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Good Corporate Governance, Board Attributes, and Corporate Tax Planning: The Case of Nestle Nigeria Plc.

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Abstract

This paper aims to investigate Board attributes as a subset of corporate governance and their effects on the tax planning of listed manufacturing companies in Nigeria, with special emphasis on Nestle Nigeria Plc. Since the Board is more accountable for overseeing corporate governance than any other organization, this paper discusses the roles of the Board in managing companies' financial plans, the subset of which is tax planning, and in whose interest is this done. By the nature of their business operations, manufacturing companies incur high costs. To meet their profit maximization objective, most of them engage in aggressive tax planning through various tax avoidance schemes and strategies, sometimes in violation of tax law. This paper investigates this subject by using the doctrinal legal research method, including the annual reports of the Company under investigation. The study also addresses similar earlier research conducted in Nigeria and other nations and their shortcomings in achieving the desired outcomes. After reviewing a few studies examining how the Board's characteristics affected corporate tax planning, their differing conclusions were further analysed. The paper concludes that board attributes have little bearing on tax planning. However, it recommends that independent non-executive, executive, and non-executive directors on corporate boards be suitably balanced to meet the Company's tax planning goals. It also advocates the representation of various skills and experience on corporate boards to achieve ideal tax planning and ensure corporate profitability without violating any tax law in force.

Keywords: Board Attributes; Corporate Tax Planning; Corporate Governance; Tax Aggressiveness, Nestle Nigeria Plc.

1.0 Introduction

The issue of tax planning in the form of tax avoidance has been a long-standing concern among Company's stakeholders. Corporate tax is paid on companies' profit. For instance, in Nigeria, large and public companies (such as Nestle Nigeria Plc) with a turnover of one hundred million naira and above are required to pay 30% of their profit as company tax.¹ This is a huge amount that takes a big toll on corporate profits. To avert this, companies engage in a series of tax avoidance (by taking advantage of loopholes in tax statutes) and, at times, outright tax evasion (an illegal act) to reduce or avoid the corporation tax.

Globally, the string of business disasters and corporate scandals involving aggressive taxation through massive tax shelters,² including corporate giants such as Enron, Dynegy, GlaxoSmithKline, WorldCom, and Tyco,³ have altered the tax profile⁴ from historical obscurity to the forefront of business concern and it is currently a top priority in boardroom discussions.⁵ Corporate governance emerges to address these scandals and drastically minimise recurrence as much as possible through effective boards, transparency, and timely disclosure of material information, among others. While companies are expected to be effectively governed by their boards., the quest to reduce income tax and manipulate operations to the advantage of the managers as opposed to company owners have been the bane of corporate governance. Companies are supposed to be transparently and effectively run for the benefit of all the stakeholders, but in most cases, the boards govern the companies to advance their personal interests. They engage in aggressive tax planning to get robust profits and deplete the revenue targeted by the government.

The need for people of impeccable character, diverse skills, and experience has made good corporate governance *sine qua non* for companies. Board attributes include board size, composition, diversity, number of times meetings are held, etc. The question, therefore, has always been how these attributes can enhance good corporate governance and avoid tax manipulations. Since shareholders cannot effectively monitor the managers

¹ See s.40, Companies Income Tax Act, Cap C21 LFN 2004.

² Tax shelter is a means by which individuals or companies minimise or decrease their taxable incomes and, thus, tax liabilities.

³ The Tyco scandal was due to the unethical behaviour of its management by stealing over \$600 million from the company through inflated salaries and unauthorised bonuses, thus reducing the company's taxable income.

⁴ Tax profiles are used to define tax rates used when invoicing clients.

⁵ J. Freedman, Tax and Corporate Responsibility (Tax Journal 695(2), 2003) 1-4. See also KPMG, Tax in the Boardroom. (A Discussion Paper No. 211-321, KPMG, London, UK, 2005).

due to information asymmetry, agency problems crept in, which is another problem on its own.

Information asymmetry means the shareholders cannot effectively know all the relevant information concerning their companies' operations because they are not directly involved in the governance of the companies. The managers, therefore, need to be constantly monitored to achieve the desired transparency and accountability.

Given the risks to companies' finances and reputations that come with using tax avoidance techniques, the boards of directors of most companies currently approach tax matters with a significantly higher level of seriousness than they did in the past.⁶ Accordingly, Lanis and Richardson,⁷ as well as Minnick and Noga,⁸ claim that it is logical to research the Board's oversight responsibilities regarding corporate tax planning, which is now an issue of global concern.⁹

Although law, corporate finance, and accounting experts have recently begun to investigate the link between corporate taxation and governance, many studies have been conducted earlier. For instance, Young¹⁰ and others have studied the broad consequence of corporate governance on corporate tax planning. However, their conclusions are very general and do not address the specific topic of this paper. Researchers have examined how the Board's attributes affect corporate tax planning. The results indicated some significant constructive and adverse relationships among the variables. For instance, Minnick and Noga¹¹ investigated the impacts of board attributes on certain corporations' tax management plans. They found that while specific characteristics had negative effects, others had beneficial effects on corporate tax planning. In particular, Lanis and Richardson considered how the Board's composition affected thirty-eight Australian companies' corporate tax strategy. "Having more outside members on the board reduces the likelihood of tax aggressiveness," they discovered."¹² Nestle is a multinational company with a presence in many countries, out of which Nestle

⁶ ATO, 2005; Rego and Wilson, 2012; Badertscher et al., 2013; Hassan et al., 2014; Guenther et al., 2017.

⁷ R. Lanis, G. Richardson, Corporate Social Responsibility and Tax Aggressiveness: An Empirical Analysis. (Journal of Accounting and Public Policy 31(1), (2012), 86-108.

⁸ K. Minnick and T. Noga, Do Corporate Governance Characteristics Influence Tax Management?" (Journal of Corporate Finance 16(5), (2010), 703- 718.

⁹ See the Organisation of Economic Cooperation and Development (OECD) Principles on Tax Planning.

¹⁰ A. Young, How Does Governance Affect Tax Avoidance? Evidence from Shareholder Proposals (Applied Economics Letters 24 (17), (2017), 1208- 1213.

¹¹ K. Minnick and T. Noga, op. cit. (note 8).

¹² R. Lanis and G. Richardson, The Effect of Board of Director Composition on Corporate Tax Aggressiveness. (Journal of Accounting and Public Policy, 2011)50. <<https://doi.org/10.1016/j.jaccpubpol.2010.09.003>> accessed 12 January 2024.

Nigeria Plc is just one. The choice of the Company for this study is premised on the fact that it prides itself on being one of the most compliant companies in compliance with the Code of Corporate Governance, tax law, and board diversity.¹³ Whether all these attributes have a positive effect on tax planning or not engages the mind of this author in this paper, with a view to finding an answer to this issue.

2.0 Conceptual Framework

2.1 Corporate Governance and Composition of the Board

Corporate governance is the apportioning of responsibilities and rights between the equity providers and the Company's officers, most especially the directors. It is a corporate monitoring system that provides a framework for accomplishing the objective of the Company. Corporate governance is also an approach to managing and leading businesses.¹⁴ Uwuigbe, Olusanmi, and Iyoha¹⁵ described it as a structure made up of several organisations and rules designed to safeguard the interests of the owners.

The Board is the first and most important component of the corporate governance structure of modern corporations. The Board oversees the Company's operations, sets the strategic goals, puts them into action, and reports to its owners on its stewardship. Thus, the corporate governance structure of Nestle Nigeria Plc, including the Board's size, composition, and the strategies adopted in its tax planning, are the main subject of this paper.

2.1.2 Board Attributes and Tax Aggressiveness

Tax aggressiveness means the strategy of reducing tax liability beyond the limits allowed by the relevant tax law in force. Some writers¹⁶ have noted that tax aggressiveness is the strategy of using tax planning to reduce taxes paid to the government to mitigate tax liabilities. Also, Khurana and Moser¹⁷ opined that all actions to lower a company's tax obligations are considered tax aggressiveness. They conclude that management's tax-aggressive behaviour stems mainly from the governance frameworks. They contend that with weak governance,

¹³ See Nestle Nigeria Plc, 2021 Annual Reports and Accounts, Corporate Governance Reports, pp. 15-23.

¹⁴ See the OECD 2003 and Cadbury Code 1992.

¹⁵ O. Olusanmi, U. Uwuigbe and F. Iyoha, The Impact of Corporate Governance Practices on Nigerian Enterprises' Dividend Distribution Policies. (Journal of Accounting and Auditing: Research & Practice, 2015) 1-11.

¹⁶ T. Shevlin, S. Chen, X. Chen, and Q. Cheng, Ownership and Aggressive Taxation. (University of British Columbia and University of Washington Business School Working Paper, (2007).

¹⁷ I. Khurana and W. Moser, Institutional Shareholders' Investment Horizons and Tax Avoidance. (The Journal of the American Taxation Association 35(10) (2013), 21-39.

there is a greater chance of tax aggression and a lower chance under strong governance. This writer disagrees with the view that all actions to reduce tax are aggressive. Instead, this writer believes that any strategy adopted, as long as it is within the ambit of the relevant tax law, is acceptable. Only when tax law is violated or when any tax statute does not cover the action taken does aggressiveness come into play. One major factor influencing the effectiveness of the Board is its size. Large boards that are unnecessary are sometimes perceived as less successful in promoting collaboration among members, sharing ideas, and upholding stringent tax regulations.¹⁸ In line with this, Jensen¹⁹ has argued that the Board becomes less effective as it grows in size. This is because a large board is often slow to react to events and is often incapable of taking action quickly when needed. Jensen also added that the directors on a large board are less likely to be critical of each other than those on small boards.

According to Lanis and Richardson,²⁰ the board size considerably impacts tax aggressiveness. Additionally, board size must be commensurate with the Company's business operations, otherwise, the increased board remuneration will deplete the Company's profit. Conversely, Aliani and Zarai²¹ cite the lack of nexus between board size and tax aggressiveness. Independent non-executive directors (INEDs) are meant to provide a balanced perspective to the Board. Young²² found that an effective tax rate decreases with increasing board independence. He argues that even businesses with strong corporate governance nevertheless use tax-aggressive tactics. Another aspect of corporate governance is having diverse genders on the Board, that is, the representation of women on corporate boards. It has been proposed that women are instrumental in maintaining compliance with tax law. Fallan²³ highlights that women are generally more compliant, which will impact how they deal with tax issues. He, thus, advocates for more women's representation on corporate boards.

¹⁸ O. Ruin, P. Fung and M. Firth, China Provides Evidence on Ownership, A Two-Tier Board Structure, and the Informativeness of Earnings, (Journal of Public Policy and Accounting, 26(1), (2007), 463–469.

¹⁹ 1993

²⁰ G. Richardson, and R. Lanis, The Impact of the Makeup of the Board of Directors on the Aggressiveness of Corporate Taxation. (Journal of Accounting and Public Policy, 30(1) (2011), 50–70..

²¹ M. A. Zarai, and K. Aliani, Demographic Diversity in the Board and Corporate Tax Planning in American Firms, (Business Management and Strategy, 3(1) (2012), 72-86.

²² A. Young, How Does Governance Affect Tax Avoidance? Evidence from Shareholder Proposals (Applied Economics Letters 24 (17), (2017), 1208- 1213.

²³ L. Fallan, Gender, Exposure to Tax Knowledge, and Attitudes Towards Taxation: An Experimental Approach. (Journal of Business Ethics, 18(2), (1999), 173-184.

2.2 Theoretical Framework

Four theories shall be considered to discuss the subject matter further so as to provide insight and more understanding of the relationship between tax planning and the theories.

2.2.1 Agency Theory, Corporate Governance, and Tax Aggressiveness

The first and the most important of the theories is the Agency theory, which was developed by Jensen and Meckling in 1976.²⁴ The theory centered on how the governance of a company is based on the conflicts of interest between the owners of the Company (shareholders), its managers (the Board) and major providers of debt finance (creditors). They explained that each of these groups has different interests and objectives, and the major aim of the theory is on how these conflicting interests can be balanced. Thus, the theory majorly discusses the economic theory of the corporation, and it is the most important theory in the corporate governance literature. Dalton and Canella²⁵ point to two significant factors that influence agency theory. Firstly, the theory conceptually reduces the corporation to two participants: managers and shareholders. Secondly, it is sacrosanct that human beings are self-interested and self-centered. Simply put, agency theory explains the agency problems arising from the separation of ownership (of the Company, that is, the shareholders) from control (that is, those that control, manage or administer the Company, that is, the directors and other managers).

According to Davies et al., it 'provides a useful way of explaining relationships where the parties' interests conflict and can be brought more into alignment through proper monitoring and a well-planned compensation system.'²⁶ These results, according to Jensen and Meckling,²⁷ in situations where company managers use their specialised knowledge about the Company and their managerial expertise to gain an advantage over the owners of the firm, the shareholders, who are not involved in the Company's day-to-day affairs. This situation usually leads to opportunistic behaviour by the managers of the firm.²⁸ Since the managers control the

²⁴ M. Jensen and W. Meckling. Theory of the firm: Management Behaviour, Agency Costs, and Ownership Structure. (Journal of Financial Economics 3, (1976) 305-360.

²⁵ C. M. Daily, D. R. Dalton and A. A. Canella, Corporate Governance: Decades of Dialogue and Data. (Academy of Management Review, 28 (3), (2003) 371-382.

²⁶ J. H. Davies, F. D. Schoorman, and L. Donaldson, Towards a Stewardship Theory of Management. (Academy of Management Review, 22, (1997) 20-37.

²⁷ M. Jensen and W. Meckling. Theory of the firm (note 24).

²⁸ Opportunistic behaviour is the act of company managers running the companies in their own interests as against the overall interest of the company.

firm, the risk is that they will pursue actions in their self-interest instead of the owners' interest.²⁹

In specific terms, however, Jensen and Meckling define agency relationship in the context of "a contract where one or more persons (called the principal or principals) engage the services of another person or persons (called the agent or agents) to carry out some services on their behalf which involve assigning some decision-making authority to the agent(s)."³⁰ Thus, Agency theory concerns itself with resolving two problems that are inherent in agency relationships. The first is the agency problem, which happens when the goals of the principal and agent are different, and it is difficult or expensive for the principal to determine the actual actions of the agent. The second is risk sharing, which happens when the principal and agent have conflicting attitudes toward risk.

Eisenhardt³¹ explains that the agency problem happens when "(a) the interests of the principal and agent conflict, and (b) the principal finds it difficult or expensive to find out precisely what the agent is indeed doing." The problem is that the principal cannot verify that the agent is behaving responsibly and appropriately because it is by acting responsibly that the principal's interest can be satisfied. By this, we mean the shareholders are not on the ground to closely monitor or supervise the Board and the management that runs the affairs of the Company on behalf of the shareholders, who are the owners of the Company.

Shleifer and Vishny³² explain the agency problem in the context of a manager who raises capital from investors to put them to productive use or cash out his holdings in the firm. They explained that while the financiers need the managers' specialized human capital to generate a return on their funds, the managers, on their part, require the funds of the financiers. But how can financiers be sure that they get the expected returns from the managers once they invest their funds? This is the basis of the agency problem. Shleifer and Vishny explained further that the agency problem in this context refers to the challenges the financiers have in assuring that the managers do not expropriate funds or waste them on unattractive projects.

²⁹ M. Jensen, M. and W. Meckling. Theory of the Firm: Management Behaviour, Agency Costs, and Ownership Structure. (Journal of Financial Economics 3, (1976) 305-360.

³⁰ Ibid. p 308.

³¹ K. M. Eisenhardt, Agency Theory: An Assessment and Review. (International Journal of Management, 5, (1989) 341-353.

³² A. Shleifer and R. Vishny, A Survey of Corporate Governance, (Journal of Finance, 52, (1997) 246-253.

Following the explanation of the agency problem that had been analysed, a fundamental question calls for an answer: in whose interest is the Board engaging in aggressive tax planning, the directors or the owners? The answer to this question is the basis of the agency problem, or put differently, the principal-agent problem, the principal being the owners of companies and the agent being the directors.

According to Fama, the validity and transparency of agency theory depend on the mechanisms by which firm owners can monitor managers' performance to verify that firm managers are using their competencies and the firm's resources to achieve the best returns for the principals.³³ Fama and Jensen³⁴ noted that shareholders can hold management accountable according to the firm's results. Therefore, monitoring managerial decisions by the boards becomes crucial to protect shareholders' interests.³⁵ Such monitoring from the Board of Directors is vital to ensure the reliability and completeness of financial reporting.

Since earnings management misleads stakeholders because directors provide them with false information about a firm's true financial position. This situation has raised some pertinent questions, which are addressed in this paper: In whose interest are the directors planning tax? Are the directors bothered if aggressive tax planning gives the Company a bad image? Who is at the losing end in the long run: Shareholders, directors, or government? In summary, the agency relationship between shareholders (principals) and managers or directors (agents) is thwarted by conflict and this is the major problem with this theory. The agency problem arises primarily from the principal's desire to increase shareholders' wealth and the self-interested attempt of the agent to expropriate funds.

Concerns have also been raised about whether managers' objectives coincide with those of the shareholders when they act in a tax-aggressive manner within an agency structure. Slemrod³⁶ was among the earliest writers on agency problems and companies engage in tax aggressiveness. Along these lines, some other writers³⁷ also added their findings to the increasing research on tax aggressiveness. They contended that there would unavoidably be a conflict of interest as tax aggressiveness affects several stakeholders, including shareholders,

³³ E. Fama, (1980), op cit.

³⁴ E. Fama and M. Jensen, Separation of Ownership and Control. (Journal of Law and Economics, 26, (1983) 301–325.

³⁵ Ibid.

³⁶ J. Slemrod, The Economics of Corporate Tax Selfishness, (National Tax Journal, 57(1), (2004), 877-899.

³⁷ M. A. Desai, A. Dyck, and L. Zingales, Theft and Taxes, (Journal of Financial Economics, 84(3), (2007), 591-623.

insiders, creditors, managers, host communities, and the government. The separation of principals from agents is an essential factor. In a corporate arrangement, one important attribute is the need to distinguish equity providers from management.³⁸ It has also been questioned whether management's tax-aggressive behaviour is motivated by the same goals as the shareholders.³⁹

Chen and Chu were among the first scholars to use agency theory to investigate the nexus or link between tax aggression and company good corporate governance. They contend that managers purposefully create information asymmetry between the Company and the tax agencies to find means of mitigating their tax liabilities or payments and evade the tax authorities' detection, which is how tax aggressiveness is created. Regretfully, this move affects the information asymmetry between shareholders and management. This, in turn, will hinder the shareholders from valuing the Company.⁴⁰ Tax aggressiveness is connected with the agency problem because it is a strategy for covering up management rent diversion. Proponents of this viewpoint opined that tax aggressiveness might shield expedient acts of the managers and combat rent-seeking activities or rent diversion at the expense of the investors or shareholders.⁴¹

2.2.2 Empirical Review

Ribeiro et al.⁴² explored how effective tax rates (ETRs) and firms' financial and operational features are related. They sought to demonstrate how crucial corporate governance characteristics are in understanding ETRs. Between 2010 and 2013, a sample of 704 listed manufacturing companies was chosen for the investigation. Their empirical findings demonstrated that larger and more successful companies were linked to greater ETRs. Furthermore, they found that even if capital intensity, leverage, and research and development expenses are all on the rise, ETRs are negatively impacted by these factors.

³⁸ J. Slemrod, (2004). Op. cit.

³⁹ M. Jensen, and W. Meckling, Theory of the Firm, Managerial Behaviour, Agency Costs and Ownership Structure, (Journal of Financial Economics, 3(4), (1976), 305-360. See also M. Desai, D. Dharmapala and W. Fung, Taxation and The Evolution of Aggregate Corporate Ownership Concentration. (NBER Working Paper No. 11469, (2006), 345-383.

⁴⁰ X. Wang, Tax Avoidance, Corporate Transparency, and Firm Value. (Working Paper, 2010) quoted from J. A. Amedu Michael and N. P. Francis Udeh: Corporate Governance Structure and Tax Aggressiveness of Quoted Manufacturing Companies in Nigeria, Proceedings of the 7th Annual International Academic Conference on Accounting and Finance Disruptive Technology: Accounting Practices, Financial and Sustainability Reporting, Organized by the Institute of Chartered Accountants of Nigeria (ICAN).

⁴¹ M. Desai, and D. Dharmapala, Taxation and the Evolution of Aggregate Corporate Ownership Concentration, 2006.

⁴² A. Ribeiro, A. Corqueira, and E. Brandao, The Determinants of Effective Tax Rates: Firms Characteristics and Corporate Governance. (FEP Working Papers, School of Economics Management, University of Porto, (2015).

Yeung⁴³ was another investigator who examined the connection between aggressive taxation and corporate governance in Hong Kong-based companies. The results showed that while corporate governance affects ETR, the state of the economy significantly affects this relationship. Chen, Cheng, and Shevlin⁴⁴ analyse the aggressiveness with which US-based foreign-owned companies handle their taxes. They concluded that businesses with foreign control were taxed less aggressively than those without. They also found that companies with plans to seek outside capital and those without foreign institutional investors exhibit reduced levels of tax aggressiveness. Richardson, Taylor, and Lanis⁴⁵ also investigated the link between tax aggression and female board members in selected Australian companies. The results demonstrated that having a female director reduces the chance of tax aggressiveness.

2.2.3 The "Nexus of Contract" Theory

This is the second theory, and it is a spillover from agency theory. According to Fama, Agency theory sees the firm as a nexus of contracts.⁴⁶ He explained that the unit of analysis of the firm under agency theory is the contract. To him, the "nexus of contracts" theory of the corporation seeks to dispel the proposition that shareholders "own" the corporation and that the shareholders are the main beneficiaries of the directors' fiduciary duties.⁴⁷ This theme is developed by decomposing the corporation into several groups bound together to a set of production objectives, with the corporation serving as a tool for implementing these objectives. Because a corporation is perceived as a unit of organising contracts among groups thus bounded, with no particular affinity to any of the groups, the "nexus of contracts" theory implicitly adopts the real entity theory of the corporation, which tends to dissociate the corporation from its shareholders.⁴⁸ The literature on the "nexus of contracts" theory is considerable.⁴⁹ Ige Bolodeoku⁵⁰ believes that contractual relations are the purpose of the firm,

⁴³ C. T. Yeung, *Effects of Corporate Governance on Tax Aggressiveness*, (An Honours Degree Project, Hong Kong Baptist University, (2010). < <http://libproject.hkbu.edu.hk/trsimage/hp/07014341>. Pdf> accessed 23 December 2023.

⁴⁴ S. Chen, X. Chen, Q. Cheng, and T. Shevlin, *Ownership and Tax Aggressiveness*. (Working Paper, University of Washington Business School and University of British Columbia, (2007).

⁴⁵ G. Richardson, G. Taylor, and R. Lanis, *The Impact of Board of Director Oversight Characteristics on Corporate Tax Aggressiveness: An Empirical Analysis*, (*Journal of Accounting and Public Policy*, 32(1), (2013), 68-88.

⁴⁶ E. Fama, *Agency problems and the theory of the firm*. *Journal of Political Economy* 88 (2) 1980) 288-307.

⁴⁷ E. Fama, *Agency Problem and the Theory of the Firm* (*J. Pol. Econ.* 1980) 288.

⁴⁸ M. Jensen and W. Meckling, "Theory of the Firm: Managerial Behaviour, Agency costs, and Capital Structure" (*J. Fin. Econ.* 305, 1976) 3.

⁴⁹ M. Jensen and W. Meckling, "Theory of the Firm: Managerial Behaviour, Agency costs, and Capital Structure" (*J. Fin. Econ.* 305 1976) 3; N. Henry Butler, "The Contractual Theory of the Corporation", (*11 Geo. Mason U.L.Rev.* 99, 1989).

⁵⁰ I. O. Bolodeoku, "Economic Theories of the Corporation and Corporate Governance: A Critique", (*J.B.L Sweet & Maxwell and Contributors*, July ed. 2002) 411-439 especially at 416.

both with the employees and with suppliers, customers, creditors, the government, and so on. This writer agrees with Bolodeoku because each of the stakeholders he mentioned has one form of contractual relationship or the other with the Company. The inherent flaw in this theory, which makes the agency theory preferable, is that the "nexus of contracts" theorists take a corporation's existence for granted because it emphasises each stakeholder as having different contracts with the corporation instead of seeing the corporation as a single entity. According to Bolodeoku,⁵¹ what is essential for the macro-economic analysis in production theory is the existence of a production unit rather than the form of such a unit. This explains why a sole proprietorship, a firm, and a corporation, in economic terms, can all be described as a "nexus of contracts". So, this theory generally applies to all business units, and its claim to the corporation or Company alone cannot stand.

2.2.4 The Traditional or Deterrence Theory of Tax Compliance

The deterrence theory was propounded by Frey and Feld.⁵² It deals with tax compliance challenges in an attempt to seek an enforcement mechanism that can be complemented or substituted by appealing to the citizen's tax morality. The traditional theory of tax compliance is referred to as "deterrence theory," which is based principally on the assumption of fear of detection and punishment.⁵³ However, Kornhauser⁵⁴ argues that the deterrence theory, which is based on the methods of enforcement through audits and penalties, explains only a small fraction of actual voluntary tax compliance levels. It has poor explanatory power because it assumes that the decision to comply is based on a cost-benefit analysis where people rationally weigh the benefits of non-compliance against the cost of detection and penalties. Kornhauser⁵⁵ explores the normative and cognitive aspects in his review of the literature on tax compliance to explain why people pay or fail to pay taxes in the United States of America.

2.2.5 Tax Planning Theory

The theory of tax planning states that taxpayers can arrange their financial activities in a way that will make them suffer a minimum expenditure for taxes through effective tax planning. It

⁵¹I. O. Bolodeoku, *Ibid.*

⁵²E. Kornhauser Marjorie, *Corporate Regulation and the Origins of the Corporate Income Tax*; (Indiana Law Journal 2007) 66.

⁵³M. G. Allingham and A. Sandmo, *Income Tax Evasion: A Theoretical Analysis*. (Journal of Public Economics, 1(3-4), 2014) 323-338.

⁵⁴E. Kornhauser Marjorie, *Corporate Regulation and the Origins of the Corporate Income Tax*; (Indiana Law Journal 2007) 66.

⁵⁵*Ibid.*

was propounded by William Hoffman in 1961,⁵⁶ and explained that not all tax planning reduces the tax liability to the desired minimum level. Tax planning that is properly fashioned to align with the individual taxpayer may ultimately have the adverse effect of maximizing the tax. Tax planning must likewise be distinguished from tax saving.⁵⁷ Hoffman,⁵⁸ Mgammal, and Ismail,⁵⁹ reported that tax planning activity theories introduce concepts and principles applicable to tax practitioners. Tax planning could not be sustained for long, except tax planning activities are "flexible", that is, continuity of the strategies. This is especially applicable to the cases of tax planning strategies that depend on the ambiguities and loopholes in tax regulation. Therefore, tax planning strategies must be time-oriented and proportionate in the logic that "the past, the present, and the future limit require consistency. But the present limit must be further circumscribed in the light of the taxpayer's future requirements."⁶⁰

3.0 Attributes of Corporate Boards

The study examines the following attributes of the Board: Board committee structure; board size,⁶¹ gender diversity,⁶² CEO duality (measures of Board independence, whether the same person occupies the position of CEO and Chairmanship of the Board or whether different people occupy each of the positions); frequency of Board meetings,⁶³ and the financial literacy of Board members.

4.0 Composition of the Board and Corporate Tax Avoidance

The term "Board Composition" refers to the number of Independents (INEDs) and other categories of directors on the Board. Board composition is a major factor in determining how well the Board manages supervision.⁶⁴ This is significant because inside directors can

⁵⁶ W. H. Hoffman, The theory of tax planning. *Accounting Review*. 36 (2) 1961) 274-281.

⁵⁷ Ibid.

⁵⁸ W. H. Hoffman, Op. cit.

⁵⁹ M. H. Mgammal and K. N. Ismail, Corporate Tax Planning Activities: Overview of Concepts, Theories, Restrictions, Motivations and Approaches. (*Mediterranean Journal of Social Sciences*. 6 (6) 2015) 350 – 358.

⁶⁰ Corporate Tax Planning Activities Overview Of Concepts, Theories, Restrictions, Motivations and Approaches from

<https://www.slideshare.net/alkaser100/corporate-tax-planning-activities-overview-of-concepts-theories-restrictions-motivations-and-approaches-56289781>>accessed 28 July 2022.

⁶¹ Board Size means the number of directors on the board.

⁶² Gender Diversity means the proportion of male and female directors on the board.

⁶³ Frequency of meeting means the number of times meetings are held annually. The effectiveness of the Board is a measure of its consistency in holding regular periodic meetings.

⁶⁴ E. F. Fama and M. C. Jensen, Separation of Ownership and Control, (*Journal of Law and Economics* 26(2), (1983), 301-325.

potentially engage in deceptive conduct to further their interests.⁶⁵ However, the manipulative tendencies of inside directors⁶⁶ could be checkmated or controlled by outside directors⁶⁷ on the Board,⁶⁸ this is similar to checks and balances. Therefore, depending on the composition of the Board, it may be assumed that corporate tax avoidance will be positively or negatively affected. As demonstrated in Nestle Nigeria Plc, an even distribution of INEDs and EDs is expected to enhance the best possible tax planning while adhering to corporate governance principles, resulting in the expected good governance in the Company and, subsequently, in Nigeria's manufacturing companies. The results of earlier studies which examine the connection between board composition and business tax planning are inconsistent.

Studies have revealed negative connections between the two variables despite strong positive relationships being discovered in others. As an illustration, although Lanis and Richardson⁶⁹ discovered a negative correlation between company tax evasion and a larger percentage of INEDs on the Board, Minnick, and Noga⁷⁰ concluded that there is a positive correlation between overseas tax evasion and the makeup of the Board. From the perspective of good governance, the presence of INEDs on the Board ought to enhance corporate governance. In this case, the expected link between the Company's tax planning strategies and the Board's makeup should be advantageous. Additionally, given the contradictory results of earlier studies and the notion that the inclusion of INEDs aids in the Board's promotion of good governance, this study proposes a positive link between the board composition and corporate tax aggressiveness.

5.0 Composition of the Board in Nestle Nigeria Plc

Nonetheless, Nestle Nigeria Plc's superior blend of non-executive and executive directors from various countries with a range of backgrounds and expertise lends support to an increase in after-tax profit in the 2021 fiscal year.⁷¹ The Company's Board has 9 (nine) members, out

⁶⁵ H. Uzun, S. H. Szewczyk and R. Varma, Board Composition and Corporate Fraud (Financial Analysts Journal 60(3), (2004), 33-43.

⁶⁶ These are executive directors.

⁶⁷ These are Non-Executive Directors (NEDs) and Independent Non-Executive Directors (INEDs).

⁶⁸ E. F. Fama. Agency Problems and the Theory of the Firm, (Journal of Political Economy, 88(2), (1980) 288-307.

⁶⁹ R. Lanis and G. Richardson, The Effect of the Board of Director Composition on Corporate Tax Aggressiveness, (Journal of Accounting and Public Policy 30(1), (2011), 50-70.

⁷⁰ K. Minnick and T. Noga, Do Corporate Governance Characteristics Influence Tax Management?“, (Journal of Corporate Finance 16(5), (2010), 703- 718.

⁷¹ There are 9 (nine) directors in all.

of which 5 (five) are Nigerians and 4 (four) are foreigners. The Board's composition is as follows: 3 (three) NEDs, 3 (three) INEDs, and 3 (three) EDs.⁷² This composition appears ideal for achieving effective corporate governance because of the involvement of diverse skills and experiences, which the Nigerian Code of Corporate Governance (NCCG) 2018 advocates and recommends. It is expected of all directors,---EDs, NEDs, and INEDs--- to display a certain amount of mental and physical independence.

Nonetheless, there are aspirations for greater independence from INEDs in the NCCG 2018. An INED's autonomous status is defined in Section 7 of the Code. The criteria used to determine independent status are not all-inclusive. Still, they are intended to promote independence on the Board and guarantee that directors designated as INEDs are "independent both in character and in judgement."⁷³

Every year, boards must also determine and verify that each INED maintains his independent status. This has the consequence that an INED of the Company should instantly stop being an INED and be reclassified as a NED if he takes any positive step that affects his independent status, such as the acquisition of shares or involvement in any action that will make him have a financial interest in the Company because such actions will undermine his objectivity and independence.

6.0 Board Committee Structure

The creation of committees in charge of risk management, nomination and governance, compensation, and audit are recommended by the NCCG 2018. However, companies are allowed to combine these roles in board committees by considering the organization's size, needs, and operations. The Code further recommends that the Board committees overseeing nomination, governance, compensation, and audit should solely include NEDS, with the majority of them potentially being INEDs. At the Board's quarterly meetings, chairmen of committees are also expected to provide the Board with the minutes of their sessions.

Consequently, to ensure that the committees responsible for nomination, governance, and compensation (where applicable) are made up exclusively of NEDs, boards should examine their current membership composition. If there is none already in existence, one must be instantly installed. This situation is present in Nestle Nigeria Plc and further demonstrates compliance with the Code. Additionally, boards must make sure that the current

⁷² NEDs means Non-Executive Directors, INEDs means Independent Non-Executive Directors and EDs means Executive Directors.

⁷³ See s.7.1 of the Nigerian Code of Corporate Governance, 2018.

composition of their boards consists of the right number of INEDs to create committees and directors with the necessary experience, especially in risk management, finance, and governance, to ensure effective oversight.⁷⁴ In addition, company secretaries must submit a written report summarizing the main points discussed in committee meetings, which is then presented to the Board by the committee chairs.

6.1 Composition of the Audit Committee of Nestle Nigeria Plc

The makeup of the audit committee is another aspect of good corporate governance that is capable of enhancing efficient tax planning since the committee deals with financial matters. The committee oversees and monitors financial data to ensure transparency and accountability. This kind of committee should ideally have additional INEDs for oversight. It should also include representatives of the shareholders for transparency's sake. For instance, Nestle Nigeria Plc's audit committee comprises seven members (one foreigner and six Nigerians). Of the 7 (seven) members, there is a Nigerian chairman, two representing the shareholders, and 4 (four) representing the directors.

This type of composition appears a bit lopsided, in that there is an expectation of equal representation of the directors and the shareholders, by having 3 (three) members representing the shareholders and the remaining 3 (three), the directors, while the chairman is expected to be neutral for the sake of objectivity and oversight. This is needed to achieve good governance, financial transparency, and effective tax planning for this multinational Company. However, to avoid managerial opportunism and manipulations, 3 (three) of the 4 (four) members representing the directors are INEDs in the Company's Board.

The Financial Statements and Annual Report for the Year Ended December 31, 2021, along with the Reports from the Directors and Auditors.⁷⁵

Table 1: Financial Highlights of Nestle Nigeria Plc 31 December 2021

The table shows the Financial Statements and Annual Report for the Year Ended December 31, 2021, along with the Reports from the Directors and Auditors.

Financial Highlights

⁷⁴ Periodic training courses can be scheduled for the directors to enhance their skills. This is called board refreshment in corporate parlance.

⁷⁵ Culled from Nestle Nigeria Plc Annual Report and Financial Statements for the year ended 31 December 2021, p.4.

<i>In thousands of naira</i>	2021	2020	Increase/ (decrease) %
Revenue	351,822,329	287,084,087	23%
Profit before income tax	61,875,342	60,638,443	2%
Profit for the year	40,037,277	39,212,025	2%
Declared dividend	47,955,703	55,485,937	-14%
Issued Share capital	396,328	396,328	-
Total equity	21,378,209	29,296,984	-27%

Stock Exchange Information

Stock exchange quotation at 31 December

in Naira per share	1,556.50	1,505.00	3%
Number of shares issued ('000)	792,656	792,656	-
Market capitalisation at 31 December (N: million)	1,233,769	1,192,948	3%

These financial highlights show that the profit for the year 2021 increased by 2% over the profit for the year 2020. In addition, earnings before taxes increased by 23% in 2021 compared to 2020. This demonstrates how the Company's finance team works under the direction of the Board of Directors to implement good tax planning or strategy for the Company.

7.0 Chief Executive Officer (CEO) Duality and Business Tax Avoidance

The CEO duality is to have one person discharging a corporation's Chairman and CEO responsibilities. This situation reveals some significant issues in the leadership and governance of a corporation,⁷⁶ because it creates an opportunity for a person to concentrate authority on himself, which could undermine the Board's capacity to exercise effective control.⁷⁷ Consequently, the level of independence of the Board is impacted by the CEO duality.⁷⁸ In light of this, it is important to comprehend how CEO dualism and company tax avoidance are related,⁷⁹ since the Board now makes decisions about tax management.⁸⁰

⁷⁶ R. Said, Y. H. Zainuddin and H. Haron, The Relationship between Corporate Social Responsibility Disclosure and Characteristics in Malaysian Public Listed Companies, (Social Responsibility Journal 5(2), (2009), 212-226.

⁷⁷ J. Tsui and F. A. Gul, Corporate Governance and Financial Transparency in Hong Kong Special Administrative Region of the People's Republic of China, (Paper Presented at the 2nd Asian Roundtable on Corporate Governance, Hong Kong, (2000).

⁷⁸ F. A. Gul and S. Leung, Board Leadership, Outside Directors' Expertise and Voluntary Corporate Disclosures (Journal of Accounting and Public Policy 23(5), (2004), 351-379.

⁷⁹ Minnick and Noga, (2010), op.cit.

The duties of the Board Chairman are delineated in Section 3 of the NCCG 2018, which encompasses overseeing the Board's activities and offering comprehensive business guidance. It also provides that the chairman should not be involved in the Company's daily operations. The section also highlights the importance of the chairman's routine contact with NEDs. This provision requires the Board to ensure that the roles of the chairman and the other EDs, as well as NEDs, are well-defined. The board charters and the appointment letters of the directors should explicitly outline the duties and obligations of each director's position. Moreover, a formal structure defining financial matters such as tax policy and non-financial issues that need to be brought before senior management and the Board needs to be developed.

Furthermore, the Board's chairman must determine appropriate mechanisms for regularly including other NEDs. As a result of the numerous corporate crises globally, prominent of which are the cases of Enron and Parmalat, the roles of chairman and CEO are now clearly defined in the Corporate Governance Codes of almost all nations. The two roles are now held by two distinct people rather than by one. The separation of roles aims to advance openness and transparency, which are essential to enhancing good corporate governance. Considering the current corporate governance and tax planning practices, earlier research on the dualities of CEO and corporate tax evasion is no longer applicable.⁸¹

7.1 Board Dimensions and Tax Avoidance in Companies

The impact of group size in decision-making in various processes is a phenomenon that cannot be over-emphasized. Consequently, the size of a board of directors can influence the decisions made and, consequently, the overall quality of corporate governance.⁸² Generally speaking, as noted by Jenter et al.,⁸³ Researchers studying corporate governance have not been able to establish the ideal board size to assess the efficacy of the Board. For instance, this researcher found that in Nestle Nigeria Plc, the total number of directors, both EDs and NEDs,

⁸⁰ KPMG, Tax in the Boardroom. (A Discussion Paper No. 211-321, KPMG, London, UK, (2005).

⁸¹ R. Said, Y. H. Zainuddin and H. Haron, The Relationship between Corporate Social Responsibility Disclosure and Characteristics in Malaysian Public Listed Companies, *Social Responsibility Journal* 5(2), (2009), 212-226.

⁸² R. Said, Y.H. Zainuddin and H. Haron, *Ibid.*

⁸³ Dirk Jenter, Egor Matveyev, and Lukas Roth, Does Board Size Matter, (2023) <<https://ssrn.com/abstract/4371743>>. accessed 9 April 2023.

is 9 (Nine).⁸⁴ While most of these researchers believe that larger boards can result in poor decision-making processes, cost ineffectiveness, and communication and coordination problems,⁸⁵ some have contended that bigger boards are essential for the exchange of ideas and improved decision-making.⁸⁶ Minnick and Noga,⁸⁷ regarding corporate tax evasion, evaluated the impact of board size and concluded that "larger boards only concentrate on lowering domestic taxes."⁸⁸ However, the present study agrees with Said et al.⁸⁹ that bigger boards are essential for cross-fertilization of ideas, leading to better decisions, including corporate tax planning.

7.2 Frequency of Board Meetings and Corporate Tax Avoidance

The question that matters here is whether the number of times that the Board holds meetings affects the Company's tax planning. Zalata et al. have shown that the number of meetings held may be used to measure the Board and its committees' initiatives.⁹⁰ The Cadbury Report⁹¹ recommended quarterly or four times annually. In contrast, the Combined Code by the FRC⁹² suggested that for boards to carry out their responsibilities effectively, they should meet often. To Vafeas, how regularly the Board meets is "a crucial aspect of board functions."⁹³ Emphasising the importance of the frequency of board meetings, Conger et al.⁹⁴ feel that a crucial component of the Board's efficacy is the time members spend in meetings.

⁸⁴ The Board is made up of three (3) Non-Executive Directors including the Chairman, Three (3) Independent Non-Executive Directors and Three (3) Executive Directors, making 9 (nine) in all. This is a good mixture of the composition which is in line with the NCCG 2018.

⁸⁵ Lipton M, Lorsch J (1992). A Model Proposal for Improved Corporate Governance. (Business Lawyer 48(1):59-77, C. Raheja, The interaction of Insiders and Outsiders in Monitoring: A Theory of Corporate Boards", (Working Paper, Vanderbilt University, Nashville, TN, (2009).

⁸⁶ Said et al., (2009) Op.cit; Jenter D, Schmid T, Urban D (2018). Does Board Size Matter? (Working paper Presented at AFA (2019).

⁸⁷ K. Minnick and T. Noga, Do Corporate Governance Characteristics Influence Tax Management?" (Journal of Corporate Finance 16(5) (2010) 703-718.

⁸⁸ Minnick and Noga, *ibid*, (2010) 717.

⁸⁹ Said et al., Does Board Size Matter?", (Working Paper Presented at AFA (2019).

⁹⁰ A. Zalata and C. Roberts, Internal Corporate Governance and Classification Shifting Practices: An Analysis of the UK Corporate Behaviour, (Journal of Accounting, Auditing & Finance, 31(1), (2016), 51–78.

⁹¹ Cadbury Report (1992) Report of the Committee on the Financial Aspects of Corporate Governance.

⁹² Financial Reporting Council.

⁹³ N. Vafeas, Board Meeting Frequency and Firm Performance, (. (Journal of Financial Economics 53(1) (1999),113.

⁹⁴ J. A. Conger, D. Finegold, E. E. Lawler III, Appraising Boardroom Performance. (Harvard Business Review 76, (1998), 136-148.

While Lipton and Lorsch⁹⁵ have maintained that the main issue facing most directors is lack of time, in part because they also serve as directors for other companies, it is surprising that very few scholars⁹⁶ have looked at the significance of board meeting frequency in the context of tax planning and corporate governance issues.

Gaining further insight into the impacts of these elements may enhance the understanding of proper functioning of a board. One important feature that can positively impact other areas of the Board's operations is how frequently the Board meets. Therefore, a board that meets more frequently is likely to manage the Company's taxes more effectively. Regrettably, there is not much research examining the link between this trait and corporate tax avoidance, and what is available makes it challenging to build a compelling argument.

7.3 Financial Literacy of Board Members and Corporate Tax Avoidance

Following the numerous accounting scandals that have occurred recently, emphasis has been placed on the necessity of having more financial specialists on the boards.⁹⁷ To guarantee an improvement in comprehension of the financial statement analysis, supporting the boards' oversight function. For instance, the Sarbanes-Oxley Act⁹⁸ of 2002 in the US requires financial specialists to be on the boards of publicly traded companies. While the Nigerian CAMA 2020 does not contain a comparable clause, Nestle Nigeria Plc has gone beyond the provisions of the CAMA 2020 by complying with the SOX by having its Finance and Control director⁹⁹ as a board member. Nonetheless, the NCCG 2018 mandates financial literacy for all publicly traded corporation audit committee members. In particular, one committee member should be a part of ICAN or any other accounting body acknowledged in Nigeria,

⁹⁵ M. Lipton and J. Lorsch, A Model Proposal for Improved Corporate Governance, *Business Lawyer* 48(1), (1992) 59-77.

⁹⁶ L. D. Brown and M.L. Caylor, *Corporate Governance and Firm Performance*, (Working Paper, Georgia State University, Atlanta, GA; Conger JA, Finegold D, Lawler III EE (1998). (Appraising Boardroom Performance. *Harvard Business Review* 76, (2004),136-148.

⁹⁷ E. Nga, T. M. Iskandar and P. Yatim, *Corporate Ownership and Corporate Governance*. (Paper presented at the 2nd Accounting Research & Education Conference (AREC), UiTM Shah Alam, Malaysia, 2012).

⁹⁸ Section 407 of the Sarbanes-Oxley Act of 2002 requires the SEC to issue rules requiring each reporting company to disclose whether or not (and, if not, an explanation of why not) its audit committee has at least one financial expert as defined by the SEC's rules. Section 302 of the SOX Act of 2002 mandates that senior corporate officers personally certify in writing that the company's financial statements comply with SEC disclosure requirements and "fairly present in all material respects the financial condition and results of operations of the issuer" at the time of the Report.

⁹⁹ Mr. Jagdish Kumar Singla, an Indian, is the Finance and Control Director of the company at the time of writing this paper.

such as ANAN.¹⁰⁰ The merit here is that financial literacy of members have a high tendency of producing a reliable financial statement for potential investors to make investment decision.

Although Vafaes¹⁰¹ found a positive connection between the presence of a financial specialist on the Board and corporate tax evasion; however, the board members' financial literacy as a whole has not been investigated. A board with many financially competent members may be better able to supervise activities and discourage tax evasion because of its legal and ethical implications.

7.4 Board Size and Level of Tax Aggressiveness

All other factors being equal, the Board's size affects the Company's tax management strategy and establishes its efficacy. The efficacy of the Board is primarily determined by the number of directors proxied¹⁰² on it. Large boards are typically deemed less successful in fostering coalitions among board members, advocating aggressive tax initiatives, and exchanging ideas. For Minnick and Noga,¹⁰³ large boards of directors seem ineffective due to the challenges in reaching decisions regarding tax aggressiveness policy, whereas small boards of directors' support sound tax management. Nonetheless, this writer believes that increasing tax management is independent of board size. What is essential is to have a sufficient number of board members commensurate with the volume of business the firm conducts and the right combination of skill sets.

The effect of board size on tax aggression has been the focus of numerous research studies. The outcomes have been uneven. For instance, Richardson and Lanis¹⁰⁴ revealed that the size of the Board greatly impacts tax aggressiveness. Adeusi, Bennee, and Uniamikogbo¹⁰⁵ examined the connection between corporate governance and tax aggressiveness in Nigeria's oil and gas sector. Secondary data were sourced from the selected companies' annual reports and accounts between 2013 and 2017. The results showed a positive relationship between board size and tax aggressiveness.

¹⁰⁰ Section 11.4 of the Nigerian Code of Corporate Governance provides that all members of the committee should be financially literate and should be able to read and understand financial statements.

¹⁰¹ N. Vafaes (2010), op. cit.

¹⁰² Proxy is the authority given to a person to act for someone else, such as by voting for them in an election, or the person to whom this authority is given, for instance, a proxy vote.

¹⁰³ K. Minnick and T. Noga, Do Corporate Governance Characteristics Influence Tax Management *Journal of Corporate Finance*, 16, (2010), 703-718.

¹⁰⁴ R. Lanis, and G. Richardson, The Effect of the Board of Director Composition on Corporate Tax Aggressiveness. (*Journal of Accounting and Public Policy*, 30, (2012), 50-70.

¹⁰⁵ E. Uniamikogbo, E. Bennee, and A. Adeusi, Corporate-Governance-and-Tax-Aggressiveness-in-Nigeria, (*Funai Journal of Accounting, Business and Finance* 4(1) (2019), 20-33.

Likewise, Ogbeide and Obaretin¹⁰⁶ examined the tax aggressiveness and corporate governance practices of Nigerian listed corporations. Data were gathered for 85 listed non-financial enterprises over five years, from 2012 to 2016. The findings showed that tax aggressiveness is adversely affected by board size.

In contrast, Aliani and Zarai¹⁰⁷ revealed no correlation between board size and tax aggression in the US setting. They found that attempts to minimize tax expenses were independent of the number of directors. In the same way, Okafor and Onyali¹⁰⁸ investigated the relationship between corporate governance practices and the tax aggression of a few Nigerian industrial businesses. They utilised data collected from the financial statements of the listed manufacturing businesses between 2005 and 2016. The results demonstrated no meaningful correlation between tax aggression and board size. This author agrees with the results and emphasizes the importance of having the right mix of skills and a sizeable membership suitable for business operations. Chytis, Tasios, and Filos¹⁰⁹ investigated how corporate governance practices impacted the tax planning of 55 (fifty-five) non-financial listed companies between 2011 and 2015 in Athens. The results showed that board size has little bearing on Greek-listed companies' corporate tax planning.

8.0 Independence of the Board and Tax Aggressiveness

All directors must exhibit a certain level of independence of mind and appearance, regardless of their kind or amount of share ownership (if any). However, as the NCCG 2018 states, there is a higher level of autonomy from the INEDs. Section 7 of the Code outlines how to determine the independent status of an INED.¹¹⁰ The Code also provides, *inter alia*, that an existing NED should not be reclassified as an INED. This was done to strengthen the

¹⁰⁶ S. O. Ogbeide, and O. Osaretin, Corporate Governance Mechanisms and Tax Aggressiveness of Listed Firms in Nigeria, (Amity Journal of Corporate Governance, 3(1), (2018), 1-12.

¹⁰⁷ K. Aliani, I. Hamid, and M.A. Zarai, Diversity in Kind in the Board of Directors and Tax Optimization: Validation in the Tunisian Context, Journal of Management and Global Business Research, 11(1), (2011) 41-50.

¹⁰⁸ C. L. Onyali, and T.G. Okafor, Effect of Corporate Governance Mechanisms on Tax Aggressiveness of Quoted Manufacturing Firms on the Nigerian Stock Exchange, Asian Journal of Economics, Business and Accounting, 8(1), (2018), 1-20.

¹⁰⁹ E. Chytis, S. Tasios and I. Filos, The Effect of Corporate Governance Mechanisms on Tax Planning during the Financial Crisis: An Empirical Study of Companies Listed on the Athens Stock Exchange. Int J Discl Gov 17(1) (2020), 30–38.

¹¹⁰ Some of the more stringent requirements than those outlined in some of the current sectoral rules seem to be part of the independence criteria proposed in the Code. In particular, independent directors are not permitted to own more shares than 0.01% of the company's paid-up capital (as opposed to the 0.1% allowed by the SEC Code).

independence of the Board further. While not exhaustive, the criteria also ensure that directors categorised as INEDs are "independent both in their character and judgement." It is equally necessary for the boards to verify each INED's ongoing independence annually. Companies must assess their independent directors in light of the requirements and make any required adjustments. They would also need to verify and validate the directors' position as independent annually.

As agency theory suggests, directors' independence leads to effective control of managers. Obviously, external members (INEDs) can guarantee both capability and competence simultaneously.¹¹¹ Given that their presence is a sign of good corporate governance, the INEDs are always viewed as a counterbalance on the Board. It is commonly believed that independent directors typically oppose executive directors' proposals to appropriate shareholder wealth. As a result, they lessen tax aggressiveness that is detrimental to shareholders by enhancing the Board's capacity to oversee management in the circumstances typical of agency problems, which typically result from the separation of ownership and control. As a result, as demonstrated by Nestle Nigeria Plc, having a larger number of outside (INED) directors on higher boards may considerably lessen the possibility of tax aggressiveness. Zemzem and Flouhi,¹¹² also examined 73 (Seventy-Three) French companies between 2006 and 2010. According to their findings, a higher percentage of outside directors could not affect tax aggressiveness. Onyali and Okafor¹¹³ examined the impact of corporate governance practices on tax aggressiveness in a subset of Nigerian manufacturing firms. The results of the data analysis showed that INEDs and the ratio of NEDs to EDs significantly influence tax aggressiveness among listed manufacturing businesses in Nigeria.

Some researchers¹¹⁴ also examined how business governance attributes affected tax planning during the global financial crisis. The findings showed a strong positive association between board independence and tax planning, and there was no relationship between CEO duality and firm size.

¹¹¹ C. I. Onyali and T.G. Okafor, Effect of Corporate Governance Mechanisms on Tax Aggressiveness of Quoted Manufacturing Firms on the Nigerian Stock Exchange, (Asian Journal of Economics, Business and Accounting, 8(1), (2018), 1-20.

¹¹² A. Zenzem, and K. Ftouhi, The Effects of the Board of Directors' Characteristics on Tax Aggressiveness, Research Journal of Finance and Accounting, 4(4), (2013), 140-147.

¹¹³ C. I. Onyali and T.G. Okafor, op. cit.

¹¹⁴ E. Chytis, S. Tasios, and I. Filos, The Effect of Corporate Governance Mechanisms on Tax Planning during the Financial Crisis: An Empirical Study of Companies Listed on the Athens Stock Exchange. (Int J Discl Gov 17(1) (2020), 30–38.

9.0 Board Ownership and Excessive Taxation

Given that taxes are deducted from a company's cash flow and, consequently, from the dividends that are distributed to shareholders, it stands to reason that these investors would use a variety of tax-aggressive tactics to optimise their wealth. Possibly for this reason, Shackelford and Shevlin¹¹⁵ suggest that tax aggressiveness should be determined by ownership structure. Indeed, the nature of agency difficulties is significantly influenced by corporate ownership. Tax aggressiveness helps the business, but depending on the ownership and control structure of the Company, there could also be significant non-tax costs. Khurana and William¹¹⁶ found that businesses with greater institutional ownership exhibit lower levels of tax aggressiveness because these owners are mainly bothered about the long-term effects of aggressive tax tactics.

10.0 Discussion of Findings

According to an overview of the results from the examination of the tax auditors' input, a company's tax management plan may be impacted by the traits and attitudes of each director toward tax compliance, particularly the chairman of the Board. Nonetheless, their concern for organisational legitimacy can be superseded by the fact that the firms nominated and compensated their directors. Moreover, the directors frequently hold multiple board positions. A director may serve on five boards of public companies. However, section 307 (2) of CAMA 2020 prohibits multiple or concurrent directorships in more than five public companies.¹¹⁷ This makes them less concerned with legal issues than financial ones, so the directors may not be aware of the tax status of the companies they oversee. As a result, management is more concerned with choosing a tax management strategy than the Board is.

Conclusion and Policy Implications

This paper examines the connection between Nestle Nigeria Plc's corporate tax avoidance, board qualities, and good corporate governance. Overall, the paper offers a fresh perspective on investigating the connection between Nestle Nigeria Plc's corporate tax avoidance and the attributes of the Board. Putting the quantitative results first, one could conclude that although the directors are perceived as having an impact on the companies' choice of tax management

¹¹⁵ D. A. Shackelford and T. Shevlin, Empirical tax Research in Accounting, (Journal of Accounting and Economics, 31(1-3), (2001) 321-387.

¹¹⁶ I. Khurana and W. Moser, Institutional Shareholders' Investment Horizons and Tax Avoidance, (The Journal of the American Taxation Association. 35(10) (2013), 21-39.

¹¹⁷ . See CAMA 2020, s. 307(2).

strategy, their ability to make judgment calls is undermined mainly by the financial benefits the companies provide, as well as the fact that the companies appoint these directors.

This conclusion is essential for revising the provisions on the appointment of directors in the CAMA 2020 and the NCCG 2018. The directors' supervision responsibilities, particularly those of the INEDs, ought to be broadened to include director accountability in situations where there appears to be negligence regarding non-compliance with the tax law. A shorter term for board members should be considered, and the problem of multiple directorships needs to be examined.

This conclusion is not without some limitations. First, this paper focuses on Nestle Nigeria Plc, a large multinational manufacturing company, given its propensity for tax management. Finally, even while the tax auditors' opinions offer an objective analysis of the directors' involvement in the tax management of their companies, the directors' opinions may offer further information. Consequently, learning more about the directors' perspectives may help one comprehend their involvement in the tax management strategies of the companies. In this regard, it is suggested that further qualitative investigation be conducted by using retired or dismissed directors as respondents. This will enhance a better comprehension of the boardroom activities concerning tax management strategy.

As previously mentioned, two essential viewpoints have proposed a connection between tax aggression and board structure. First, aggressive taxation transfers wealth from the government to the owners of the Company, it may be considered a value-maximizing tactic. Therefore, as long as the predicted marginal benefit is more than the marginal cost, corporate tax strategies should boost shareholder value. Corporate boards may approve tax-aggressive tactics. However, from the agency theory perspective, the importance of agency costs resulting from tax aggression cannot be overstated. Corporate boards have the authority to reduce tax aggressiveness when the cash excess generated by aggressive behaviour raises the possibility of managerial opportunism and jeopardises the alignment of shareholder and managerial interests. The study suggests that company boards may permit tax-aggressive techniques provided the estimated marginal benefit outweighs the marginal costs.

11.0 Recommendations

Based on the results, it is hereby recommended that having more numbers of INEDs is not enough to reduce aggressive taxation, as large board size is not a *panacea* to tax aggressiveness. Tax aggressiveness has the unethical tendency of transferring wealth from the

government to the owners of the Company. Modest board sizes commensurate with the Company's operations must be maintained. Excessively large board size may not necessarily improve the efficiency of choices and might even negatively impact the Company's bottom line. What is essential is to have a balanced skills and experience like what obtains in Nestle Nigeria Plc.

In addition to encouraging adequate representation of women on corporate boards, corporate bodies should use internationally renowned audit firms, maintain a reasonable board size, promote managerial ownership, and include investors as non-executive directors. These recommendations are made to support effective and timely decision-making on the Board and to adhere to the provisions of tax legislation. Additionally, this study suggests that institutional investment and ownership concentration in a company may marginally enhance regulatory and existing tax law. Tax authorities also need to conduct tax audits and investigations to track down illicit tax activity that could result in tax evasion. Although tax planning can increase net profit, companies must also consider the actual and potential costs associated with tax avoidance.

Also, for corporate boards to be effective, regular (but not excessive) meetings should be held, and members must attend as much as possible. Representation through proxies may sometimes not achieve the desired objective. This is part of the reasons why CAMA 2020 pegged the number of directorships which a person can hold in public companies to five to enable them have time and participate actively on board deliberations. Lastly, corporate boards should ensure that whatever tax planning strategies they adopt is in the best interest of all the stakeholders. They should 'give unto Ceasar (government), what belongs to Ceasar and unto other stakeholders (most especially, shareholders) what belong to them.