

Understanding the Fundamental Issues of Multiple Taxation in Nigeria: The Theoretical and Historical Approach

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Abstract

Taxation has not been fully harnessed in Nigeria years due to oil boom which has been the major source of government revenue. With decline in the revenue from oil, the allocation from the federal account dwindles and has become inadequate for the state and local governments. This, accordingly, re-awakens clarion attention to non-oil revenue source (taxation) in other to boost the revenue account. Consequently, the governments have enacted various forms of tax laws in other to boost her revenue. As a result, there are multiplicities of taxes payable to the Federal, States; and Local Governments. This became apparent as the various tiers of government enacts tax laws that is not within the ambits of their taxing powers; while others in exercising their legitimate taxing power, act in excessive manner that leads to tax proliferation, leaving the taxpayer with burden of paying too many taxes. Some of the taxes are illegal, not in accordance with the law, others are legal, in accordance with the law, but have caused proliferation of taxes in the system. These factors have given rise to multiple taxation with the attendant consequence: scaring investors away and dwindling the rate of tax compliance. There is need to develop an efficient tax system in Nigeria that would be devoid of multiple taxation syndrome. It is against this backdrop that this paper is initiated to examine the possible way out of the problem. The paper adopted doctrinal research methodology. Accordingly, reliance was placed on the study of both primary and secondary sources of law like the constitution, federal and state enactments, text books, journals and newspapers. The paper founds the intricate causes of multiple taxation to include Nigerian Fiscal Federalism, Administration of Road Tax and Illegal Tax Collectors.

Keywords: Multiple taxation, road tax, tax collectors

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1. Introduction

Taxation is an invaluable source of government revenue. There is hardly any government which does not rely on taxation as a source of generating revenue. Unfortunately, the tax system has not been gainfully exploited in Nigeria in the recent years as result of oil boom which has been a major source of government revenue.

With the decline in revenue from oil, many Nigerian states have awakened to the importance of harnessing the internally generated revenue (taxation) in other to boost their revenues. The attention given to taxation has, however, generated multiple taxation in the system, with indiscriminate imposition of taxes on the citizens. Some are legal, while some are illegal. This situation has aggravated the taxpayers who fill over burdened with so many taxes while describing multiple taxes as evil and business unfriendly¹. On the other hand, the authorities are not shifting ground. Government is determined to boost internally generated revenue by imposing all manner of taxes while arguing that nothing is wrong with multiple taxation in so far as they are in conformity with the law.²

In view of the contentions, the paper seeks to examine the true meaning and nature of multiple taxation; factors responsible for multiple taxation; and the possible way out of the problem? Consequently, the paper first analyses the meaning and nature of multiple taxation, wherein multiple taxation was classified into two categories: multiple taxation in the literal sense and multiple taxation in the legal sense. It also traced the historical evolution of multiple taxation. The work also examined the intricate causes of multiple taxation. It further suggested the way out of the problem.

2.0 The Concept and Nature of Multiple Taxation

The phrase multiple taxation is not defined anywhere in Nigerian tax law. It is an amalgamation of two semantics: "multiple" and "taxation". Multiple, according to Oxford Advanced Learner's Dictionary, means "having or involving many individuals, items or types". Taxation on the other hand, is "the imposition or assessment of a tax; the means by which the states obtain the revenue required for its activities"³. If the two words are amalgamated literally, multiple taxation would, therefore, mean having too many taxes. It is on this ground that some critics argue that multiple taxation simply means having too many taxes to pay irrespective of the legal source of the

¹ See Kebechi, PO (2011), The Problem of Multiple Taxation, [Online] Available: <http://www.sunnewsonline.com> (November 2, 2011).

² See Ade Ipaye,, (2011). Multiple Taxation: Lagos State Government Assessment and Response. [Online] available: <http://www.financialnigeria.com/development> (May 3, 2011).

³ Black's law Dictionary, (2004) (8th ed.) West and Thompon, p 1500
Black's law Dictionary, eight edition (2004) West and Thompon, (Page 1500).

taxes.¹

However, the meaning in the legal perspective could transcend beyond the literal meaning. Under the law, multiple taxation includes a situation where the same income is subjected to more than one tax treatment. It is sometimes called double taxation, triple taxation as the case may be.² The 1999 Constitution of Nigeria also has a similar provision which seek to bring multiple taxation under legal surveillance. Pursuant to item 8 of the Concurrent legislative list³, it is provided that:

Where an Act of the National Assembly provides for the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a state in accordance with paragraph 7 thereof, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one state.⁴

This buttresses the point that there can be multiple or double taxation when a taxpayer is levied more than once by one or different tiers of government for the same taxing purpose.⁵ It has been submitted⁶ that genuine case of double or multiple taxation within our country are only anticipated where two or more taxing authorities impose what is in actual fact the same tax on the same person, property or other tax base. Ade⁷ also opined that the situation is different with the argument of where several taxes are imposed on the same entity under different laws by different government.

In the same vein, Oserogho Eligeagbon,⁸ noted that what constitute multiple taxation is that two taxes must be imposed on the same income by the same governing body during the same period for the same taxing purpose. Multiple taxation also connote a situation where “taxpayers are compelled to pay one tax twice to different tiers of government in Nigeria or to even the same tier of government in a different jurisdiction for a single earning.”⁹ This position was also captured in the National tax policy¹⁰ where it is stated that “the only aspect of multiplicity of tax that is avoidable and for which the Constitution answers is that where the tax, fee or rate is levied on the same person in respect of the same liability by more than one state and local government councils.”

It has also been canvassed that a situation where double taxation is alleged, what need to be determined is whether each of the taxes was properly charged by a competent authority in accordance with the Constitution and any other relevant laws; if so, there is no question of multiple taxation.¹¹ Hence, the argument that there is no multiple taxation in the Federal System of government. According to Ayua,¹² where more than one legislative authority has the power to levy a tax, there is nothing in the Constitution that prevents the same person or article from being taxed by both the federal and state governments.

Another argument on Double Taxation is where individual shareholders of a company are cheated or punished twice for paying tax as personal income tax and also on the corporate income¹³. The basis for this argument is that the corporate profit belongs to the shareholders; and the same shareholder is made to pay personal income tax. This is construed as a practice of taxing the income twice; and an incidence of double taxation. On the other hand, some scholars have canvassed a divergent view. It is argued that a company is a separate entity from the individual investors; that in legal theory and in facts, a company is not the same as an individual shareholders.¹⁴

¹ This was the view of Jide Mike of Manufacturers Association of Nigeria (MAN) when he argues that over 154 taxes had been identified in the country against 39 in the Taxes and Levies (Approved list for collection) Act which in his contemplation is a case of multiple taxation. see Kebechi, the Problem of Multiple Taxation, *op. cit*

² See Famous, RF, (2010), Eliminating multiple taxation in the capital market- the capital market perspective, *www.secure.com*, 2010. Double taxation, however, also involves international tax agreement between one country and another; but it can be used to describe an incidence of multiple taxation where the income of taxpayer is subjected to two tax treatment either by the same tier of government or by different tiers in one country. This is the view of the court in American case of *Second Street Properties case*{1934}60 C.L.R 263, where it was held that “to constitute double taxation two taxes must be imposed on the same property, by the same governing body during the same period for the same taxing purpose”.

³ 1999 Constitution

⁴ See also item 10 of the concurrent legislative list which has a similar provision with regards to tax or fees made for collection by the local government.

⁵ An example of this is where a tax payer could be charged 5% of VAT on consumption of goods and at the same time subject to 5% of Hotel Occupancy and Restaurant Consumption Law, Cap C78, Laws of Lagos State of Nigeria, 2003 on the same consumption. It would amount to multiple taxation against the spirit of item 8 and 10 of the concurrent legislative of 1999 Constitution. However, the validity of the Hotel Occupancy Law is in contention before a competent court. While we await courts pronouncement, it is our humble submission that it constitute multiple taxation. This would be examined in details later in this paper.

⁶ Ade Ipaye, Multiple Taxation: Lagos State Government Assessment and Response. *op. cit*

⁷ *Ibid*

⁸ Oserogho Ehijeagbon, (2011) The Constitutionality of Lagos Sales Tax Law. [Online] Available: <http://www.oseroghoassociates.com/news/late>. (April 8, 2011)

⁹ Umenweke, MM, (2009) Checking the Incidence of double taxation in Nigerian tax Regime, *Faculty of Law, Apogee Journal of Business, Property and Constitutional Law, Vol 1 No 2 (Oct-Dec,2009)* (Page 33)

¹⁰ Chartered Institute of Taxation (2011). [Online] Available: <http://www.citnorg/others/nationlatax-pdf> (April 15, 2011)

¹¹ Ayua, AY. *Nigeria Tax Law* (Ibadan: Spectrum Law Publication, 1996) p 33.

¹² *Ibid*.

¹³ Famous, RF, (2010), Eliminating multiple taxation in the capital market- the capital market perspective, *op cit*

¹⁴ *ibid*

Having considered the various views on the meaning of multiple taxation, the paper has been able to classify multiple taxation in two categories:

1. Multiple taxation in the legal sense
2. Multiple taxation in the literal sense.

2.1. Multiple Taxation in the Legal Sense

The various tax laws that are illegal or void on the reason of multiple taxation shall be the focus of this consideration. Multiple taxation in the legal sense is a scenario where a tax assessment and collection is designed in a manner that would levy the citizen more than once against the spirit of item 8 and 10 of the Concurrent legislative list¹. This is usually when one tier of government, example the state, enact tax law that has already been covered by another tax law made by the state or federal government; or where a particular government issues tax enactment it lacks the Constitutional power to so do. Such power would be null and void to the extent of its inconsistency with the Constitution².

There are samples of tax laws which fall under this purview. Example is the Sales Tax Law of Lagos State³. In the case of *Lagos State Board of internal Revenue V Nigerian bottling Company*⁴, the court while inquiring into the validity of Sales Tax Law of Lagos State, held that, Lagos State Board of Internal Revenue was not constitutionally competent to impose Sales Tax in view of Value Added Tax⁵.

Another example is in the case of *Lagos State Government & 4 Or's V Registered Trustees of ATON & 6 Or's*⁶ In this case, the Registered Trustees of ALTON (Association of lincensed Telecoms Operators of Nigeria) (plaintiff/Respondents) had approached the Court for a declaration that the Infrastructure Maintenance Law (IMRA) enacted by Lagos State in 2004, to the extent that it sought to regulate telecommunication, was unconstitutional and excess of the state's legislative competence. The plaintiff also sought for an order of interlocutory injunction restraining the defendant/appellant from implementing the said provision.

The Court held that the enactment of IMRA law encroaches on the powers of the NCC (an agency of the Federal Government) which has exclusive power to legislate on telecommunication matters; and that Lagos state government was camouflaging under urban planning to delve into telecommunications. Accordingly, some portions of the IMRA law were struck out as unconstitutional, null and void.

There is also need to examine the Hotel Occupancy and Restaurant Consumption Law⁷. The law imposes five percent (5%)⁸ tax on all goods and services consumed in Hotels, Restaurant and Events Centers situated within the territory of Lagos State. VAT is also a consumption tax, charged and paid on the supply of all goods and services other than such goods and service which are expressing exempted under the Value Added Tax (VAT). VAT like the Lagos State Consumption Tax Law is charged at the rate of five percent (5%) on the goods or services enjoyed by consumers, including the Goods & Services consumed in Hotels and Restaurants. Thus, it is our view that the imposition of the Hotel Occupancy and Restaurant Consumption Law amounts to double taxation in view of VAT.

2.2 Multiple Taxation in the Literal Sense

Multiple Taxation in the Literal Sense simply connotes duplicity or multiplicity of taxes. It describes a situation where there are too many taxes payable within a jurisdiction. Under multiple taxation in the literal sense, little or no emphasis is placed on the legality of such tax. What matters is that taxes are numerous. When these taxes become too many, it is referred to as multiple taxation in the literal sense. The manufactures Associations of Nigeria⁹ position that over 159 taxes are payable as against 39 provided in Taxies and Levies (Approved List for Collection) Act¹⁰ describes multiple taxation in the literal sense.

Some stakeholders in tax system decry the situation as it is capable of causing hardship to the citizenry.¹¹ Too many taxes are unhealthy to a good tax system and to the Economy. A situation where a person doing petty business is subject to taxes that would be higher than the intended revenue would deter the rate of tax compliance. Therefore, there is need to checkmate the number of taxes in the country in order to curtail incidences of multiple taxation.

¹ 1999 Constitution of the Federal Republic of Nigeria

² See the case of *A.G of the Federation v A.G of Abia State and 35 ors* {2005} All FWLR 9(pt 398)

³ Cap. S3, Laws of Lagos State, 2003,

⁴ Unreported suit No/D/454/2002, available at www.aellex.com/files/LSBIR%20v%20NBC%20judgement.pdf

⁵ The decision is rational upon the fact that VAT and Sales Tax law are both the same kind of tax and only different in names, and the later has been covered by the former pursuant to section 4(5) of the Constitution. The decision was reached following the Appeal Court ruling in the case of *Attorney General of Lagos State V Eko Hotel*, [2008] All FWLR (Pt. 398) 235, where the Court held that Sales Tax Law and Value Added Tax are the same; and that the imposition of both would amount to double taxation.

⁶ Appeal No CA /L/769/2007 Unreported,

⁷ supra

⁸ Section 2

⁹ Ikebechi, The Problem of Multiple taxation, *op. cit*

¹⁰ Cap T2, Laws of The Federation, 2004

¹¹ Ikebechi, The Problem of Multiple Taxation, *op. cit*

3.0 Brief History of Multiple Taxation

The precise origin of multiple tax practices is little bit elusive. It is, however, suggested by some writers¹ that the practice became more pronounced and prevalent in the late 1980's. According to Famous², "this period coincided with the period when revenues accruable to the state and local government from the federation account began to witness an increasing decline, some state governments and many local governments in the country to seek for alternative sources of internally generated revenue. It then made a lot of them gravitate into multiplicity of taxes.³ Nevertheless, the problem of multiple taxation could be traced back to the time Nigeria became a federating unit in 1954. At that time, the question of sharing taxing power between the Regions and the Federal Government heightened.⁴ This issue was considered in the Nigeria Constitutional Conference in London, in 1957. Accordingly, Raisman Commission was set up to look into the matter and make recommendations.⁵

In June 1958, the commission recommended, among others,⁶ that the Regions (now states) should have exclusive power to impose personal income tax on individuals, sole traders, partnerships, clubs, trusts and other unincorporated associations. The recommendations were later enshrined in section 70 of the Nigeria constitution, 1960. As a result of that, the *Western Region enacted an Income Tax Development Contributitional Law of 1961*. The Eastern Region also enacted their own separate income tax laws known as the *Eastern Region Finance law, 1962*; and the North, Northern Nigeria Personal Tax Law, 1962.⁷ Later, Nigeria was further divided into 12 states. All the states created out of the Northern Region applied the Personal Tax Law of 1962, those of the East, Eastern Region Finance Law of 1962, and the West, Income Tax Development Contributitional Law, 1961.

The administration of the various laws of personal income tax gave rise to double taxation among the regions. There were varying rates of personal income tax. There were also incidences where the residents of Eastern Region who were working in the Western Region were taxed twice: as resident of the East and as income earned in the West.⁸ It became more pronounced that the taxpayers protested against it. In response to the protest, Income Tax Management Act was later introduced to unify Personal Income Tax rates across the country, and put an end to the varying rates among states.

The Income Tax Management remained operational until the second Constitution was enacted in 1979. The 1979 constitution took a drastic measure to curtail the practice of multiple taxation by incorporating Personal Income Tax in the Exclusive List. Under item 58 of the Second Schedule to the Constitution⁹, the Federal Government has the exclusive power to legislate on Personal Income Tax.¹⁰ This helped in curtailing the problem of multiple taxation as the federal was empowered to enact uniform law on personal income tax that was applicable across the federation.

Another dimension in the history of multiple taxation in Nigeria took place in the 1990s. In this era, Nigeria has developed, many states were created. The quest for revenue by states became high while allocation from the Federation Account became inadequate. It later became apparent during the military regime of General Sani Abacha. The military Governors adopted what was then known as "Accelerated Revenue Generation Programmes". They appointed consultants to audit businesses and receive various taxes that the businesses had failed to pay. They also promulgated various forms of laws imposing various forms of taxes, fees, levies and the other, which occasioned tax multiplicity.¹¹

The complaints against multiplicity of taxes were typically laid before the then Federal Military Government (FMG). The FMG, having considered the various complaints against the military Governors, took another remarkable step that helped in sanitizing Nigeria tax system against the problem of multiple taxation. The F.M.G. then promulgated Taxes and Levies (Approved list for collection) Decree No 21 of 1998,¹² which sets out the list of taxes and levies collectable by the Federal, State and Local Government Councils. The Decree also prohibited collection of any tax or levy that is not included in the Decree. It equally outlawed the use of road blocks for tax collection and enforcement.

Another era of multiple taxation is witnessed in the 2000s. This era is characterized by the emergence of democracy from the military regime that ruled the Nation in the 1990s. The Nation has become more developed with 36 states. Most of the states relied on the federation allocation to finance its programmes and agenda. Unfortunately, the revenue from the federal is inarguably inadequate for the states. The states, therefore, saw the

¹ Famous, RF, (2010), Eliminating multiple taxation in the capital market- the capital market perspective, *op cit*

² *Ibid*

³ *Ibid*

⁴ Ayua A I, (1996). *Nigerian Tax Law. op cit* (Page 26)

⁵ *Ibid*

⁶ *Ibid*

⁷ *Ibid*

⁸ *ibid*

⁹ 1979 Constitution

¹⁰ In the 1963 constitution, Personal Income Tax was within the legislative competence of the regions and the member states.

¹¹ Ade Ipaye: "Multiple Taxation: Lagos state government Assessment and Response" *op. cit*

¹² Now refers to Taxes and Levies (Approved List for Collection) Act, Cap T2, Laws of The Federation, 2004

need to intensified effort to boosting internal generated revenue through various forms of tax legislation. This, consequently, lead to tax multiplicity in the States and Local Governments.

4.0 The Intricate Causes of Multiple Taxation

As highlighted by Famous,¹ the causes of multiple taxation include: “unfair revenue formula, dwindled state income from the central fund, unhealthy state rivalries, political patronage, source of reimbursing so called political god-fathers, lack of political will to stop multiple taxation by some state and local government, poor equipping and training of revenue agencies staff, inefficient manpower at the revenue agencies and greed on the part of tax officials.”

While the paper subscribe to the above expositions, it has, however, found that there could be other technical factors responsible for multiple taxation other than the general motive of unfair revenue formula and the dwindling state’s allocation income and the rest of them. The factors found include Nigerian Fiscal Federalism, Road tax, and illegal tax collectors. These factors are the fundamental causes of tax multiple taxation in Nigeria.

4.1 Nigeria Fiscal Federalism

The 1999 Constitution of the Federal Republic of Nigeria guarantees fiscal federalism. Under the Constitution, the federal, the state and the local government have autonomous powers on tax collection. This implies that the different tiers of government have the right to impose and collected taxes within the dictate of the Constitution and other relevant laws. Accordingly, there is tendency of multiple taxation when each tier exercises these powers. M.N. Umunweke² submitted that incidence of multiple taxation is attributed to different tiers of government we have in Nigeria that have powers to impose taxes.

The National Assembly is empowered to make tax legislation on any of the 67 items on the Exclusive legislative list and those on the Concurrent legislative list³. The States House of Assembly have their powers to make tax laws on the matters specified in the Concurrent list and matters not included in the Exclusive list, otherwise referred to as Residual matter⁴. The Residual matters are unspecified. By virtue of item 9 of the Concurrent legislative list of the Constitution, the states can make any tax law for the administration and collection by local government. By these provisions, the state has inherent taxing power with regard to Residual matters. The constitution also conferred upon the local government, functions with respect to matters in the Fourth Schedule of the Constitution.

It is therefore observable that where every tier of government exercises its power to collect taxes, the taxpayers are only at the will and caprices of the governments as it is always the desire of any government to generate high revenue. On this ground, therefore, A.I. Ayua⁵ argues that there is no bar against multiple taxation in a Federal System of Government. The court⁶ has also reasoned that were more than one legislative authority such as the Federal and State legislatures have the power to levy a tax, there is nothing in the Constitution that prevent the same person or article from being taxed by the Federal and State governments.

Thus, where the Federal Government would tax, the State would tax, the Local Government would also tax, all on the citizens, there is no way the burden wouldn’t be too much. What worsen the matter is that the States Governments have unlimited taxing powers unlike the Federal that has enumerated taxing items.⁷ That is why multiple taxation is more prevalent among the States Governments.

So what do we expect from the States Government where there is robust desire to increase the revenue through internal generated revenue in other to meet with its responsibilities in states? The states have no option than to exercise their wild power by enacting tax laws as many as they could; after all, their taxing power under the Constitution is limitless,⁸ though limited to the extent of the Federal Government powers.⁹

It would have been a different thing if the states have enumerated taxing power just as the Federal has under Exclusive legislative list: it would curtail their excesses. Since they don’t have, it would be difficult to determine the extent of their taxing powers; the taxpayers, therefore, live at their mercy

¹ Famous, RF, (2010), Eliminating multiple taxation in the capital market- the capital market perspective, *op cit*

² M N Umenweke “Checking the Incidence of double taxation in Nigerian tax Regime,” *Faculty of Law, Apogee Journal of Business, Property and Constitutional Law, Vol 1 No 2 (Oct-Dec,2009)* p 33

³ Section 4(2) of the Constitution, as amended

⁴ Section 4(6) *supra*

⁵ A.I Ayua *op. cit* p 26

⁶ *Cantonment Board v. Western Indian theatre A.I.R. 1954 Bom. 261*

⁷ For more on the power of the state government to impose any tax pursuant to item 8, 9 and 10 of the Concurrent Legislative List see See Amadi, BN, (2014). An Appraisal of Taxes and Levies (Approved List for Collection) Act, Cap. T2 Laws of the Federation of Nigeria (LFN), 2004. *EBSU Journal of International Law and Juridical Review*, Vol. 2, 2012, (Page 15)

⁸ The Concurrent list, item 9 provides that: A House of Assembly may, subject to such conditions as it may prescribe make provisions 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. Here, the Constitution is not specific on the number of taxes

⁹ See section 4(5) of the 1999 Constitution

4.2 Road Tax

Road tax is another silent area that causes multiple taxation. It has not been given adequate consideration, but its effect to multiple taxation is magnitude.

Road tax is provided for administration and collection by state government pursuant to Taxes and Levies (Approved list for collection) Act.¹ The problem with the tax is, however, in practice. The Federal Government collects road tax in form of vehicle and driving licences, while the states also have their own like road worthiness and vehicle test. Such collection by the two tiers of government on the same income and for the same purpose is double taxation on road tax.

Another problem with road tax administration is that road is a network of two or more states; or two or more local government, in the state. Sometimes a federal road or state road may link two or more states, and each of the states or local government may want to collect road tax in different forms and name. This has caused the tax payer the burden of paying taxes, fees or levy to various states while on route.

The Taxes and Levies Act did not make any provision with respect to; whether the road tax shall be collectable by one state so that it would not be paid to different states. But if the Act made such provision, which state would want to leave it for another to collect? This is the problem with road tax collection and administration.

4.3 Illegal and Fake Tax Collectors

Most of the tax collectors are fake tax agents. They disguise in the name of Government Revenue Agency and mount road blocks to collect taxes from the citizens. According to Babatunde Fashola,² “there are levies imposed on business men and women by touts in Lagos States; every individual should live up against the touts.” There is an issue of the identity of the touts. Most of them are political associates of the government who are assigned such role as patronage for political reason. The touts block road and uses all manner of force and intimidation to exploit money from the people. They charge higher amount and engage the tax payer in negotiation against the principle of a good tax system that tax must be certain. They are all over the countries. They are illegal tax agents. It is therefore a challenge on the security agencies to fish them out and deal with them in accordance with the law should there be a political will. They are one of the major causes of multiple taxation.

5.0 The Way Out of Multiple Taxation

It is a common adage that a problem understood is half solved. Since the causes of multiple taxation have been discovered, the way out is very obvious. Accordingly, it has been suggested that a solution to the problem of multiple taxation would involve a codification of taxes collectable by the various organ of Government. Gega Adebayo³ said that in order to curb the problem multiple taxation, the government should codified the types of taxes stipulated by the law. In the view of Famous,⁴ reducing multiple taxation, the government should ensure that constitutional provisions are not violated; and that there is need for uniformity in tax practices.⁵ In the report of Manufacturers Association of Nigeria (MAN),⁶ it is recommended that the following would constitute the way out of multiple taxation: effective utilization of tax revenues in providing basic amenities; enforcement of compliance with the Taxes and Levies (Approved List for collection) Act or an appropriate review of the Act to accommodate other taxes that were not listed earlier; provision of more tax incentive and implementation of the Incentives; ensuring transparency accountability and due process, reducing the number of taxes.

The MAN's report is a plausible solution to multiple taxation. Indeed, Taxes and Levies Act⁷ need an appropriate review to accommodate other taxes that were not listed earlier; and the issue of “more tax incentive” is also germane.

However, there are some other radical approaches that need take place before the position of MAN would become achievable. The Constitution is the root and primary source of taxation. Therefore, any approach to multiple taxation problem must start with constitutional review. The relevant taxing powers of each tiers of Government is provided in the Constitution. The Taxes and Levies Act is not superior to the Constitution, rather it is subject to the Constitution. The argument, therefore, is, if the Act is reviewed to accommodate or expunge other taxes, the review would be a nullity to the extent of its inconsistency with the Constitution. No matter how the Act is reviewed, it cannot counter the inherent or unspecified taxing power of the State Government.

With regard to the view of tax codification, it is view of the paper that the approach will be fair but cannot provide a long lasting solution to the problem. If taxes are codified, what it means is that taxes collectable within a jurisdiction are listed and documented for the awareness of tax payers. It would help to eliminate tax exploitation.

¹ *supra*

² Woman in Management and Business', (2010) [Online] Available: <http://www.234next.com> (May, 2010)

³ Cited in Kelechi Mgbogi, Multiple Taxation: Heavy Burden For Industries. *op cit*

⁴ Famous RF *op. cit.*

⁵ *Ibid*

⁶ Manufacturers Association of Nigeria, (2011). [Online] Available: www.manufacturersnigeria.org, (May 8, 2011).

⁷ *supra*

It is a fair but tentative solution. If taxes are codified, it is not a bar to the Constitutional power of Federal or States Government to impose taxes other than those codified. Where a new tax law is enacted, it will be difficult bringing it within the codified law. Moreover, the tax codified may only last within a particular regime. If a new regime comes, it may introduce new taxes that are not contemplated by those codified.

What is, therefore, the way out? It is simply nothing but constitutional review. The Constitutional review that would touch the taxing powers of the various organs of government and make it clearer and specific. To this effect, It is the view of this paper that all taxing powers should be left in the Exclusive legislative list. It does not mean that the state and the local government will no longer collect taxes as guaranteed under fiscal federalism. It should be left with a clause that “a tax legislation will be passed by the National Assembly on the recommendation of the Joint Tax Board.”¹ This would ensure uniformity in tax laws. Wherein, the item taxable by the State would be listed, the item taxable by the Federal would also be listed and that of the Local Government. Then every tier of Government would know the extent and limit of its taxing power. The enactment may then come in the nature of Taxes and Levies Act with no other sources of collectable taxes other than those specified in the Act. It is when this is done that the suggestion to review the Taxes and Levies Act will be relevant; and the call for tax codification will be necessary.

Trending down the history, it should be recalled that the first incidence of multiple taxation witnessed in Nigeria was Personal Income Tax. As has earlier been discussed, it was quickly resolved by removing the taxing power of each Regional Government, with regard to personal income tax that was enshrined in the 1963 Constitution, and place it exclusively for the Federal Government in 1979 Constitution. That was a wonderful provision to that effect. The 1999 constitution also retained the provision. Since that was done, multiple taxation arising from personal income tax have been drastically reduced. There is now uniformity in Personal Income Tax practice across the country.

Another attempt in curbing the problem of multiple taxation was the Taxes and Levies (Approved list for Collection) Decree NO 21, 1998, now refers to as Taxes and Levies (Approved list for Collection) Act Cap T2 Laws of the Federation 2004.² The Decree was adjudged by many to be a good approach to sanitizing the Nigerian taxing system. Unfortunately, the Decree has outlived its relevance because of the advent of democracy. The constitution, under democracy, is now superior to the Decree. Thus, there can be numerous taxes collectable outside the Decree.

It therefore follows that if the attempt made with regards to solving personal Income Tax problem and that of the Decree are reconciled, it will help in eliminate the problem of multiple taxation. If the taxing powers in the Concurrent legislative list (as done with regard to personal income tax) is place it in the Exclusive list: that the Federal Government should have power to make tax laws applicable in Nigeria on the recommendation of the Joint Tax Board. When this is done, the National Assembly would come up with list of item collectable by every tier of Government such that no tax will be collected outside the list.

The essence of reserving the clause “on the recommendation of Joint Tax Board” is to ensure that the interest of the state are accommodated so that the National Assembly would not unilaterally make tax laws that will be inimical to State’s interest.

On the road tax, the intrinsic nature of road tax has earlier been highlighted. To this effect, it is suggest that where the Constitution is amended, Road tax should be left in the administrative jurisdiction of Federal Government as done to personal income tax earlier highlighted; just like VAT was also done³. It should be administered and collected by the Federal Government and the proceeds from it be remitted to the State Government.

The paper also recommend that the use of professional tax practitioners other than tax consultants should be entrenched in the ‘new law’; It will help to get rid of fake tax collectors. where all these are done; and the number of taxes payable remain too many, then there would be the need to promote tax incentive in order to reduce the number of taxes and encourage investment in the country.

Conclusion

Multiple taxation is classified into two: multiple taxation in the literal sense and multiple taxation in the legal sense. Multiple taxation in the literal sense involves a practice of tax proliferation or multiplicity; which means that there are too many taxes payable within a jurisdiction. Multiple taxation in the legal sense is a case where taxes are imposed against the spirit of the law. Whatever form multiple taxation takes, is inimical to the development of the economy. It scares investors away and causes tax avoidance and evasion. There is, therefore, urgent need to address

¹ It should be recalled that Joint Tax Board comprises of both the State and Federal Government tax authorities. They will deliberate on a matter and harmonize the various areas of discrepancies with the State and Federal Government; and reach a consensus. Once a consensus is reached, it would forwarded to the National Assembly for enactment.

² The Act has also been discussed, wherein we noted that the Federal Supreme Counsel, in response to multiple taxation practice by the Military Governors, promulgated the Decree which tend to unify and codify all the taxes that were collectable across the country.

³ Vat was introduced to remedy the inherent problem of multiple taxation arising from Sales Tax Law of states government

the problem in other to achieve the much desired success in tax reform. This paper has accordingly ventilated the veritable approaches through which this problem can be resolved. The approach includes, among other things, constitutional review of tax jurisdictions which should reserve tax legislation in the exclusive list. This means that it is only the National Assembly that should have power to legislate on tax matters that would be applicable across the country on the recommendation of Joint Tax Board. This would help to instill uniform tax practices among the states that would curtail the incidences of multiple taxation.

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