

PROBLEMS BEDEVILING COMPARATIVE TAX LAWS: THE WAY FORWARD*

Abstract

Comparative tax law has assumed heightened significance in contemporary legal scholarship as states increasingly seek to harmonise fiscal frameworks in response to global economic integration. Despite shared common-law traditions, notable disparities persist in the design, administration and interpretation of tax laws across jurisdictions. The paper interrogates recurrent problems in tax legislation and administration, including statutory ambiguity, administrative inefficiencies, judicial inconsistency and the pervasive challenges of tax avoidance and evasion. Using doctrinal research methodology and drawing primary sources from statutes, case law and constitutional instruments as well as secondary materials such as academic commentaries, policy reports and comparative analyses, the paper evaluates the extent to which interpretative doctrines and administrative practices influence the effectiveness of tax governance in each jurisdiction. The paper further examines how courts in the three legal systems have approached the interpretation of taxing statutes, particularly concerning strict construction, purposive reasoning and anti-avoidance principles. The comparative inquiry demonstrates that while the United Kingdom exhibits relatively stable jurisprudence supported by a sophisticated administrative apparatus, Nigeria and South Africa continue to grapple with fragmented legislation, institutional weaknesses and inconsistent judicial approaches that undermine coherence and predictability in tax adjudication. The findings reveal that structural deficiencies in legislative drafting, coupled with limited administrative capacity and inconsistent interpretative practices, pose significant obstacles to achieving tax equity and fiscal justice. The paper argues that meaningful reform requires a harmonised statutory drafting approach, enhanced judicial training in tax adjudication, institutional strengthening of tax authorities and improved transnational cooperation aimed at combating avoidance and ensuring compliance. It further recommends the codification of taxpayer rights across jurisdictions to promote transparency, accountability and public trust in the tax system. By situating these issues within a comparative framework, the study contributes to the development of a more coherent and responsive body of tax jurisprudence capable of addressing contemporary fiscal challenges.

Keywords: Court, Jurisdiction, Judicial Interpretations, Tax Laws, Tax Problems, Tax Solutions

1. Introduction

Taxation remains a central mechanism for funding government expenditure and promoting economic stability.¹ Comparative tax law explores how different jurisdictions structure, administer, and interpret their fiscal regimes.² In the globalized economy, cross-border investment, digital trade and capital mobility have intensified the need to understand comparative fiscal systems.³ Nigeria, the United Kingdom and South Africa provide compelling jurisdictions for comparative inquiry. Each shares a common law heritage but operates distinct constitutional and economic systems influencing its tax policy and jurisprudence.⁴ The UK represents a mature and stable fiscal system grounded in centuries of common law evolution.⁵ South Africa post-apartheid tax reforms reflect a hybrid of common law and

*By **Anthony I. IWOWO, LLB, BL, LLM, FIMC**, M.O. UBANI, SAN & CO., 11B, Ogunlowo Street, Ikeja, Lagos State, Nigeria, Email: iwowotony@gmail.com, Tel: 08034440807

***Ademola TAIWO, LLB, BL, LLM, PhD**, Professor of Law and Head, Department of Jurisprudence and Public Law, School of Law and Security Studies, Babcock University, Iperu, Ogun State, Nigeria, Email: taiwoa@babcock.edu.ng, Tel: 08023321960; and

***Mercy A. IWOWO, LLB, BL, LLM**, Lords & Flair (Legal Practitioners & Notaries Public) No. 4A, Araromi Street, Off Awolowo Way, Anifowoshe, Near Ikeja Local Government Council, Ikeja, Lagos State, Nigeria, Email: mercyiwowo@gmail.com, Tel: 09069997502

¹ R Bird and J Martinez-Vazquez, *Taxation and Development: The Weakest Link?* (Edward Elgar 2014) 3.

² P Baker, *Double Taxation Conventions and International Tax Law* (6th edn, Sweet & Maxwell 2013) 21.

³ OECD, *Addressing Base Erosion and Profit Shifting (BEPS)* (OECD Publishing 2015) 5.

⁴ A Oguttu, 'Comparative Tax Law in the Commonwealth: Divergent Paths to Similar Goals' (2018) 12 *African Journal of International and Comparative Law* 94.

⁵ P Harris, *Income Tax in Common Law Jurisdictions: From Source to Residence* (CUP 2013) 42.

civil law principles, aimed at achieving equity and transformation.⁶ Nigeria, by contrast, struggles with administrative inefficiencies, overlapping jurisdictions and constitutional conflicts in fiscal federalism.⁷ Comparative examination exposes shared challenges tax evasion, interpretative ambiguities, corruption and uneven enforcement while revealing jurisdiction specific approaches to addressing them.⁸ The research covers major direct and indirect tax statutes in the three jurisdictions such as the Companies Income Tax Act (Nigeria), Income Tax Act (South Africa) and Income Tax Act 2007 (UK). It also considers VAT systems, Capital Gains taxes and judicial interpretations.

2. Statement of the Problem

Despite shared legal ancestry, Nigeria, the UK and South Africa face persistent systemic and interpretative challenges in their tax regimes. Nigerian tax statutes often suffer from poor drafting and administrative overreach; the UK grapples with complex anti-avoidance rules and aggressive tax planning by multinational corporations; while South Africa faces tension between equity driven fiscal reforms and economic competitiveness.⁹ These challenges have doctrinal, judicial and policy dimensions. Ambiguities in legislative texts lead to inconsistent court interpretations.¹⁰ Administrative inefficiencies undermine compliance.¹¹ In developing economies such as Nigeria, weak institutional capacity and overdependence on oil revenue further compound tax administration problems.¹² Thus, the problem lies not merely in revenue shortfalls but in structural and jurisprudential weaknesses that hinder effective and equitable taxation across the three jurisdictions.¹³

3. Conceptual and Theoretical Framework of Comparative Tax Law

The conceptual and theoretical framework of comparative tax law demonstrates that while taxation is a universal phenomenon, its administration and interpretation vary widely.¹⁴ Comparative doctrinal analysis enables identification of best practices and exposes systemic weaknesses¹⁵. For Nigeria, lessons from the UK and South Africa include the need for institutional strengthening, clearer statutory drafting and consistent judicial reasoning. For all three, the ultimate goal remains the same which includes achieving fiscal justice through coherent, equitable and transparent tax systems.¹⁶

The Concept of Comparative Tax Law

Comparative tax law involves the systematic study and analysis of tax systems across different jurisdictions to identify similarities, differences and potential lessons for reform.¹⁷ It is not merely a descriptive exercise but a normative and analytical process aimed at understanding how different legal traditions approach similar fiscal problems.¹⁸ According to Thuronyi, comparative tax law allows scholars and policymakers to evaluate how other jurisdictions address issues of tax base determination, avoidance, compliance and administration.¹⁹ In contemporary discourse, the subject serves as a bridge between domestic tax legislation and international fiscal coordination.²⁰ The comparative method in tax law is particularly useful because taxation touches every aspect of national life economy, politics and

⁶ L Olivier and M Honiball, *International Tax: A South African Perspective* (10th edn, Siber Ink 2020) 16.

⁷ O Okauru, *Nigerian Tax System: Theory and Practice* (CITN Press 2012) 33.

⁸ E Kirchler, *The Economic Psychology of Tax Behaviour* (CUP 2007) 78.

⁹ M. Thuronyi, *Comparative Tax Law* (Kluwer Law International 2003) 54.

¹⁰ *FBIR v Halliburton (WA) Ltd* (2016) 10 TLRN 1 (CA, Nigeria).

¹¹ *R (oao Gaines-Cooper) v HMRC* [2011] UKSC 47, [2012] 1 AC 152.

¹² T Aina, 'Taxation and Institutional Capacity in Nigeria' (2020) 15 *Nigerian Law and Practice Journal* 58.

¹³ *Metcash Trading Ltd v Commissioner for SARS* 2001 (1) SA 1109 (CC).

¹⁴ Attiya Waris, *Tax and Development: Solving Kenya's Fiscal Crisis through Human Rights* (LawAfrica Publishing 2013).

¹⁵ Peter Harris, *Comparative Tax Law* (Cambridge University Press 2020).

¹⁶ Judith Freedman, 'Improving (Not Perfecting) Tax Legislation: Rules and Principles Revisited' (2010) 6(1) *British Tax Review* 111.

¹⁷ M Thuronyi, *Comparative Tax Law* (Kluwer Law International 2003) 2.

¹⁸ K Zweigert and H Kötz, *An Introduction to Comparative Law* (3rd edn, OUP 1998) 41.

¹⁹ P Harris, *Principles of International Taxation* (3rd edn, OUP 2016) 27.

²⁰ OECD, *Model Tax Convention on Income and on Capital* (2017) 15.

social welfare.²¹ For instance, the United Kingdom experience with anti-avoidance legislation, South Africa efforts to create an equitable post-apartheid tax structure and Nigeria struggle with informal sector taxation each provide unique insights into different paths to fiscal justice.²²

Historically, tax law developed within domestic boundaries, shaped by national needs and administrative capacities.²³ However, globalization and cross-border transactions have blurred these boundaries, necessitating comparative study.²⁴ In the early twentieth century, comparative fiscal analysis emerged as states began negotiating double taxation treaties.²⁵ The post-World War II era saw the rise of international organizations such as the Organization for Economic Cooperation and Development and, International Monetary Fund which promoted fiscal coordination and comparative research.²⁶ In the African context, comparative tax studies gained prominence during the 1990s structural adjustment era, as many countries, Nigeria included, undertook fiscal reforms modelled on British and South African systems.²⁷ Comparative tax law thus serves both academic and policy functions. Academically, it enriches understanding of legal transplants and fiscal doctrine; policy wise, it guides reform and harmonization.²⁸

Theories of Comparative Taxation

The comparative study of tax law is grounded in several interrelated theoretical frameworks:

Positivist Theory: This theory posits that law derives its authority from formal sources constitutions, statutes and judicial decisions rather than moral or economic considerations.²⁹ In comparative taxation, the positivist approach emphasizes textual analysis of legislation, focusing on how statutory language defines tax liability.³⁰ For example, in the UK, courts traditionally adhere to strict construction of taxing statutes, as affirmed in *Cape Brandy Syndicate v IRC*, where Rowlatt observed that ‘there is no equity about a tax.’³¹

Economic Efficiency Theory: This theory, influenced by public finance economics, holds that tax laws should minimize distortions and promote optimal resource allocation.³² Comparative studies under this lens assess how different systems balance efficiency and equity.³³ The South African move towards a broad-based VAT system in 1991 exemplifies the search for efficiency and neutrality.³⁴

Equity and Justice Theory: Grounded in both moral philosophy and constitutionalism, this theory emphasizes fairness in tax distribution.³⁵ Comparative analysis often highlights how progressive income taxes and redistributive mechanisms operate differently across jurisdictions.³⁶ For instance, South Africa *Katz Commission Reports* emphasized equity as a constitutional imperative, while Nigeria courts occasionally invoke fairness principles when interpreting ambiguous tax provisions.³⁷

²¹ R Bird and E Zolt, ‘Technology and Taxation in Developing Countries’ (2008) 61 *National Tax Journal* 397.

²² A Oguttu (n 4) 98.

²³ L Olivier and M Honiball, *International Tax: A South African Perspective* (10th edn, Siber Ink 2020) 14.

²⁴ OECD (n 3) 5.

²⁵ P Baker, *Double Taxation Conventions and International Tax Law* (6th edn, Sweet & Maxwell 2013) 17.

²⁶ IMF, *Fiscal Policy and Development: Human, Social and Physical Investment for the SDGs* (IMF Policy Paper 2021) 8.

²⁷ O Okauru (n 7) 35.

²⁸ M Thuronyi (n 18) 5.

²⁹ J Austin, *The Province of Jurisprudence Determined* (Weidenfeld and Nicolson 1954) 124.

³⁰ P Harris (n 20) 48.

³¹ *Cape Brandy Syndicate v IRC* [1921] 1 KB 64, 71.

³² R Musgrave and P Musgrave, *Public Finance in Theory and Practice* (5th edn, McGraw-Hill 1989) 139.

³³ Bird and Zolt (n 22) 403.

³⁴ Katz Commission, *Fourth Interim Report on Fiscal Policy* (Pretoria, 1994) para 2.1.

³⁵ J Rawls, *A Theory of Justice* (Harvard University Press 1971) 277.

³⁶ A Oguttu (n 4) 104.

³⁷ *Metcash Trading Ltd v Commissioner for SARS* 2001 (1) SA 1109 (CC) 1123.

Institutional Theory: This theory focuses on how administrative structures and judicial institutions shape tax outcomes.³⁸ A tax law, however well-drafted, may fail if the implementing institutions are weak.³⁹ In Nigeria, inefficiency and corruption within revenue services impede enforcement, whereas the UK His Majesty's Revenue and Customs and South Africa South African Revenue Service demonstrate how strong institutions enhance compliance.⁴⁰

4. Comparative Methodology in Tax Laws

The methodology of comparative tax law encompasses three principal stages: description, comparison and evaluation.⁴¹ Description entails accurately setting out the law in each jurisdiction.⁴² Comparison involves identifying similarities and differences in the operation or interpretation of those laws.⁴³ Evaluation assesses which system provides better solutions and why.⁴⁴ Scholars like Watson warn, however, that effective comparison requires sensitivity to contextual variables economic structure, political stability and administrative culture.⁴⁵ For instance, while the UK self-assessment system depends on high taxpayer literacy, such assumptions may not hold in developing economies like Nigeria.⁴⁶ Comparative methodology thus operates not in abstraction but through contextual legal realism.⁴⁷ It integrates doctrinal analysis with socio-economic understanding, ensuring that comparative lessons are neither superficial nor misleading.⁴⁸

5. Role of the Judiciary in Comparative Tax Law

Judicial interpretation remains central to comparative tax analysis because courts elucidate statutory meaning, resolve ambiguities and articulate fiscal principles.⁴⁹ In all three jurisdictions, courts have shaped tax jurisprudence through interpretative doctrines. In the United Kingdom, courts historically favoured literalism in tax interpretation.⁵⁰ However, modern decisions like *Barclays Mercantile Business Finance Ltd v Mawson* reflect a shift towards purposive interpretation aligned with economic reality.⁵¹ In South Africa, the Constitutional Court in *Metcash Trading Ltd v Commissioner for SARS* underscored that tax statutes must be interpreted in light of constitutional values, including the right to fair administrative action.⁵² In Nigeria, courts have swung back and forth between strict and purposive interpretation. While cases such as *FBIR v Halliburton (WA) Ltd* apply literalism, others like *A.G. Rivers State v FIRS* embrace a purposive and federalist approach.⁵³ These judicial philosophies reveal that comparative tax law is not merely about statutory text but about how courts, through doctrine, balance revenue interests against taxpayer rights.⁵⁴

6. Comparative Tax Principles

Across jurisdictions, several shared principles underpin tax legislation and adjudication. They include:

³⁸ D North, *Institutions, Institutional Change and Economic Performance* (CUP 1990) 98.

³⁹ O Akanle, 'Tax Administration and Institutional Failure in Nigeria' (2019) 10 *Nigerian Tax Journal* 58.

⁴⁰ HMRC, *Annual Performance Report 2023* (UK Government 2024) 11.

⁴¹ Zweigert and Kötz (n 19) 45.

⁴² *ibid* 46.

⁴³ *ibid* 47.

⁴⁴ *ibid* 48.

⁴⁵ A Watson, *Legal Transplants: An Approach to Comparative Law* (2nd edn, University of Georgia Press 1993) 12.

⁴⁶ O Okauru (n 7) 61.

⁴⁷ M Thuronyi (n 18) 7.

⁴⁸ PM Bakibinga (n 14) 81.

⁴⁹ P Harris (n 20) 92.

⁵⁰ *Ayrshire Pullman Motor Services v IRC* [1929] SC 347.

⁵¹ *Barclays Mercantile Business Finance Ltd v Mawson* [2004] UKHL 51, [2005] 1 AC 684.

⁵² *Metcash Trading Ltd v Commissioner for SARS* (n 38).

⁵³ *A.G. Rivers State v FIRS & A.G. Federation* (FHC/PH/CS/149/2020, judgment delivered 9 Aug 2021).

⁵⁴ O Oloyede, 'Judicial Approaches to Tax Interpretation in Common Law Jurisdictions' (2021) 18 *Commonwealth Law Review* 87.

i) Legality of Taxation: No tax shall be imposed without express legislative authority⁵⁵; ii) Certainty and Clarity: Tax obligations must be clearly defined to prevent arbitrary administration⁵⁶; iii) Equity and Neutrality: Tax systems should distribute burdens fairly and avoid discrimination⁵⁷; iv) Administrative Efficiency: The cost of collection should not outweigh the revenue obtained⁵⁸; v) Transparency and Accountability: Fiscal governance must uphold public trust.⁵⁹ These principles form the normative basis upon which comparative evaluation rests. Where one jurisdiction succeeds in upholding them, others can derive reformative lessons.

7. Problems Bedeviling Comparative Tax Systems

Comparative analysis of tax systems in Nigeria, the United Kingdom and South Africa reveal persistent doctrinal and administrative problems that challenge the realization of equitable and efficient taxation.⁶⁰ These challenges manifest across legislative drafting, institutional enforcement, judicial interpretation and compliance behaviour.⁶¹ While the peculiar economic and political contexts of each jurisdiction explain some of these problems, many are structural and global rooted in legal ambiguity, administrative inertia and socio-economic inequality.⁶² The principal problems bedeviling comparative tax laws, focus on statutory complexity, administrative inefficiency, tax avoidance and evasion, judicial inconsistency and challenges arising from internationalization and digitalization of taxation.

Tax Avoidance and Evasion

Another central problem is the persistent tension between lawful tax avoidance and unlawful tax evasion.⁶³ The line separating the two remains doctrinally contested and practically blurred.

Nigeria: In Nigeria, aggressive tax avoidance strategies by corporations exploit legislative loopholes, while evasion thrives due to weak enforcement.⁶⁴ The absence of effective anti-avoidance provisions akin to the UK General Anti-Abuse Rule (GAAR) leaves revenue authorities vulnerable.⁶⁵ Courts have sometimes facilitated avoidance through overly literal interpretations, such as in *FBIR v Halliburton (WA) Ltd*, where the taxpayer prevailed on a narrow statutory reading.⁶⁶

United Kingdom: The UK, once known for its judicial tolerance of avoidance as in the case of *IRC v Duke of Westminster*, has progressively adopted purposive interpretation and statutory countermeasures.⁶⁷ The *Finance Act 2013* introduced GAAR, empowering HMRC to disregard arrangements deemed abusive.⁶⁸ However, critics argue that the vagueness of GAAR generates uncertainty and litigation.⁶⁹

South Africa: South Africa GAAR provisions, contained in sections 80A–80L of the *Income Tax Act 58 of 1962*, provide robust protection against artificial schemes.⁷⁰ Nonetheless, disputes persist over their

⁵⁵ Constitution of the Federal Republic of Nigeria 1999 (as amended), s 59.

⁵⁶ *IRC v Duke of Westminster* [1936] AC 1 (HL).

⁵⁷ L Olivier and M Honiball (n 24) 29.

⁵⁸ R Bird, 'Improving Tax Administration in Developing Countries' (2004) 12 *Journal of African Economies* 90.

⁵⁹ OECD, *Tax Administration 2022: Comparative Information on OECD and Other Economies* (OECD Publishing 2022) 16.

⁶⁰ M Thuronyi (n 18) 12.

⁶¹ P Harris (n 20) 102.

⁶² OECD, *Tax Administration 2022: Comparative Information on OECD and Other Economies* (OECD Publishing 2022) 16s

⁶³ *R v CIR, ex p Fisher's Executors* [1926] AC 395 (HL).

⁶⁴ O Akanle, 'Tax Administration and Institutional Failure in Nigeria' (2019) 10 *Nigerian Tax Journal* 60.

⁶⁵ OECD, *Addressing Base Erosion and Profit Shifting (BEPS)* (OECD Publishing 2015) 9.

⁶⁶ *FBIR v Halliburton (WA) Ltd* (2016) 10 TLRN 1 (CA).

⁶⁷ *IRC v Duke of Westminster* [1936] AC 1 (HL).

⁶⁸ *Finance Act 2013* (UK), Part 5.

⁶⁹ P Baker, 'GAARs and Uncertainty in Tax Law' (2015) 32 *British Tax Review* 119.

⁷⁰ *Income Tax Act 58 of 1962* (South Africa), ss 80A-80L.

scope and constitutional validity.⁷¹ In *CSARS v NWK Ltd*, the Supreme Court of Appeal adopted a purposive approach, striking down avoidance arrangements lacking commercial substance.⁷² Across all three jurisdictions, the challenge is balancing the taxpayer's right to plan affairs with the state's duty to prevent revenue loss.⁷³

Legislative and Doctrinal Ambiguities

A core problem in comparative tax systems is the complexity and ambiguity of tax legislation.⁷⁴ Tax statutes are often lengthy, technical and difficult to interpret, creating uncertainty for both taxpayers and administrators.

Nigeria: Nigerian tax laws are characterized by frequent amendments, overlapping jurisdictions and inconsistencies between federal and state laws.⁷⁵ For example, the constitutional division of taxing powers has generated conflicts, as seen in the case *A.G. Rivers State v FIRS*, where the Federal High Court had to determine whether value-added tax was within federal competence.⁷⁶ The absence of clear drafting standards has led to duplication and confusion across statutes such as the Companies Income Tax Act, Personal Income Tax Act, and Value Added Tax Act.⁷⁷

United Kingdom: In the UK, although tax administration is comparatively efficient, the statutory framework remains highly complex.⁷⁸ The Income Tax Act 2007 and Corporation Tax Act 2010 run into thousands of sections, reflecting decades of piecemeal reform.⁷⁹ The House of Lords in *R. Wilkinson v Inland Revenue Commissioners* lamented the opacity of tax legislation and the difficulty of achieving certainty.⁸⁰

South Africa: South Africa's post-apartheid tax reforms produced modernized but equally intricate legislation. The Income Tax Act 58 of 1962 has been amended numerous times, resulting in fragmentation.⁸¹ The courts often struggle to reconcile legislative intention with administrative practice, as illustrated in *CSARS v NWK Ltd*, where the Supreme Court of Appeal criticized the misuse of artificial transactions for tax avoidance.⁸²

The comparative problem, therefore, is that tax laws, in their quest for precision, have become inaccessible to the very taxpayers they govern.⁸³

Administrative Inefficiency and Institutional Weakness

Effective tax systems rely on competent, transparent, and accountable institutions.⁸⁴ Across all three jurisdictions, administrative inefficiencies undermine compliance and revenue generation, albeit to varying degrees.

Nigeria: The Nigerian tax administration suffers from inadequate technological capacity, corruption and poor taxpayer education.⁸⁵ The multiplicity of revenue agencies like FIRS now NRS, State Internal

⁷¹ *CSARS v Bosch* [2015] ZASCA 171, 77 SATC 1.

⁷² *CSARS v NWK Ltd* [2011] ZASCA 168, 73 SATC 55.

⁷³ L Olivier and M Honiball, *International Tax: A South African Perspective* (10th edn, Siber Ink 2020) 44.

⁷⁴ A Oguttu, 'Comparative Tax Law in the Commonwealth: Divergent Paths to Similar Goals' (2018) 12 *African Journal of International and Comparative Law* 108.

⁷⁵ O Okauru, *Nigerian Tax System: Theory and Practice* (CITN Press 2012) 49.

⁷⁶ *A.G. Rivers State v FIRS & A.G. Federation* (FHC/PH/CS/149/2020, judgment delivered 9 Aug 2021).

⁷⁷ *Companies Income Tax Act* (Cap C21 LFN 2004, as amended).

⁷⁸ HMRC, *Tax Simplification Review* (UK Government 2019) 4.

⁷⁹ *Income Tax Act 2007* (UK); *Corporation Tax Act 2010* (UK).

⁸⁰ *R (oao Wilkinson) v Inland Revenue Commissioners* [2005] 1 WLR 1718 (HL).

⁸¹ *Income Tax Act 58 of 1962* (South Africa).

⁸² *CSARS v NWK Ltd* [2011] ZASCA 168, 73 SATC 55.

⁸³ L Olivier and M Honiball, *International Tax: A South African Perspective* (10th edn, Siber Ink 2020) 37.

⁸⁴ D North, *Institutions, Institutional Change and Economic Performance* (CUP 1990) 102.

⁸⁵ T Aina, 'Taxation and Institutional Capacity in Nigeria' (2020) 15 *Nigerian Law and Practice Journal* 58.

Revenue Services, and local government councils creates duplication and conflict.⁸⁶ The 2019 *Finance Act* attempted to streamline operations but has not eliminated bureaucratic overlap.⁸⁷

United Kingdom: The UK HM Revenue and Customs (HMRC) is internationally regarded as efficient, yet it faces its own challenges, particularly in addressing tax avoidance by multinational corporations.⁸⁸ The complexity of international profit-shifting mechanisms often outpaces administrative capacity.⁸⁹

South Africa: The South African Revenue Service (SARS) initially set a regional standard for administrative efficiency, but governance lapses in the late 2010s eroded its credibility.⁹⁰ Subsequent reforms aimed to restore transparency and accountability, yet enforcement remains uneven, particularly in the informal sector.⁹¹

The comparative insight here is that institutional integrity, not merely statutory reform, determines tax efficacy.⁹²

8. Judicial Inconsistency and Doctrinal Divergence

The judiciary plays a pivotal role in interpreting tax laws, yet inconsistencies abound.⁹³ In Nigeria, courts vacillate between strict and purposive interpretation, resulting in unpredictability.⁹⁴ The Federal High Court in *A. G. Rivers State v FIRS* applied constitutional purposivism, while earlier cases like *FBIR v Halliburton (WA) Ltd* adhered to textualism.⁹⁵ In the United Kingdom, judicial doctrine has evolved from the rigid literalism of *Cape Brandy Syndicate v IRC* to the purposive reasoning in *Barclays Mercantile Business Finance Ltd v Mawson*.⁹⁶ Yet, the tension between predictability and equity persists.⁹⁷ In South Africa, constitutionalization of tax interpretation since 1994 has introduced rights-based reasoning, but courts sometimes drift between taxpayer protection and revenue prioritization.⁹⁸ Such inconsistency undermines doctrinal coherence and taxpayer confidence across jurisdictions.⁹⁹

9. Globalization, Digitalization, and Base Erosion

A contemporary comparative challenge is the impact of globalization and digitalization on tax jurisdiction and enforcement.¹⁰⁰ Multinational corporations exploit digital structures to shift profits to low-tax jurisdictions, eroding national tax bases.¹⁰¹ The OECD's BEPS (Base Erosion and Profit Shifting) project seeks to counteract such practices through coordinated international rules.¹⁰² While the UK has implemented BEPS-aligned measures such as the Diverted Profits Tax, Nigeria and South Africa have only partially adopted them.¹⁰³ Moreover, the taxation of digital services such as online advertising and data monetization raises complex jurisdictional issues.¹⁰⁴ The UK enacted a Digital

⁸⁶ *FIRS (Establishment) Act 2007*, s 2.

⁸⁷ *Finance Act 2019* (Nigeria).

⁸⁸ HMRC, *Annual Performance Report 2023* (UK Government 2024) 15.

⁸⁹ OECD, *Addressing Base Erosion and Profit Shifting (BEPS)* (OECD Publishing 2015) 6.

⁹⁰ South African Revenue Service, *Strategic Plan 2022-2025* (Pretoria, 2022) 9.

⁹¹ *ibid* 13.

⁹² R Bird, 'Improving Tax Administration in Developing Countries' (2004) 12 *Journal of African Economies* 93.

⁹³ O Oloyede, 'Judicial Approaches to Tax Interpretation in Common Law Jurisdictions' (2021) 18 *Commonwealth Law Review* 87.

⁹⁴ O Akanle, 'Tax Administration and Institutional Failure in Nigeria' (2019) 10 *Nigerian Tax Journal* 62.

⁹⁵ HMRC, *Annual Performance Report 2023* (UK Government 2024) 11.

⁹⁶ *Barclays Mercantile Business Finance Ltd v Mawson* [2005] 1 AC 684 (HL).

⁹⁷ P Harris, *Principles of International Taxation* (3rd edn, OUP 2016) 114.

⁹⁸ *Metcash Trading Ltd v Commissioner for SARS 2001* (1) SA 1109 (CC) 1134.

⁹⁹ O Okauru, *Nigerian Tax System: Theory and Practice* (CITN Press 2012) 69.

¹⁰⁰ OECD, *Addressing Base Erosion and Profit Shifting (BEPS)* (OECD Publishing 2015) 8.

¹⁰¹ R Avi-Yonah, 'Globalisation, Tax Competition and the Fiscal Crisis of the Welfare State' (2000) 113 *Harvard Law Review* 1575.

¹⁰² OECD, *Addressing Base Erosion and Profit Shifting (BEPS)* (OECD Publishing 2015) 10.

¹⁰³ HM Treasury, *Digital Economy and Taxation* (London 2020) 6.

¹⁰⁴ OECD, *Tax Challenges Arising from Digitalisation – Interim Report* (2018) 15.

Services Tax (DST) in 2020, whereas Nigeria 2021 Finance Act introduced digital presence rules for non-resident companies.¹⁰⁵ South Africa, meanwhile, relies on existing VAT regulations for cross-border electronic services.¹⁰⁶ These developments demonstrate that domestic tax frameworks are ill-suited for globalized digital economies, necessitating comparative innovation and cooperation.¹⁰⁷

10. Socio-Political and Compliance Challenges

Finally, socio-political factors significantly influence tax performance.¹⁰⁸ In Nigeria, widespread distrust of government and corruption discourage compliance.¹⁰⁹ In South Africa, inequality and perceptions of fiscal injustice undermine voluntary tax payment.¹¹⁰ The UK, while generally compliant, faces public backlash against perceived leniency towards multinational tax avoidance.¹¹¹ Comparatively, compliance depends on the psychological contract between the citizens and the state if taxpayers perceive fair use of public funds, compliance increases.¹¹² Thus, comparative tax law must integrate legal reform with governance ethics.¹¹³ Comparative analysis reveals that despite different developmental contexts, Nigeria, the UK and South Africa confront similar systemic problems: legislative ambiguity, administrative inefficiency, avoidance, judicial inconsistency, and globalization pressures. These problems are multifaceted ranging from legal, institutional and ethical problems. Doctrinal solutions must therefore transcend mere statutory reform and embrace holistic approaches involving institutional strengthening, judicial coherence, and transnational collaboration.

11. Summary of Findings

This comparative doctrinal study of Nigeria, the United Kingdom and South Africa identifies persistent structural, doctrinal and administrative obstacles that impair the coherence and efficacy of modern tax systems. First, legislative complexity and drafting ambiguity are pervasive. Nigerian tax statutes, in particular, exhibit overlapping provisions and frequent amendments that generate jurisdictional conflict and interpretative uncertainty; comparable problems of statutory proliferation and opacity are evident in the UK and South African regimes.¹¹⁴ Courts repeatedly shoulder the burden of clarifying these ambiguities, but judicial clarification has produced mixed outcomes: authoritative rulings have both corrected administrative excesses and, at times, entrenched narrow textual readings that invite avoidance.¹¹⁵ Second, administrative weakness and institutional fragmentation undermine compliance and enforcement. Nigeria's multiplicity of revenue agencies and limited digital capacity exacerbate compliance gaps and encourage litigated resolution of routine disputes; by contrast, well-resourced administrations such as HMRC and (in periods of effective governance) SARS demonstrate that institutional competence materially improves revenue performance.¹¹⁶ Third, tax avoidance and base-erosion pose a transnational threat that domestic measures alone cannot resolve. The UK's statutory and judicial move towards purposive anti-avoidance mechanisms (for example post-GAAR developments) offers useful lessons, while South Africa's GAAR jurisprudence and constitutionalisation of tax interpretation suggest ways to combine substantive and rights-based constraints on abusive schemes. Nigeria's limited anti-avoidance architecture and judicial vacillation leave it vulnerable to sophisticated

¹⁰⁵ *Finance Act 2021* (Nigeria), ss 4–5.

¹⁰⁶ SARS, *VAT on Electronic Services Regulations* (2019).

¹⁰⁷ OECD, *Tax Administration 2022: Comparative Information on OECD and Other Economies* (OECD Publishing 2022) 27.

¹⁰⁸ E Kirchler, *The Economic Psychology of Tax Behaviour* (CUP 2007) 96.

¹⁰⁹ A Adebisi, 'Public Trust and Tax Compliance in Nigeria' (2021) 9 *African Journal of Governance and Development* 88.

¹¹⁰ South African Revenue Service, *Compliance Programme Report 2021* (Pretoria 2021) 5.

¹¹¹ HMRC, *Tax Gap Report* (London 2022) 2.

¹¹² E Kirchler, *The Economic Psychology of Tax Behaviour* (CUP 2007) 102.

¹¹³ R Bird, 'Improving Tax Administration in Developing Countries' (2004) 12 *Journal of African Economies* 95.

¹¹⁴ Companies Income Tax Act (Cap C21 LFN 2004); Personal Income Tax Act (Cap P8 LFN 2004); Value Added Tax Act (Cap V1 LFN 2004).

¹¹⁵ *FBIR v Halliburton (WA) Ltd* (2016) 10 TLRN 1 (CA); *Shell Petroleum Development Co v FBIR* (1996) 8 NWLR (Pt 466) 256.

¹¹⁶ Federal Inland Revenue Service (Establishment) Act 2007 s 2; *Metcash Trading Ltd v Commissioner for SARS* 2001 (1) SA 1109 (CC).

tax planning.¹¹⁷ Fourth, judicial inconsistency across and within jurisdictions oscillation between strict construction and purposive or teleological interpretation creates unpredictability for taxpayers and administrators and weakens doctrinal coherence. Landmark decisions (for example judicial pronouncements on federal–state taxing competence and on the scope of taxable ‘profits’) have clarified principles but frequently leave collateral issues unresolved, perpetuating litigation.¹¹⁸ Finally, globalization and digitalisation intensify jurisdictional contestation, requiring coordinated transnational responses; unilateral domestic reforms are insufficient to stem profit shifting or to allocate taxing rights for digital activities.¹¹⁹

In sum, doctrinal remedies alone are inadequate. The study finds that sustainable improvement requires a composite strategy: clear and consolidated statutory drafting, strengthened and technologically enabled tax administrations, targeted anti-avoidance rules harmonised with international initiatives, and programmes to enhance judicial expertise in tax matters. Together these measures will promote legal certainty, fiscal fairness and administrative effectiveness across comparative tax systems.

12. Conclusion

This paper has examined the doctrinal foundations, problems, judicial responses and prospective reforms in comparative tax law across Nigeria, the United Kingdom and South Africa. It finds that although these jurisdictions share a common-law heritage, their tax systems differ in structure, administration, and interpretative philosophy. The major problems identified include legislative complexity, administrative inefficiency, tax avoidance, judicial inconsistency, and globalization pressures. These issues erode public trust, reduce compliance, and compromise fiscal justice. However, comparative analysis also reveals doctrinal resilience and potential for reform. The UK’s purposive jurisprudence, South Africa’s constitutionalisation of tax justice, and Nigeria ongoing fiscal reforms collectively demonstrate a trajectory towards modernization. The solutions proposed in this paper such as statutory harmonization, taxpayer rights codification, institutional strengthening, and judicial consistency, represent not merely administrative reforms but doctrinal imperatives essential to sustaining the rule of law in fiscal governance. The pursuit of a fair and efficient tax system is a moral, legal, and institutional enterprise. Comparative tax law must thus evolve as a discipline of justice, balancing state revenue needs with citizens’ rights and global economic realities.

13. Recommendations

Having examined the conceptual, doctrinal and comparative dimensions of taxation across Nigeria, the United Kingdom and South Africa, and found many problems bedeviling comparative tax laws, the following pragmatic solutions to the problems identified in this paper will be useful. These solutions focus on strengthening legislative drafting, enhancing institutional capacity, promoting judicial consistency, and fostering transnational cooperation. The aim is to ensure that comparative tax systems evolve towards fairness, predictability, and administrative efficiency which covers the triadic pillars of fiscal justice.

Legislative Reforms: A recurring problem across all three jurisdictions is legislative complexity. Legislatures should adopt harmonized and simplified drafting techniques. For Nigeria, this requires consolidating multiple overlapping tax statutes into a single Tax Code, akin to the UK Corporation Tax Act 2010 or South Africa Tax Administration Act 2011. Simplification reduces compliance costs and enhances legal certainty. The UK Tax Law Rewrite Project offers a model that Nigeria could emulate through the Federal Ministry of Justice in collaboration with the Chartered Institute of Taxation of Nigeria.

Codification of Taxpayer Rights: Taxpayer protection is a central component of fiscal legitimacy. Nigeria currently lacks a comprehensive taxpayer rights statute, leading to administrative arbitrariness.

¹¹⁷ Finance Act 2013 (UK) (GAAR); *CSARS v NWK Ltd* [2011] ZASCA 168, 73 SATC 55

¹¹⁸ *A-G Federation v A-G Lagos State* (2018) LPELR-45061 (SC); *A.G. Rivers State v FIRS & A.G. Federation* (FHC/PH/CS/149/2020, judgment delivered 9 Aug 2021).

¹¹⁹ OECD, *Addressing Base Erosion and Profit Shifting (BEPS)* (OECD Publishing 2015).

A Taxpayer Bill of Rights, similar to that contained in the South African Tax Administration Act (Chapter 2), should be enacted to codify rights to notice, fair hearing, and appeal. In the UK, HMRC's Charter of Taxpayer Rights and Obligations could serve as a soft-law model for balancing administrative discretion with procedural fairness.

Institutional and Administrative Strengthening: Administrative competence is the backbone of effective tax systems. Nigeria's FIRS and state tax agencies must enhance staff training, digital capacity, and inter-agency coordination. Adopting digital tax filing systems, data analytics, and automated audits as successfully deployed by SARS and HMRC will improve efficiency and transparency. Tax authorities should enjoy operational autonomy balanced with accountability. South Africa's SARS demonstrates how institutional independence fosters credibility, though governance lapses have shown the dangers of politicization. Nigeria must insulate tax administration from political interference by strengthening FIRS's statutory independence under the FIRS Act 2007. Periodic parliamentary oversight and public reporting, as practiced in the UK, would ensure transparency without compromising efficiency.

Judicial and Doctrinal Reforms: Nigerian courts, in particular, should adopt a structured consistent interpretative purposive approach guided by legislative intent and economic substance. The UK principle and South Africa constitutional purposivism offer persuasive templates. Judicial education through seminars and continuous professional development possibly under the National Judicial Institute should be institutionalized to enhance tax law expertise. Courts must actively safeguard taxpayer rights against arbitrary assessments and administrative abuse. In line with *Metcash Trading Ltd v Commissioner for SARS*, Nigerian courts should uphold due process while balancing revenue collection imperatives. Judicial review should not merely correct administrative errors but also develop coherent tax jurisprudence grounded in equity and certainty.

Theoretical Integration and Future Directions: Doctrinal tax analysis must evolve towards an integrated theoretical model that combines legal positivism, equity, and institutional realism. Positivism ensures legality and certainty, Equity theory demands fairness and proportionality in tax burden and, Institutional realism recognizes that effective taxation depends on administrative competence and social legitimacy. For future research, comparative tax scholarship should embrace interdisciplinary methods, combining doctrinal, empirical, and behavioural insights to capture the full dynamics of fiscal governance.