk. There is also an increase in transparency and disclosure obligations through the mandatory record keeping. More than ever before, aggressive tax strategies may trigger reputational risks under the NTA 2025. Boards are increasingly expected to align tax strategies with ethical standards and stakeholder expectations. Tax planning strategies are now priority board matters.

5. 3 Summary: From Old to New

The overarching restructuring philosophy under the Act is:

Old Strategy	New Strategy under NTA 2025
Aggressive tax avoidance	Compliance-driven optimisation
Use of loopholes	Alignment with global standards
Offshore profit shifting	Substance-based taxation
Tax holidays reliance	Investment-linked incentives
Fragmented compliance	Integrated tax governance

6. Critical Evaluation: Legal Gaps and Challenges

It is obvious that the Nigeria Tax Act 2025 promotes fairness in taxation and it prevents revenue loss to the government. It also aligns with global best practices. Despite the changes, there are some constraints: Increased compliance cost. Electronic monitoring restricts flexibility. The wider tax net: which brought more bodies into taxation. A strong implementing body is also lacking. For instance, the NRS is not well placed and is not endowed with the capacity for enforcement, which is essential in the face of tax evasion. Lack of technically skilled personnel within tax administration bodies is another challenge. Some companies so used to aggressive tax planning might not be able to stand the harshness of the Act if there are no tax specialists to manage and oversee the enforcement.

The comprehensive alteration necessitated by the Act calls for an approach to tax planning that abandons artificial transactions and form, moving towards the doctrine of substance and administration-focused tax planning. Although the tax reforms contribute to fiscal probity, their eventual outcome is dependent on their efficacy in implementation, the ability of state institutions, and the balance achieved to ensure revenue generation and promote economic development.

Tension between Revenue Maximisation and Investment Attraction: As it increases revenue, the Act may hinder the investment because the cost of

[70] OECD, *Principles of Corporate Governance* (OECD Publishing 2015).

compliance could be high due to its complications. For example, the tax burden is heavier (like 30% of CGT), but this is not good for investment. Also, foreign investors may not be interested due to its complexity of compliance.

Administrative Capacity Constraints: Successful application of the Act relies on skills and technical knowledge of tax authority, availability of technology and enforcement resources, without which these anti-avoidance measures may remain cosmetic rather than substantial.

Incomplete Harmonisation with International Standards: Despite being in line with BEPS, there still remain many shortcomings, e.g. Lack of a comprehensive GAAR system, lack of legal precedents governing interpretation, limitations in the treaty network.

Judicial Inconsistencies: There is also the chance of the risk of judicial uncertainty. Besides this, there is the possibility of a misuse of the extensive discretionary powers of tax authorities.

6.2 Conclusion

The NTA 2025 represents a paradigm shift in the realm of tax planning as it moves away from a "form over substance" approach to a "substance over form" one. Tax planning under the Act is allowed, but its scope has been severely limited to that which can pass the substance test by reason of the anti-avoidance provisions, global minimum tax regime, and increase compliance. Nigeria appears to be aligning with the United Kingdom, the United States, and that of the OECD principles particularly by embracing the "substance over form" approach and adhering to BEPS directives. The extent to which this transformation materialises, however, rests on the interpretative power of the judiciary, efficiency of the administrative authorities, and the clarity of the legislation.

The Act is one of the decisive shifts from proactive tax planning to regulated tax optimisation which was influenced by a globally defined standard for the anti-avoidance norms. The inclusion of the BEPS compatible measures of minimum tax, CFC regimes, has broaden the tax base in the Act pushes companies to reorganise its tax planning approach around substance, transparency, and compliance. When compared to the UK where the judicial interpretation is often relied upon (e.g., the Ramsay principle), the Nigerian tax law chooses a statutory-oriented regime which offers greater certainty, though lacks the flexibility associated with judicial interpretation. Overall, tax planning under the NTA 2025 is not an "avoidance engineering" but a "tax governance".

Further, the judicial approach to tax planning in Nigeria has shifted from legalistic to purposeful and substance-based. Nigerian courts still uphold the right of taxpayers to plan their affairs to avoid tax liability, but with greater emphasis on economic reality over legal form, anti-avoidance rules, and statutory application. Overall, Nigerian courts strive to strike a balance between upholding the taxpayer's right and deterring the abuse of the tax system.

Finally, the Act ensures that tax planning has become legal optimisation rather than distortion. It is no longer a merely technical concept, rather, it is an integral business process linked to business substance, business transactions, and value creation. The NTA 2025 represents a categorical shift away from the days of "aggressive tax planning" to a system of regulated tax optimisation guided by international standards in combating anti-tax avoidance. With the introduction of the BEPS compliant principles like minimum tax, CFC regime, base expansion and many more, the NTA 2025 effectively requires businesses to restructure their tax planning strategies based on substance, transparency, and compliance.

In contrast, while the UK operates predominantly within a realm of judicial principles such as the doctrine of Ramsay, Nigeria functions through a legislative mechanism of prescribing certain tax parameters. It therefore achieves greater certainty, albeit with less flexibility. Overall, successful tax planning under the Act, must be perceived, not as an "engineering of tax avoidance", but a 'governance of tax affairs'.

In conclusion, a loophole-based tax planning in the old regime has transformed into a compliance-driven practice under the Act. Taxpayers are prompted to adopt and enjoy tax optimisation through allowable reliefs, transparency, and global standards. Restructuring of the Nigerian tax planning under the Nigeria Tax Act 2025 requires moving from the current model to a modern integrated, and forward-looking approach, combining both the Legal elements (anti-avoidance, minimum tax) and Operational aspects (investment, Research and Development, supply chain design).

6.3 Recommendations

Based on the above analysis and conclusion, some policy recommendations are suggested to derive the utmost benefit from the Act as far as corporate tax planning is concerned. First, Nigeria should legislate a strong GAAR to mirror the UK legislation for better transparency and uniformity. Secondly, institutional capacity in the tax authorities should be strengthened for the proper administration of the Act. Thirdly, taxpayer education and enlightenment should be carried out to enhance voluntary compliance. The pertinent professional bodies such as the Chartered Institute of Taxation of Nigeria (CITN) and the Institute of Chartered Accountants of Nigeria (ICAN), could spearhead the education and awareness.

It should also be desirable, for ease of compliance, that the concept of 'small companies' as stated under the Companies and Allied Matters Act 2020 be the same as the definition of 'small companies' under the NTA 2025.[71] Divergence in the definitions could lead to the problem of compliance or conflicting judicial declarations, where issues concerning financial thresholds arise for the court to decide.
Also, in comparison, while Nigeria's system appears to be moving towards international standards, there is a need for the system to become more doctrinally cohesive and administratively driven to attain the reform's desired objectives.

Furthermore, in digital tax systems, there should be a capital outlay in making digital infrastructure and audit tools as this will enhance the function of electronic tax administration introduced by the Act. In addition, the treaty network will have to be enhanced by renegotiating old treaties, and adding provisions complying with BEPS, for it to be an effective Act.

A clear guidance and advance rulings through the issuance of interpretative guidelines and the introduction of advance pricing agreements (APAs), is also recommended. This will ensure transparency and accountability in the management of tax revenues. To avoid jurisdictional conflicts, collaboration between federal and state tax authorities should be strengthened.

Lastly, there should be a balancing of anti-avoidance provisions with investment incentives through some targeted incentives (e.g., EDTI) and certainty in tax policy. As robust and modern as the provisions of the Act are, the above recommendations are needed to fill the obvious gaps to make the Act not only functional, but also, achieve its lauded objectives.

[71] Companies and Allied Matters Act (CAMA) 2020, s 394, and the Nigeria Tax Act 2025 s 202.