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Doctrinal methodology for Tax Laws Administration in Nigeria: State Governments Perspective

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ABSTRACT

The central focus of this work is on the extant tax laws administered by State Governments in Nigeria. Under the Second Schedule part one and two of the Constitution, Federal Republic of Nigeria, 1999, the power to collect tax from individuals is vested on the State Governments. This study gives a comprehensive overview of the extant laws that empower State Governments to impose tax on individuals. Doctrinal methodology is adopted in conducting the research. The study finds that the informal nature of the Nigerian economy, lack of proper record keeping and documentation of transactions among tax payers are the banes of enforcement of tax by state governments in Nigeria.

Keywords: *Doctrinal methodology, tax laws, tax administration*

INTRODUCTION

Nigeria practices a federal system of Government and by implication its tax system can be referred to as that of fiscal Federalism as the taxing power is shared among the three tiers of Government; Federal, State and Local Governments respectively.[1] The power to legislate on items listed in the exclusive legislative list is vested on the National Assembly.[2] Section 4(2) of the Constitution provides that:

> *The National Assembly shall have power to make laws for the peace, order and good government of the federation or*

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[1]Abiola J. and Asiweh M, "Impact of Tax Administration on Government Revenue in a Developing Economy-A Case Study of Nigeria", (2012) 3(8) *International Journal of Business and Social Science*, 99-113, 103. Available at http://www.ijbssnet.com Last visited, June 2016.
[2] Second Schedule Part I, Constitution Federal Republic of Nigeria (CFRN) 1999.

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> *any part thereof with respect to any matter including the exclusive legislative list set out in part I second schedule of this Constitution.*[3]

The exclusive legislative list, items 58 and 59 contains the following:

(a) Taxation of incomes, profits and capital gains except as otherwise prescribed by this Constitution;

(b) Stamp Duties;

A collective reading of section 4(2) and items 58 and 59 confirm that only the National Assembly can legislate on tax matters listed under items 58 and 59[4] of the exclusive legislative list. Notwithstanding the above position, the National Assembly may legislate to the effect that the collection of any tax or duty or administration or imposing it shall be carried out by the State Governments.[5] Hence, this study gives an overview of extant tax laws administered by State Governments in Nigeria.

Extant Tax Laws Administered By State Governments in Nigeria

The extant tax administered by State Governments in Nigeria and various amendments thereto, as at the time of embarking on this study include the following:[6]

1. 1999 Constitution Federal Republic of Nigeria.
2. Personal Income Tax Act Cap 8 LFN 2004.
3. Value Added Tax Act Cap 1 LFN 2004
4. Capital Gains Tax Act Cap C1 LFN 2004.
5. Stamp Duties Act Cap 58 LFN 2004.
6. Taxes and Levies (Approved List for Collection) Act Cap T2 LFN 2004.

1999 Constitution Federal Republic of Nigeria

With its federal structure, Nigeria operates three tier governments.[7] To avoid

[3] *Ibid*
[4] *Ibid* Second Schedule Part I.
[5] *Ibid* Second Schedule Part II Paragraphs 7, 5.4(7) (B).
[6] National Tax Policy (2012), Federal Ministry of Finance, Abuja. 1.
[7] Odusola A, "Tax Policy Reforms in Nigeria", (2006) (3), *World Institute for Development Economics Research*, 1810-2611, 3.

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conflicts among the three tiers of government, the Constitution distributed the taxing powers among the tiers of government. The federal government has power to the exclusion of other tiers of government to impose tax in respect of items provided under the exclusive legislative list.[8] Both Federal and State Governments can impose tax in respect of items provided in the concurrent legislative list.[9] It is pertinent to note that where there is conflict between the Federal and State Governments in respect of power to impose tax, the Federal Government shall prevail.[10] The Local Governments are empowered by State laws to impose taxes under the concurrent legislative list.[11] The distribution of powers to impose tax among the three tiers of government under the Constitution of the Federal Republic of Nigeria 1999 tends to produce situation similar to unitary system of Government. This is because the system negates the basic realities of co-equality in a federation which grants autonomy to the States and the Federal Government to develop at their own pace. It is therefore obvious that the distribution of powers to impose tax under the Constitution of the Federal Republic of Nigeria does not give the State Governments the wherewithal to generate substantial revenue to provide social amenities and essential services to their indigenes and residents.

Personal Income Tax Act Cap 8 LFN 2004

The Personal Income Tax Act[12] was enacted by the National Assembly, but the power to administer it against individuals is vested in the States.[13] The State Boards of Internal Revenue (SBIR) administer personal income tax on individuals residing within their territory beginning from 1st January of each year.[14] Non-resident individuals, members of the Nigerian Armed Forces, staff of Nigerian Foreign Services, members of the Nigerian Police Force and residents of the Federal Capital Territory, Abuja are to pay their taxes to

[8] Second Schedule Part I, CFRN 1999.
[9] *Ibid* Part II Paragraph 7, CFRN 1999.
[10] Odusola, above n 7, 4.
[11] Second Schedule part II Paragraph 9, CFRN 1999.
[12] *Ibid.*
[13] *Ibid*, S.2 (2).
[14] *Ibid*, S.2 (1) (b).

the Federal Inland Revenue Service (FRIS).[15] The 183 days residency rule is to be reckoned with on twelve months basis and not merely within an assessment year.[16] Salaries, wages, fees, allowances and all other gains or profit from employment including compensation, bonuses, premiums and so on earned by an employee whether temporary or permanent are taxable. Only reimbursements of expenses incurred by the tax payer in the course of carrying out his duty which do not amount to profit or gain are not taxable.[17] Amounts contributed into some funds from income of a tax payer are also not taxable; such funds include *inter alia* National Housing Fund, National Health Insurance Scheme and Gratuity.[18]

Value Added Tax Act Cap 1 LFN 2004

Value Added Tax was invented by a French economist called Maurice Laure in 1954 and it was first introduced in France on 10th April 1954.[19] In the Nigerian context the history of value added tax may be linked to a book,[20] the author of the book made a strong case for the introduction and implementation of Value Added Tax (VAT) in Nigeria. On 26th April 1991, Dr Okongwu the then Minister of Budget and Planning inaugurated a 20 man study group to review the entire tax system; the report of the study group includes *inter alia*, the introduction of value added tax.

The report culminated into enactment of the Value Added Tax Act[21] on the 1st day of January 1994 to replace the sales tax which was hitherto used in levying tax on consumption and services. Value Added Tax is a compulsory tax levied at each stage of the consumption chain and is borne by the final consumer.[22] The Act vested the power to administer Value Added

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[15] *Ibid* S.24 (d).
[16] *Ibid* S.3 (1).
[17] *Ibid*, S.1 (f).
[18] *Ibid.*
[19] Kizito E.U, "The Nexus Between Tax Structure and Economic Growth in Nigeria: A Prognosis", (2014) 4(1) *Journal of Economics and Social Sciences*, 113-138, 124. Available at http://www.scholarlyjournal.com. Last visited 12th June 2016.
[19]Ola C.S, *Nigerian Income Tax Law and Practice* (Macmillan Publishers, London, 1985) 438.
[20] *Ibid.*
[21] Value Added Tax Act (VAT Act) Cap 1 LFN 2004.
[22] Ola, above n 20, 449.

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Tax on the (FIRS).[23] The FIRS charge and collect Value Added Tax from every taxable person in respect of taxable goods and services at a flat rate of 5 percent.

Taxable persons, Government Ministries, Agencies, Parastatals and non-resident companies are required to register with the FIRS.[24] Value Added Tax was originally imposed on 17 categories of goods and 24 categories of services. Such items as basic foods medical and pharmaceutical products, books newspaper and magazines, house rent, commercial vehicles and spare parts and services rendered by Community and People Bank (Micro Finance Bank) were however exempted from Value Added Tax.[25] Under the extant law,[26] the rule for determining whether a particular good or service is exempted is whether it is specifically exempted in the first schedule to the Act.[27] In the absence of any specific exemption, the good or service remains taxable, thus giving the tax a very wide base.[28] The following goods and services are exempted from being taxed under the Act:[29]

Part I – Goods exempted[30]

1. All medical and pharmaceutical products.
2. Basic food items.
3. Books and educational materials
4. Baby products.
5. Locally manufactured fertilizer, agricultural and veterinary medicine, farming machinery and farming transportation equipment.
6. All exported goods.
7. Plants, machinery and equipment imported for use in the export processing zones.
8. Plant, machinery and equipment purchased for utilization of gas in downstream petroleum operation.
9. Tractors, ploughs, agricultural equipment purchased for agricultural purposes.

[23] S. 7, VAT Act Cap 1 LFN 2004.
[24] *Ibid*, S.8; S.9; S.10.
[25] Odusola, above n 7, 12.
[26] VAT Act Cap 1 LFN 2004
[27] *Ibid*
[28] *Ibid*, S.2.
[29] *Ibid*, S.2; First Schedule Part I and II.
[30] *Ibid.*

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Part II – Services exempted[31]

1. Medical services.
2. Services rendered by community banks, peoples' bank and mortgage institutions.
3. Plays and performances conducted by educational institutions as part of learning.
4. All export services.

The revenue generated through Value Added Tax is shared among the three tiers of government.[32] The Federal Government takes 15 per cent, State Governments take 50 percent and Local Governments take 35 per cent.[33] Although the Act designated the Federal Inland Revenue Service as the body responsible for implementation of value added tax.[34] In practice the Nigerian Customs Service collects value added tax on behalf of the Federal Inland Revenue Service in respect of goods imported into Nigeria while collecting Customs Duties.[35]

The informal nature of the Nigerian economy is a hindrance to the enforcement of the Value Added Tax Act.[36] The application of Value Added Tax is only suitable in developed Countries that operate Super Markets where all transactions are documented. The issue of whether a particular good or service is exempted from VAT should be left for FIRS to determine by way of subsidiary legislation because as time goes on the goods and services that should be exempted may defer based on the economic circumstance of the country.

Capital Gains Tax Act Cap C1 LFN 2004

The law imposing tax on capital gains was first introduced in Nigeria in 1967.[37] At its inception, it levied tax at the rate of 20 per cent on capital gains. The

[31] *Ibid.*
[32] Odusola, above n 7, 12.
[33] *Ibid.*
[34] S. 1 VAT Act Cap 1 LFN 2004.
[35] Odusola, above n 7, 13.
[36] VAT Act Cap 1 LFN 2004.
[37] By Decree No.44 of 1967.

decree was in *pari materia* with the Capital Gains Tax Act of United Kingdom.[38] The first capital gains law[39] underwent several amendments culminating into the Capital Gains Act.[40]

The rate of capital gains tax under the extant law[41] is 10 per cent of capital gains accruing within Nigeria. The tax applies to any individual or company throughout Nigeria.[42] the sources of income that are subject to capital gains tax include any capital sum derived from a sale, lease transfer, and assignment, a compulsory acquisition or other disposition of assets, notwithstanding that no asset is acquired by the person paying the capital sum.[43] Examples of situation where the person paying the capital sum does not acquire any asset are provided under the Act.[44]

Both the Federal Inland Revenue Service and State Boards of Internal Revenue are empowered to collect capital gains tax as provided under the schedule to the Act *mutates mutandis*.[45] The capital gains tax is a concurrent tax where Federal Government imposes it on corporate bodies and individuals living in Abuja and State Governments impose it on individuals living within their jurisdiction.[46] The informal nature of the Nigerian economy makes it difficult for revenue authorities to enforce Capital Gains Tax Act[47] on all transactions that attract Capital Gains Tax due to poor culture of documentation of transaction and record keeping in Nigeria.

Stamp Duties Act Cap 58 LFN 2004

The Stamp Duties Act[48] is the extant law on stamp duties in Nigeria. Stamp duties are taxes paid in perfection of documents.[49] It is imposed by both the Federal and State Governments on documents, conveyance, sale agreement,

[38] Ola, above n 20, 512.
[39] Capital Gains Tax Act (CGTA) Cap C1 LFN 2004.
[40] *Ibid.*
[41] *Ibid.*
[42] *Ibid*, S.2.
[43] S.6 (1) CGTA Cap C1 LFN 2004.
[44] *Ibid*, S.2 (1) (a), (b), (c), (d) and (e).
[45] *Ibid*..
[46] Ola, above n 20, 513; Odusola, above n 7, 13.
[47] CGTA Cap C1 LFN 2004.
[48] Stamp Duties Act (SDA) Cap 58 LFN 2004.
[49] Ola, above n 20, 577.

contracts, bill of exchange, promissory notes, and instruments (letters and certificates, admission or instrument of apprenticeship, insurance policies).[50] All duties, chargeable under the Act are to be paid and denoted by impressed stamp.[51] All facts and circumstances relating to the liability of any instrument to payment of duty or the amount payable shall be fully disclosed in the instrument and any person who with intent to defraud the government:

i. Executes any instrument in which all the said facts and circumstances are not fully disclosed.
ii. being employed or concerned in or about preparation of any instrument, neglects or omits to truly or fully disclose any fact or circumstance, shall be liable to fine.[52]

By section 19 and 22[53] an unstamped instrument will not be admissible in evidence in court.[54] However, a court or tribunal or arbitrator or a referee may permit a defaulter to pay all unpaid duties and penalties on an instrument to enable him formally tender it in evidence.[55] The Federal Government is empowered to collect stamp duties in respect of instrument executed between companies and individuals or between companies *inter se* and individuals residing in the Federal Capital Territory Abuja.[56] State Governments are empowered to collect stamp duties on instruments executed between individuals.[57] The Stamp Duties Act[58] has the potential of generating substantial revenue to the State Governments. But it is hindered by the problem of lack of awareness among the tax payers and lack of documentation of the transaction that attracts Stamp Duties.

Taxes and other Levies (Approved List for Collection) Act Cap T2 LFN 2004

Nigeria practices a federal system of government and by implication its tax policy can be referred to as fiscal federalism. Thus, the power to impose tax

[50] Dadem Y.Y, *Property Law in Practice in Nigeria* (Jos, 2015), 25-27.
[51] S.5 SDA Cap 58 LFN 2004.
[52] S.8 SDA Cap 58 LFN 2004.
[53] *Ibid.*
[54] *Ibid.*
[55] *Ibid,* S.22.
[56] *Ibid,* S.4 (1).
[57] *Ibid,* S.4 (2).
[58] *Ibid*.

is shared between the three tiers of government. Tax jurisdiction of the various tiers of government is spelt out in the Constitution.[59] In a bid to spell out the taxing jurisdiction of each tier of government and prevent tax authorities from usurping the powers of one another, the legislature enacted the Taxes and other Levies (Approved List for Collection) Act[60] under which levies and taxes collectible by the three tiers of government were spelt out as follows:

Taxes collected by the Federal Government[61]

1. Companies' income tax.
2. Withholding tax on companies, residents of the Federal Capital Territory Abuja and nonresident individuals.
3. Petroleum profits tax.
4. Value added tax.
5. Education Tax.
6. Capital gains tax on residents of the federal capital territory, Abuja, bodies corporate and resident individuals.
7. Stamp duties on bodies corporate and residents of federal capital territory, Abuja.
8. Personal income tax in respect of –
   (a) Members of the armed forces;
   (b) Members of the Nigerian Police Force;
   (c) Residents of the Federal Capital Territory;
   (d) Staff of the Ministry of Foreign Affairs;

Taxes and levies to be collected by State Governments[62]

1. Personal income tax in respect of –
   (a) pay as you earn (PAYE);
   (b) direct taxation (self assessment);

[59] Abiola J. and Asiweh M, "Impact of Tax Administration on Government Revenue in a Developing Economy-A Case Study of Nigeria", (2012) 3(8) *International Journal of Business and Social Science,* 99-113, 103. Available at http://www.ijbssnet.com Last visited, June 20116.
[60] Taxes and other Levies (Approved List for Collection) (Taxes and Levies) Act Cap T2 LFN 2004.
[61] *Ibid,* Schedule Part I.
[62] *Ibid,* Schedule Part II.

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2. Withholding tax (individuals only).
3. Capital gains tax (individuals only).
4. Stamp duties on instruments executed by individuals.
5. Pools betting and lotteries, gaming and casino taxes.
6. Road axes.
7. Business premises registration fee of –
   (a) urban areas as defined by each state, maximum of –
      i. N10,000 for registration.
      ii. N1,000 per annum for renewal of registration.
8. Development levy (individuals only) not more than N100 per annum on taxable individuals.
9. Naming of streets registration fees in state capitals.
10. Right of occupancy fees on lands owned by State Governments in urban areas of the State.
11. Market taxes and levies where State finances are involved.[63]

Taxes and levies collected by Local Governments.[64]

1. Shops and kiosk rates.
2. Tenement rates.
3. On and off liquor license fees.
4. Slaughter slab fee.
5. Marriage, birth and death registration.
6. Naming of streets registration fees excluding any street in a State capital.
7. Right of occupancy fee on lands in rural areas, excluding those collectable by Federal and State Governments.
8. Market taxes and levies excluding any market State finance is involved.
9. Motor Park levies.
10. Domestic license fees.
11. Bicycle, truck, canoe, wheel barrow and cart fees other than mechanically propelled truck.
12. Cattle tax payable by farmers only.
13. Merriment and road closure levy.

[63] *Ibid.*
[64] *Ibid,* Schedule Part III.

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14. Radio and television license (other than radio and television transmitter).
15. Vehicle radio license (to be imposed by the local government in which the car was registered.
16. Wrong parking charges. Public convenience, sewages and refuse disposal fees
17. Customary burial ground fee.

Apart from spelling out the taxing jurisdiction of the three tiers of government, the Act also checkmates dubious staff of revenue authorities or fraudsters who impersonate staff of the revenue authorities. Section 3 of the Act provides to the effect that any person who:

a. Collects or levies any tax or any levy;
b. Mounts a road block or causes a road block to be mounted for the purpose of collecting any tax or levy is guilty of an offence and liable to fine of N50,000 or imprisonment for three years.[65]

One of the principles of good tax system is that every tax payer is entitled to be certain about the tax that he ought to pay. Tax authorities cannot levy tax on tax payers arbitrarily. The scope of the tax should be certain. The Taxes and Other Levies (Approved List for Collection) Act[66] was enacted in a bid to spell out the jurisdiction of the three tiers of government to impose tax and prevent them from usurping powers of one another thereby subjecting tax payers to multiple taxation.

CONCLUSION

The study highlights and discusses tax legislations that are currently administered by State Governments in Nigeria. The work has succeeded in giving a comprehensive overview of the current tax legislations enforced by State Governments in Nigeria which confirms the taxing powers of the State Governments. The type of tax imposed by each legislation the rate at which tax is collected under each legislation and the reliefs and incentives granted by each legislation were discussed.

[65] *Ibid.*
[66] *Ibid.*