

# An Appraisal of the Legal Framework for Taxation in Nigeria

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## INTRODUCTION

“(Tax) is the one great power upon Which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy; it is also the power to keep alive”.<sup>1</sup>

It is arguable that tax is the price or consideration of the social contract between the government and the governed in modern democracies. There is hardly any government today that does not rely on tax measures to provide the much needed revenue for socio-economic development and amelioration of inequalities of wealth in society.

This paper examines the legal regime put in place for the actualization of tax administration in Nigeria. To begin it is apt that we turn to the historical antecedents of taxation in Nigeria.

## HISTORICAL PERSPECTIVE OF TAX IN NIGERIA

Prior to colonial administration of the territory now known as Nigeria, an effective tax system was reportedly in operation in indigenous kingdoms and communities<sup>2</sup>. In 1904, a notable tax legislation which harmonized the various traditional taxes was issued, called the Land Revenue Proclamation Law of 1904. This Law had effect in the Northern protectorate of Nigeria until the amalgamation of the Northern and Southern protectorates in 1914 when the Native Revenue Ordinance of 1917 was enacted to cover the areas of the Western Region of Nigeria.

Nevertheless, the Eastern region of the country had to wait until 1927 after much debate and hesitation for the first personal income tax law. This sparked off disturbances culminating in the Aba Tax Riot of 1929.

An epoch making statute in the field of company law was specifically introduced for the taxation of company profits under the Companies Income Tax Ordinance 1939.

In 1940 there was a major tax legislation, which for the first time applied throughout the country having consolidated all previous tax ordinances from 1906 to 1940. It also provided for the appointment and control of tax collectors by the residents. This was the Direct Taxation Ordinance No. 4 of 1940 and the Income Tax Ordinance No.3 of 1940. The Direct Taxation Ordinance provided for the taxation of Nigerians except those in the township of Lagos. In 1943 a more comprehensive income tax ordinance was passed repealing the 1940 ordinance, with a slightly higher tax rate.

By the turn of the year 1946, it had become very clear that hitherto legal arrangements of ruling the country as a unitary state was palpably inadequate. The introduction of the Richards constitution saw the division of the country into three regions. However, true federalism was fully achieved in 1954.

The essential feature of federalism is the formal distribution or allocation of tax jurisdictional powers between the federal and state governments. Hamilton expressed it better when he said:

“It is ... as necessary that the state government should be able to command the means of supplying their wants, as that the national government should possess the like faculty in respect of the union”.<sup>3</sup>

The inevitable question of sharing taxing powers prior to independence was referred to the Raisman Commission. In June 1958, the commission submitted its report which contained among others a decentralization of taxing powers between the federal government and the states. It however, identified problems which might result such as double taxation (internally and externally).<sup>4</sup> Thus the commission recommended the introduction of general principles for taxing individual incomes to be applicable to the whole country. In consequence, the Income Tax Management Act of 1961 was enacted and amended in 1975. Various Nigerian constitutions have attempted to allocate taxing powers between the various tiers of government, an examination of which is beyond the ambit of space and time of this work. However, the present constitutional basis will be examined *post factum* <sup>5</sup>.

## TAX DEFINED

A lay man may confuse tax with club levy, association dues, voluntary payment or donation etc. while the aforementioned involve an exaction of certain pecuniary property, they differ from the legal concept of tax, as the following definitions bears out. Tax is defined as:

“A monetary charge imposed by the government on persons, entities, transactions or property to yield public revenue”.<sup>6</sup>

In the same vein, tax has been defined by the Australian court as:

*“a compulsory exaction of money by a public authority for public purposes or taxation is raising money for the purpose of government by means of contributions from individual persons”.*<sup>7</sup>

Akanle<sup>8</sup> has defined tax as:

*“a compulsory levy imposed on a subject or upon his property by the government having authority over him”.*

While the Nigerian tax statute is silent about a definition of tax, the authorities above clearly highlight the characteristics of a tax viz:

- (1) Tax is an imposition by a public authority be it federal, state and local government. Any other levy other than by the government can not be called tax *stricto sensu*.
- (2) Tax is mandatory and not conditional. Once a citizen falls under the category of taxable persons, the payment becomes compulsory and failure to do so is an offence. This is irrespective of the fact that a citizen may or may not enjoy a direct benefit.
- (3) Tax is usually the payment of money particularly cash or cheques. The tax system in most governments does not allow for payment in kind or set off but a direct payment.
- (4) Tax is usually imposed by a sovereign within his jurisdiction. And so for example Nigeria cannot impose tax on Gambian citizens and vice versa.

It is also germane that tax be distinguished from a charge or fee imposed by a public authority or government. Charge or fee is paid by the direct beneficiaries of the services. Examples of charge or fee are license fees, water rates, electricity bills, toll fees etc. These fees are paid by those who consume the service(s) in respect of which the charge or fee is collected.

On the other hand tax is imposed for public purpose without reference to a particular benefit to be enjoyed by the tax payer. Atimes it might be a burden without a benefit as is most often the case in Nigeria where benefits and social amenities are grossly lacking despite the imposition and collection of taxes by the government.

#### **BASIS FOR TAXATION IN NIGERIA**

S.44 (2) (a) of the 1999 Constitution provides that:

*“Nothing in subsection (1) of this Section shall be construed as affecting any general law for the imposition or enforcement of any tax...”*<sup>9</sup>

Thus the compulsory imposition of tax on a citizen is not a derogation from the right of the citizens to his property, but a necessary exercise of governmental powers.

These powers to make laws for the imposition of tax are vested by virtue of Section 4(2) of the constitution on the National Assembly<sup>10</sup>. A collective reading of Section 4 of the constitution shows that taxes on income, profits or capital gains and stamp duties are exclusive to the National Assembly. Only the National Assembly can legislate on the imposition, collection and administration of any tax or duty envisaged under item 58, and 59 of the exclusive legislative list<sup>11</sup>. Notwithstanding, the National Assembly may by an Act “provide that the collection of any (of the aforementioned) tax or duty or the administration of the law imposing it shall be carried out by the government of a state or other authority of a state.”<sup>12</sup>

The house of assembly of a state may without prejudice to the powers conferred on the national assembly “make provision for the collection of any tax, fee or rate or for the administration of the law providing for such collection by a local government council”<sup>13</sup>.

Therefore, any tax emanating from such properly enacted legislations have the force of law. The Nigerian statute book is replete with such tax legislations. We would now turn to an overview of some of this pertinent tax laws. But before that it is important to point out that taxes may be direct or indirect.

#### **DIRECT AND INDIRECT TAXES**

A direct tax is one which is demanded from the very person(s) who it is intended or desired should pay it. Under this designation are included those taxes, which are assessed upon the property, person, business, income and so on of those who are to pay them. Examples of direct taxation include: Personal Income Tax, Business Tax, Capital Gains Tax, and Companies Income Tax.

Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another. In other words, indirect taxes are those which are imposed on commodities before they reach the consumer and are paid by those upon whom they ultimately fall, not as taxes but as part of the market price of the commodity. Examples of indirect taxation are Value-Added-Tax (VAT), stamp duty, excise duty, customs duty and sales or purchase tax.

It is noteworthy that indirect taxes may affect the cost of living as such taxes are borne by the consumer of such goods. A good example was the failed attempt by the federal government of jacking the VAT rate to 10%.

## **ADMINISTRATION AND ENFORCEMENT OF TAX IN NIGERIA**

A good law is important to a good tax system. A good administration (and enforcement) are sine qua non to the attainment of the overall good of the system.<sup>14</sup>

Unlike the practice in the United Kingdom, where responsibility for administration of tax is entrusted to the Board of Inland Revenue, tax administration is divided between the Federal government, state governments and local governments, with each setting up its administrative machinery as provided for under enabling statutes.

Functional bodies operated by the federal government are: the Federal Board of Inland Revenue, the Body of Appeal Commissioners and the Joint Tax Board. While the states each have a Board of Internal Revenue. Let us now examine them seriatim.

### **FEDERAL BOARD OF INLAND REVENUE**

The board is established by Section 1 of the Company Income Tax Act CAP 21 LFN (2004). The members of the board are drawn from the Federal Ministry of Finance, Board of Customs and Excise, the Nigerian National Petroleum Corporation and the Registrar General of the Corporate Affairs Commission.

A number of directorates have been established to cover the following functions:

1. Tax Assessment, Audit and Investigation
2. Tax collection, computerization and litigation
3. Management, planning and research
4. Petroleum profits tax, Training and Intelligence

We also have posts of chief inspectors of taxes, chief investigating officer, chief inspecting officer and chief instructor.<sup>21</sup> All these have been necessitated by a desire to improve tax administration and to cope with the ever increasing volume of rapid economic and spatial expansion in contemporary Nigeria.

The Board holds quarterly meetings to deliberate upon cases referred to it and other policy matters.

### **THE BODY OF APPEAL COMMISSIONERS**

Under Section 53(1) of the Company Income Tax Act CAP (2) LFN (2004), the minister of finance may establish by notice in the Federal gazette a body to be known as Body of Appeal Commissioners. The body is constituted by not more than twelve persons, none of whom must be a public officer. The Act provides detailed rules for the appointment and disqualification of Appeal commissioners.

The body is charged with the duty of hearing and determining appeals from any company which may be aggrieved by an assessment made on it and has failed to agree with the Board of Inland Revenue. The body may confirm, reduce, increase or annul the assessment complained of or make such order thereon as it deems fit.

The Appeal Commissioners at the hearing must admit all lawful evidence whether oral or documentary adduced by the Appellant company or the Board. In addition, the Board may make use of or produce in evidence any return correspondence, accounts, plans, statement or other documents to which it has had or may have lawful access for the purpose of taxation.

An award of judgment by the Body of Appeal Commissioners shall be enforceable as if it were a judgment of the Federal High Court.

In the event of any dissatisfaction of the body's ruling, either of the parties can appeal to the Federal High Court.

### **JOINT TAX BOARD**

The Joint Tax Board consists of one officer from each state and one nominee of the Federal Public Service. The joint tax board is concerned with the administration of income tax generally under the Income Tax Management Act 1990.

In particular, it coordinates the various aspects of taxation as between states as well as promoting uniformity in personnel taxation. It also advises the federal government on request in respect of double taxation arrangements with any other country and in respect of rates of capital allowances as well as on matters connected with the introduction of amendments to the Income Tax Act. It also considers and approves benefits and pension schemes valid for income tax purposes throughout the country.

### **STATE BOARD OF INLAND REVENUE**

The administrative organization of the state revenue department is basically the same throughout the country except for slight variations in designations and devolution of responsibility. The head of the revenue department is called Director of Board of Internal Revenue and he is assisted in the execution of his duty by the deputy directors, chief inspector of taxes, principal inspector of taxes, senior inspector of taxes, principal executive officers, senior executive officers and other tax officials of lower ranks.

States internal revenue collection is not solely limited to personal income tax, but includes those revenues accruing to and collected by the state internal revenue departments.

## TAX ADMINISTRATION PROCEDURE IN NIGERIA

### (a) Identifying the Tax payer

Quite often the tax statute identifies taxable persons that come under it. The tax journey moves to the requirement that the tax payer should file a return. Quite often the tax payer does not know what is meant by a return. In some statutes these returns are filed at the end of every year of assessment.

### (b) Assessment

At this stage of the tax process the tax payer would have been identified and a return would also have been filed. The tax office usually the Federal Board of Inland revenue or its state counterpart verify the authenticity of the information contained in the returns filed. In Nigeria as a result of the dearth of record keeping, resort is made to the "Best of judgment" assessment which is a double-edged sword. It may favour the taxpayer or the Revenue office.

### (c) Collection

Once an assessment is agreed upon, a tax payer who is desirous of obtaining his Tax clearance certificate would readily pay his assessment. One problem encountered in this respect is collecting from employers tax withheld from their employees under the PAY AS YOU EARN (PAYE) scheme. Where a tax payer is dissatisfied with the assessment and an amicable settlement is not reached with the revenue office he may appeal to the respective appellate body.

## A CRITIQUE OF TAX ADMINISTRATION IN NIGERIA

No tax can conform with expected standard of equity if it cannot be administered with a high degree of effectiveness. If persons are able to escape by legal or illegal means, the tax to which they should logically be subject under the general scope of tax, the theoretical equity of the tax is to a large measure lost.<sup>15</sup>

The Nigerian tax system is less than ideal and effective in comparison with the systems in Europe and America. As is the case with the national fabric of which the tax system is but a segment, moral depravity and stoic ineffectiveness has become the brand mark of government parastatals, a cankerworm which remains unabated, eating ever deeper into the national fabric.

A situation where bulk of the tax collected find their ways into private pockets and foreign account of a few persons rather than translating into real economic and infrastructural terms, will not only encourage evasion but also provoke abhorrence of the civic duty inherit in taxation.

Daily we are inundated with screaming headlines of financial scandal from the supposed trustee's of public funds. One too many examples include the recent Federal Ministry of Health scandal where over three hundred million naira was allegedly shared as booty. Not to be forgotten is the alleged misappropriation of billions of dollars in the nations electricity sector with little or nothing to show for it.

We must not also overlook the culpable attitude of Nigerians towards their civic obligation to pay tax. Evasion and avoidance of tax is the hallmark. Even where the tax payer cannot run away from paying tax they lie about the source of income and profits while claiming huge fraudulent tax allowances. In summary the problems include:

- (a) Tax legislations in Nigeria are in the main indigently drafted. Their provisions in the words of Fatayi-Williams J.S.C. (as he then was) "are unnecessarily verbose and complicated"<sup>16</sup>.
- (b) Ignorance and illiteracy on the part of many Nigerians as to the relevant tax laws that apply to them and the procedure for going about it.
- (c) Inadequate machinery expertise and manpower on the part of Revenue Collection agencies to identify tax payers, assess and enforce compliance.
- (d) The vesting of too much discretion in the officials of revenue tax offices leading to collusion with tax payers and corruption.
- (e) Insufficient specialized tax courts to ensure that tax payers are brought to book timeously.
- (f) Inadequate penalties to deter tax evasion and avoidance.

## CONCLUSION

This work has tried to examine the foundation upon which lies the basis, machinery and implementation of taxation in contemporary Nigeria. It appraised its readers with certain relevant tax laws which every Nigerian should be conversant with. In particular this work canvasses for a paradigm shift in the machinery for tax assessment and collection and also in the sensitization of taxable persons on the duty they owe their nation, if we must achieve our goals and aspirations as a nation.

Fundamentally, we must not only rebrand our laws, organs and physical image, rebranding must begin from our perception and orientation about morals in general and taxation in particular. Corruption has become cancerous eating into all spheres of society and until we reverse this trend Nigeria will continue to sink into the quagmire of underdevelopment.

## END NOTES

- (1) NICHOLS-V-AMES 173 U.S. 509 (1899) at P.515.
- (2) See Generally C.S. Ola, *Income Tax Law and Practice in Nigeria* and I.A. Ayua, *The Nigerian Tax Law*, Spectrum Law Series, Ibadan (1996). Pg.22.
- (3) Hamiton, *Federalist*, No.XXXI, P.149.
- (4) See generally Report of the Fiscal Commission, 1958 (cmd.481) para.88.
- (5) For a Detailed Analysis on the Historical Antecedents of Tax Law See Generally: O. Akanle, *The Power to Tax and Federalism in Nigeria*, Centre for Business and Investment Studies, Lagos, 1998. Also I.A. Ayua Supra Note 2.
- (6) *Blacks Law Dictionary* 8<sup>th</sup> Edition.
- (7) MATTHEWS-V-CHICORY MARKETING BOARD (1938) 60 C.L.R. 263, at 276
- (8) O. Akanle "The Government, the Constitution and the Taxpayer in Tax Law and Tax Administration in Nigeria" ed by O. Akanle, Nigerian Institute of Advanced Legal Studies, Ibadan, (1991).
- (9) 1999 Constitution of the Federal Republic of Nigeria.
- (10) *Ibid.*
- (11) *Ibid* Second Schedule Part I.
- (12) *Ibid* Second Schedule Part II Paragraph 7.
- (13) *Ibid* Section 4(7)(b) and Second Schedule Part II Paragraph 9.
- (14) Section 1 (2) Education Tax Act Laws of The Federation of Nigeria (2004).
- (15) O. Akanle "A New Framework for Tax Administration in Nigeria", in *Tax Law and Tax Administration in Nigeria*, Nigeria Institute of Advanced Legal Studies, Lagos, (1991).
- (16) Seventh Annual Senior Conference of the Federal Inland Revenue Department.
- (17) John F. Due Cited in O.J. Adeoye "The Significance of Taxation in a Nation" in A.M. Sani (ed) *Journal of Private and Commercial Law*, Faculty of Law, University of Ado-Ekiti, (2008) p.32. Vol 1 No1
- (18) *Mobil Oil (Nig.) Ltd. -V- F.B.I.R.* (1977) 3 S.C. 53 at 113.

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