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An Appraisal of Legal and Institutional Framework Regulating Tax Collection in Nigeria

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Abstract:
This research focused on exploring the regulatory framework governing tax collection in Nigeria, with a specific emphasis on the legal and institutional aspects. The analysis involved examining the relevant provisions of the Constitution of the Federal Republic of Nigeria 1999 (as amended) related to taxes and associated matters. Key statutes that regulate taxes and taxation were also scrutinized, including the Federal Inland Revenue Service (Establishment) Act, the Personal Income Tax Act, the Companies Income Tax Act, the Capital Gains Tax Act, the Value Added Tax Act, the Stamp Duties Act, and the Taxes and Levies (approved List) Act. Furthermore, the study investigated the governmental agencies responsible for tax collection and administration, such as the Federal Inland Revenue Service (FIRS), the Joint Tax Board (JTB), the Federal Board Inland Revenue (FBIR), States Board of Internal Revenue (SBIR), Local Government Revenue Committees, and Joint State Revenue Committees. The research paper was concluded by providing a summary of the findings.

Keywords: *Institution, tax, tax regulation*

1. Introduction

Government in all nations, both developed and developing countries like Nigeria, has the responsibility of providing essential services and basic amenities for the citizens by promoting their welfare through formulating and implementing positive socio-economic programs aimed at advancing the citizens' standard of living in line with the provisions of chapter two of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The foregoing represents the fundamental objectives and directive principles of the state policy. Thus, it is the obligation of the Nigerian government to implement these policies. There is no way the government can carry out or attempt to carry out these responsibilities without sufficient revenue to finance these economic policies.

No doubt, one of the most pivotal methods the government globally can conveniently generate revenue is from taxes and levies on income earners, properties and consumption. The government in every jurisdiction has the statutory powers to impose taxes on its qualified citizens as categorized under the various legal instruments. When taxes are statutorily imposed on the public, the government has the assurance of its revenue no matter the circumstance because violation or non-compliance goes with legal consequences. Tax imposition dates back to the pre-colonization era but was visibly utilized for essential services like building railways, roads and schools by the British Colonialists.[1]

Taxes are imposed by the government on its citizens to generate revenue for its activities and to establish a favorable business environment. Ideally, countries like Britain and Canada rely on taxes to fund their government operations.[2] In this regard, various stakeholders, including taxpayers, tax authorities, the government, and consultants, have specific responsibilities.[3] The legal frameworks governing tax collection[4] encompass acts such as the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999), the Federal Inland Revenue Service (FIRS) Establishment Act, the

[1]AA Josephine. Problem of Personal Income Tax in Nigeria (Ababa Press Ltd., 2012)1.

[2]T Adesanya and B Orguntola, 'The legal and Institutional Framework for Taxation in Nigeria: Some Aspects of Law, Policy and Practice' (2018) II (VI) International Journal of Research and Innovation in Social Science (IJRISS) < https://www.rsisinternational.org >accessed 6 March 2023.

[3] T Adesanya and B Orguntola, 'The legal and Institutional Framework for Taxation in Nigeria: Some Aspects of Law, Policy and Practice' (2018) II (VI) International Journal of Research and Innovation in Social Science (IJRISS) < https://www.rsisinternational.org >accessed 6 March 2023.

[4] T Adesanya and B Orguntola, 'The legal and Institutional Framework for Taxation in Nigeria: Some Aspects of Law, Policy and Practice' (2018) II (VI) International Journal of Research and Innovation in Social Science (IJRISS) < https://www.rsisinternational.org >accessed 6 March 2023.

Capital Gains Tax Act, the Companies Income Tax Act, the Personal Income Tax Act, the Stamp Duties Act, the Value Added Tax Act, the Chartered Institute of Taxation of Nigeria Act, and the Nigeria Export Processing Zones Act. [5]

We have different types of taxes, which *inter alia* includes income tax, which stems from revenue earned through a job or a personal venture. Payroll tax is the tax deducted from an employee's paycheck. We also have the capital gain tax and estate tax which is usually imposed after an individual dies and their property is transferred to a living person. The *grund norm* charged every citizen to discharge their duties in this regard, declare their income honestly to appropriate and lawful agencies and pay their tax promptly.[6] Additionally, the legislation restated that if a tax or duty is imposed by an Act of the National Assembly concerning any of the matters outlined in item D of part II of the Second Schedule to the Constitution, the resulting revenue should be distributed among states based on the principle of derivation.[7] If a state government or its authority collects the tax or duty, the resulting revenue should be considered as part of the consolidated revenue fund of that state. If the federal government or its authority collects the tax or duty, each state should receive a portion of the revenue based on the proportion derived from that state, as determined by the National Assembly.[8]

This study aims to examine and explore the different legal structures established by the legislature and delegated legislation to govern tax administration. It will emphasize the existing tax authorities and administrative procedures. In Nigeria today, tax administration is the responsibility of the Federal, State, and local governments. Each level of government has its distinct tax legislation and governing body.[9]

It is the civic obligation of every legitimate and law-abiding citizen to fulfill their tax obligations by making timely payments.

2. Legal Frameworks Regulating Tax Collection in Nigeria

2.1. Constitution of the Federal Republic of Nigeria 1999 (as amended)

The Constitution,[10] amongst other laws made by the National Assembly and States Houses of Assembly, forms the legal regime on tax collection within the territory of Nigeria. It allowed the National Assembly to promulgate Acts that would enhance efficient and transparent tax administration. Section 163[11] provides thus: where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the states on the basis of derivation and accordingly.[12]

Similarly, section 24[13] reiterates that every Nigerian citizen has the duty to declare their income honestly to appropriate and lawful agencies and pay tax promptly.[14]

2.2. Capital Gains Tax Act, Cap. C1 LFN 2004

The legislation governs the management of capital gains tax, which is imposed at a fixed rate of 10% on chargeable gains.[15]

The capital gains tax will be levied at the rate specified in subsection (1) of this section on the entire amount of chargeable gains received by an individual during an assessment year. Deductions allowed by this Act will be considered while calculating such gains. The computation and assessment of capital gains tax for individuals will adhere to the provisions outlined in this Act.[16]

The term 'chargeable assets' encompasses all types of property, regardless of their location within or outside Nigeria. Non-Nigerian currencies are also subject to charges, and any property created by the person disposing of it or owned without acquisition will be considered a chargeable asset.[17]

Note that where any asset is disposed by an individual who is currently in Nigeria, whether temporarily or permanently, it does not matter if the asset is in Nigeria or the disposal is by any trustee or settlement and seat of administration of the trust or settlement is outside Nigeria, where the disposal was done by a non-Nigerian company, the amounts of money received and brought into Nigeria shall be charged capital gain tax.[18]

It is important to observe that losses that accrue to a person on the disposal of any asset shall not be part of the deduction from gains accruing during the computation of capital gains.[19] During the computation of capital gains tax, the

[5] T Adesanya and B Orguntola, 'The legal and Institutional Framework for Taxation in Nigeria: Some Aspects of Law, Policy and Practice' (2018) II (VI) International Journal of Research and Innovation in Social Science (IJRISS) < https://www.rsisinternational.org >accessed 6 March 2023.
[6] *CFRN* s24(f).
[7] *CFRN* s163.
[8] *CFRN,* s163(a) and (b).
[9] Adesanya and Oguntola (n 2).
[10] *CFRN* 1999.
[11] *CFRN* 1999.
[12] *CFRN*, s163
[13] *CFRN* 1999.
[14] Ibid.
[15] Ibid s 2(1).
[16] Ibid s 2(2) & (3).
[17] Ibid s 3.
[18] CGTA (n 23) s4.
[19] CGTA (n 23) s 5.

amount of consideration of the asset and expenditures shall be excluded from the amount of chargeable gains.[20] When land is compulsorily acquired by the authority designated to do so under the Land Use Act, in the absence of any earlier expression of intention to sell or dispose of the property by that person, capital gains tax shall be charged on the proceed of such compulsory land acquisition.[21]

2.3. Companies Income Tax Act Cap. C21 LFN, 2011

Companies Income Tax Act governs the administration of corporate tax, also known as a corporation or company tax. Company tax is a type of direct tax levied on the income or capital of corporations and other similar legal entities. It is usually imposed in Nigeria at the national level, where the federal government has the jurisdiction to impose and collect company income tax. The rate for the tax is 30 percent of the total profit of a company.

Taxes are imposed on any profit of any company accruing in, derived from, brought into, or received in Nigeria in respect of:

- Any trade or business for whatever period of time such trade or business may have been carried on,
- Rent or any premium arising from a right granted to any other person for the use or occupation of any property….[22]

Dividends, interests, royalties, discounts, charges or amenities, any source of annual profits or gains not falling within the proceeding categories…[23] The implication of the foregoing is that taxes are charged by the government of the federation on the profits made by any company, whether accruing, derived from, brought into, or received in Nigeria in respect of any business or trade. It could be rent or premium arising from a right granted to a person for the use of property, where payment of rent is made. Dividends, interest, and royalties are also inclusive. The combined effect is that any amount deemed to be income or profit is chargeable, including fees, dues and allowances for whatever services rendered.

It must be observed that companies are identified by their incorporation number, which is expected to be displayed in all business transactions with other companies and individuals.[24] Tax exemption will be granted on the interest accrued from loans provided by banks for agricultural trade, local plant and machinery fabrication, and work capital for cottage industries. The exemption is applicable if the moratorium period is at least eighteen months and the loan's interest rate does not exceed a certain threshold...[25] Companies in the business of sea and air transportation are not exempted from tax, provided they operate in Nigeria, or their businesses are based in Nigeria.[26] Insurance companies,[27] companies other than Nigerian companies carrying out the business of transmission of messages by cable or by any form of wireless apparatus [28]… are not exempted from CIT.

2.4. Federal Inland Revenue Service (Establishment) Act, 2007

Additionally, the service is responsible for accurately reporting and accounting for all taxes collected.[29] The laws and taxes specified in the first schedule *inter alia* includes: Companies Income Tax Act,[30] Petroleum Profits Tax Act,[31] Personal Income Tax Act,[32] Capital Gains Tax Act,[33] Value Added Tax Act,[34] Stamp Duty Act,[35] and Taxes and Levies (Approved list for collection) Act.[36] Similarly, the Act established, for the service, a board known as the Federal Inland Revenue Service Board, which shall have an overall supervisory function.[37]

Consequently, this Act has created the Federal Inland Revenue Service, which functions as a board with the primary role of overseeing the administration of the service.[38,39]

2.5. Personal Income Tax Act, Cap. P8 LFN 2004

The Act governs the management of personal income taxes and states that a tax is imposed on the income of individuals, communities, families, trustees, and estates. The determination and application of this tax will adhere to the provisions outlined in the Act.[40] In accordance with this Act, tax is required to be paid by every individual, except those

[20]Ibid, s 11.
[21]Ibid, s 9.
[22] CITA 2011, s 9(1) (a) and (b).
[23] Ibid s 9(1) (c) and (d).
[24]CITA 2011, s 10.
[25]Ibid s 11.
[26]Ibid s 14.
[27]Ibid s 16.
[28]CITA 2011, s 15.
[29]FIRS 2007, s 1(3).
[30]CITA 2011.
[31]Cap.P13 LFN, 2004.
[32]PITA Cap.P8 LFN, 2011.
[33]Cap.C1 LFN, 2004.
[34]Cap.V1 LFN, 2004.
[35]SDA Cap.S8 LFN, 2004.
[36]Cap.T2 LFN, 2004.
[37] FIRS 2007, s 3(1),
[38]FIRS 2007, s 25(1).
[39]ibid, s 25(2).
[40]PITA 2011, s 1.

falling within the scope of paragraph (b) of this subsection or recognized as a resident corporation sole or body of individuals within the applicable state, as stipulated by this Act.[41] Individuals serving in the Nigerian Army, Navy, Air Force, or Nigerian Police Force, excluding civilian roles, are not liable for personal income tax. Similarly, officers in the Nigerian Foreign Service, residents of FCT, Abuja, and individuals residing outside Nigeria who earn income or profit from Nigeria are also exempt from taxation.[42]

The income subject to taxation includes profits or gains derived from any trade, business, profession, or occupation, regardless of the duration for which such activities were carried out. Salaries, wages, fees, allowances, or any other form of compensation received by employees, including bonuses, premiums, and benefits, are also taxable. It is important to note that expenses incurred by taxpayers in the course of performing their duties, which resulted in profits or gains, are not subject to taxation. In essence, personal income tax is levied only on income that represents profits or gains, excluding subsidies, allowances for meals or utilities, granting leaves, entertainment allowances, and refunds of medical or dental expenses incurred by employees.

Personal income tax is a direct tax imposed on the income of individuals. In the context of personal income tax, the term 'person' refers to individuals, sole proprietors (non-juristic persons), communities, and families. The respective state's internal revenue authorities are legally empowered to collect taxes on the income of individuals as per the provisions of the relevant legislation. There are two methods of paying personal income tax: the Pay-As-You-Earn (PAYE) system for individuals in formal employment and self-assessment for self-employed individuals.

2.6. Value Added Tax Act Cap. VI LFN, 2004

The Act establishes the imposition and collection of a tax known as value-added tax (VAT), which will be administered in accordance with the Act's provisions. The term 'the Tax' is used in the Act to refer to value-added tax.[43] The tax is levied and must be paid on the provision of all goods and services, excluding those specified in the first schedule of this Act.[44] The Act provides exemptions from value-added tax for specific items, such as medical and pharmaceutical products, essential food items, books and educational materials, baby products, fertilizer, locally produced agricultural and veterinary medicine, farming machinery and transportation equipment used in agriculture.[45] Furthermore, the Act also exempts certain services from value-added tax, including medical services, services provided by community banks, people's banks, and mortgage institutions, educational institution performances as part of learning, and all services that are exported.[46]

The tax rate applicable to taxable goods is set at 5 percent of the value of all goods and services, as determined by sections 5 and 6 of this Act. However, goods and services listed in part III of the First Schedule to this Act will be subject to a zero rate of tax...[47] The administration of the tax specified in this Act will be carried out by the Federal Board of Inland Revenue, referred to as 'The Board' within the Act. The Board has the authority to undertake any actions it deems necessary and appropriate for assessing and collecting the tax, and it is responsible for accurately accounting for all collected amounts.[48]

When a taxable person provides taxable goods or services to an authorized distributor, agent, client, or consumer, they are required to collect the tax on those goods or services at the rate mentioned in section 2 of this Act.[49] Such taxes are known as output tax.[50] A taxable person must submit returns to the Board detailing all purchased or supplied taxable goods and services in a manner determined by the Board before the 21st day of each month.[51]

2.7. Stamp Duties Act Cap. S8 LFN 2004

The Stamp Duties Act governs the appropriate verification and record-keeping of all legal documents listed in the Act's schedule and subject to charges. Starting from the enactment of this Act, the duties imposed on the specified instruments in the schedule will be the standard duties outlined in the schedule. These duties will replace the previously applicable duties under the repealed laws mentioned in this Act.[52] Under this Act, the duties levied are managed and reported according to the guidelines determined by the Minister in consultation with the state Governors. The provisions of this Act have implications for both the federal and state governments, allowing the President and Governors to appoint representatives for their respective governments.[53]

The exclusive authority to impose, modify, and collect duties on instruments listed in the schedule of this Act, pertaining to transactions involving juristic persons and individuals or groups of individuals, lies with the Federal Government.[54] The state government is authorized to gather fees for instruments executed between individuals or parties

[41]Ibid s 2(1) (a).
[42]Ibid s 2(1) (b).
[43]VATA Cap.V1 LFN, 2004, s 1.
[44]Ibid s 2.
[45]Ibid, First Schedule Part I.
[46]Ibid*,* Part II
[47]VATA 2004, s 4.
[48]ibid s 7(1) (2).
[49]Ibid.
[50]Ibid s 14(2).
[51]Ibid s 14(1).
[52]SDA 2004, s 3(1).
[53] ibid, s 3(2) and (3).
[54]SDA 2004, s 4(1).

at a rate that is determined and agreed upon with the Federal Government. The charges are collected by the state government in accordance with the agreed-upon rate established by the Federal Government.[55] Based on the above, it can be inferred that the Federal Government is accountable for collecting stamp duties from corporate entities such as banks, production companies, property companies, and financial institutions. Similarly, state governments have the authority to impose and collect duties from individuals on chargeable instruments, but the specific amount is agreed upon with the federal government.

It is important to observe that commissioners of stamp duties are appointed from the relevant civil services commission by the President or Governor of a state.[56]

Where the duty with which an instrument is changeable depends in any manner upon the duty paid upon another instrument, the payment of such last-mentioned duty shall, upon the application to a commissioner, payment of a fee of 26 kobos and production of both the instruments, be denoted upon such first-mentioned instrument by a certificate under the hand of the commissioner.[57]

Stamp duties must be paid on a dutiable instrument listed in the schedule of the Act within 40 days from the first execution thereof. Failure to stamp the instrument within the prescribed period attracts a penalty in addition to the unpaid duty.[58] Where the instrument to be stamped is chargeable with *ad valorem* duty, the said instrument, uncles it is written upon duly stamped material, shall be duly stamped with the proper *ad valorem* duty before the expiration of thirty days after it is first executed or after it has been first received in Nigeria if it was executed outside Nigeria.[59] However, where an instrument has been submitted to a commissioner for his opinion before the period within which it may be stamped has expired, the instrument may be stamped in accordance with the assessment of the commissioner within 21 days after notice of the assessment.[60]

2.8. Taxes and Levies (Approved list for Collection) Act, Cap.T2 LFN 2004

This Act allows the federal, state and local governments to be responsible for collecting the taxes and levies listed under the schedule of this Act.[61] The Minister of Finance may, on the advice of the Joint Tax Board and by Order published in the Gazette, amend the schedule of this Act.[62] The taxes referred to above, *inter alia*, includes companies' income tax, withholding tax on companies, residents of the federal capital territory.

The federal government is responsible for collecting taxes such as petroleum profit tax, value added tax, education tax, and capital gains tax from residents and non-residents in Abuja and non-residential individuals and corporate bodies.[63]

Likewise, state governments are responsible for collecting various taxes, including personal income tax such as PAYE and self-assessment.[64]

Fees for various services such as shop rentals, tenement rates, liquor licenses, slaughter fees, and registration fees for events like marriages, births, and deaths, as well as fees for naming streets, land occupancy, and market taxes, excluding specific cases...[65]

Only the relevant tax authority is authorized to assess and collect the taxes and levies mentioned in the schedule on behalf of the government, and no other person is permitted to do so.[66]

Setting up roadblocks for tax or levy collection purposes is prohibited for all individuals, including tax authorities, across the country.[67]

3. Institutional and Administrative Authorities Relevant to Tax in Nigeria

The following institutions are charged with the responsibility of tax administration and related matters.

- The Federal Inland Revenue Service (FIRS) is created and empowered to oversee and manage various taxes and laws listed in the schedule or enacted by the National Assembly. The FIRS has the authority and responsibility to control and administer these taxes and laws in accordance with the provisions set forth.[68]
- The Federal Board of Inland Revenue (FBIR) is granted the authority to establish legislation concerning the taxation of incomes, transactions, capital gains, and stamp duty. It is also empowered to collect taxes on incomes, transactions, capital gains, and stamp duty from individuals and companies within its jurisdiction in accordance with the Constitution and other applicable laws.[69]

[55]Ibid, s 4(2).
[56]SDA 2004, s 6.
[57]Ibid, s 15.
[58]Ibid, s 23(1).
[59]Ibid, s 23(3) (a).
[60]SDA 2004, s 23(6).
[61]TLA Cap. T2 LFN, 2004 s 1(1).
[62]Ibid, s 1(2).
[63]First Schedule Part I
[64]TLA 2004, Part II.
[65]TLA 2004, Part III,
[66]Ibid, s 2(1).
[67]Ibid, s 2(2).
[68]FIRS Act 2007 s 1(1) and (3).
[69]TLA 2004, s 4(a).

- The State Board of Internal Revenue (SBIR) is authorized to collect taxes on incomes or profits, capital gains, and stamp duties from residents within the state in accordance with the Constitution and relevant laws.[70]
- The Local Government Revenue Committee is granted the authority to collect taxes, fees, charges, and levies in accordance with the Constitution and other relevant laws pertaining to local government revenue collection.[71]
- The Joint State Revenue Committee is entrusted with the task of executing the decisions made by the Joint Tax Board (JTB) and providing guidance to the JTB, state, and local governments on revenue-related issues.[72]
- The Joint Tax Board (JTB) is a legally established body chaired by the Chairman of the Federal Board of Inland Revenue, with one representative from each state of the federation.[73]

4. Conclusion

Tax is an obligatory financial obligation imposed by the government on its citizens to generate revenue for financing developmental programs. Compliance with this obligation is the duty of the citizens, ensuring that the government has the necessary resources to meet their social needs. In Nigeria, there are several laws governing tax collection and administration, aiming to facilitate the remittance of various taxes to the federal, state, and local government levels. This paper examines these laws and the administrative institutions or agencies responsible for defining the different taxes, determining who is liable to pay taxes, and collecting them.

Furthermore, the study identifies key tax administrative institutions or agencies, including the Federal Inland Revenue Service, the Joint Tax Board, the Federal Board of Inland Revenue, State Boards of Internal Revenue, and Local Government Revenue Committees. These institutions play crucial roles in the effective administration and enforcement of tax regulations, ensuring compliance and facilitating the collection of taxes at different levels of government.

It was observed that there exist challenges to the lack of a national database and technicalities in understanding the functions and limitations of the various agencies and institutions. These, by no little means, will affect enforcement. However, the various functions are spelt out in the provisions of the statutes relating thereto.

It is trite to further observe that there is the likelihood of usurpation of power and the case of under assessment, double taxation, tax evasion or the challenge of identification of taxable persons may work hard under the current legal regime. The possibility of refusal or failure to remit the tax amount due and collected cannot be ruled out under the current legal regime. However, this paper is believed to serve as a strong introductory guide and research material to researchers, stakeholders, academics, students, tax practitioners and the general public on the historical, legal and institutional framework regulating tax and its related matters in Nigeria.

5. References

i. Capital Gains Tax Act, 2004.
ii. Companies Income Tax Act, 2011.
iii. Companies Income Tax Act, 2011.
iv. Constitution of the Federal Republic of Nigeria (as amended) 1999.
v. FIRS Establishment Act, 2007.
vi. Josephine A. Agbonita, problem of Personal Income Tax in Nigeria. (Ababa Press Ltd 2012).
vii. Personal Income Tax Act, 2011.
viii. Stamp Duties Act, 2004.
ix. Taxes and Levies (Approved list for Collection) Act, 2004.
x. Tolulope A. & Oguntola B. (2018) The Legal and Institutional Framework for Taxation in Nigeria; Some Aspects of the Law, Policy and Practice. International Journal of Research and Innovation in Social Science II (VI).
xi. Value Added Tax Act, 2004.

[70] Ibid, s 4(a).
[71] TLA (n 75).
[72] PITA (n 43) s 84(2) (a), TLA (n 75) s 4.
[73] Ibid, s 86(9).