

LEGAL EXPOSITION OF THE LAWS ON INTERNALLY GENERATED REVENUE (IGR) IN NIGERIA

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ABSTRACT

This paper exposes the academic and regulatory studies on internally generated revenues in Nigeria, available in the law literature. First, a review of the laws on the internally generated revenues is provided. The paper then takes a look at the parties involved in internally generated revenue, and analyzes the theories of revenue generation and empirical evidences. Finally, the paper concludes by giving some indication as to the direction of future research on revenue generation.

Key Words: *Revenue, Income Tax, Capital Gains Tax, Petroleum Profit Tax, Capital Transfer Tax.*

INTRODUCTION

Taxation in Nigeria is strictly by way of formal legislation. In other words, every tax in Nigeria, to be legal and enforceable, has to be enabled by an identifiable piece of legislation which imposes tax obligations which are clear and unambiguous¹. In the preceding chapter, legal framework was defined as a set of laws. When combined with IGR, it means a set of laws regulating IGR in Nigeria. In this regard, it is important to reiterate the notion that tax laws are statutory in nature. According to Ayua², there has been a requirement that if at all, government is to interfere with property, pry into a man's affairs and takes his money, then this must be on clear statutory authority. The

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¹ Law Nigeria, 'Nigeria Taxation Law Framework' <https://www.lawnigeria.com> accessed January 12, 2018.

² AyuaI. A., *Nigerian Tax Law* (Spectrum Law Publishing 1996) 46.

above position was rightly held by the court in the case of *7UP Bottling Company v Lagos State Internal Revenue Board*³, where it was held that:

It has often been the view of the Courts here and elsewhere that if a person sought to be taxed comes within the letter of the law, then such person must be taxed. On the other hand, if the tax authority seeking to recover tax from a person is unable to bring him within the letter of the law, the person will be free, however apparently within the spirit of the law his case ought to otherwise appear to be.

This position reinforces the law in the case of *S. A. Authority v Regional Tax Board & Ors*⁴ where the Federal Court held that, 'No tax can be imposed on the subject without words in an Act of parliament clearly showing an intention to lay a burden on him'. It is in this regard that some statutes will be examined, beginning with the constitution of Nigeria.

However, the main tax laws in Nigeria today are Companies Income Tax, Personal Income Tax, Capital Gains Tax, Petroleum Profit Tax, Capital Transfer Tax and, Value Added Tax⁵. The sources of these taxes laws vary since tax system are administered through statutes rather than common law. Generally, amongst the sources of tax law includes legislations, constitution, court judgment, circular of revenue officials, and opinion of income tax experts, budget and pronouncement of relevant ministries, etc⁶. The Companies Income Tax law has witnessed several amendments after the replacement of the Companies Income Tax Act 1961 with Company Income Tax Decree 1979. Also, in the field of Personal Income Taxation, the 1979 Constitution clarified and strengthened all previous laws on Personal Income Tax, hence the promulgation of Personal Income Tax Act 1993⁷. On Capital Gains Taxation, after the introduction of the Capital Gains Tax Act, 1967 and Capital Transfer Tax Act 1979, some novel amendments have been affected. Notably amongst those amendments

³ (2000)3 NWLR, (Pt.591) 565.

⁴ (1976) NCLR 452-464; 1970 LPELR – SC. 273/1969 Where the supreme court held that the Holy Apostles Community Aiyetoro in Ilaje District Council Area is not liable to pay tax under the Income Tax and Development Contribution Law.

⁵ Olokooba S.M. and others, Op cit. 279.

⁶ Ibid.

⁷ Ibid.

was the reduction of the Capital Gains Tax from 20% to 10% with effect from 1st January, 1996. Another amendment was the abrogation of the Capital Transfer Tax via the 1996 budget, the outcome of this latest effort at reform resulted in the enactments of FIRS (Establishment) Act 2007; Companies Income Tax (Amendment) Act 2007; Value Added Tax (Amendment) Act 2007; and National Automotive Council (Amendment) Act 2007; the adoption of the National Tax Policy in 2011; the National Tax Policy was further reviewed in 2017; then, there have been consistent tax law reforms starting with 2019; with various tax amendments inform of finance Acts of 2019, 2020, 2021, 2022, and 2023. The reason for this abrogation was that the government felt that such tax could not be implemented throughout the federation since not all the states in Nigeria produce oil. The Petroleum Profit Tax Act⁸ which consolidated the Petroleum Profit Tax, 1959 and other amendments, has also been amended severally⁹. Education Tax Decree was promulgated in 1993 and the Value Added Tax was also introduced to Nigeria 1993 with an effective date of 1st December, 1993¹⁰. However, some other notable development occurred in the history of taxation with the inauguration of Federal Board of Internal Revenue on April, 1993. Furthermore, several government efforts and interests have also been felt in the Nigerian tax reforms. Some of the noticeable significant developments introduced by the current tax reform are administrative and institutional restructuring of Federal Inland Revenue Service, introduction of Taxpayers' Identification Number (TIN), consistent public enlightenment to motivate compliance with tax laws, rules and regulations.¹¹ Within the period of 1990 - 1992, 1999 – 2012, about eight bills came before the National Assembly, the bills are:

1. Federal Inland Revenue Service (Establishment) Bill,
2. Companies Income Tax (Amendment) Bill
3. Petroleum Profit Tax (Amendment) Bill,
4. Personal Income Tax (Amendment) Bill,
5. Value Added Tax (Amendment) Bill,

⁸ Cap 354 LFN, 1990.

⁹ Olokooba S.M. and others, Op cit.

¹⁰ Ogundele E.A., Elements of Taxation (Libri Service Nig. Ltd. 1997). p. 24.

¹¹ Olokooba S.M. and Abdulkareem A.A., 'Law and Sustainable Development in Nigeria: Looking the Way of Tax Education and Mobilization' A Paper Presented at the 2nd International Conference, Faculty of Law, University of Ilorin, 4th-6th December, 2011.

6. Education Tax (Amendment) Bill,
7. National Automotive Council Tax (Amendment) Bill, and
8. Customs and Excise Tariff Consolidation (Amendment) Bill.

Out of the eight bills, four were passed into law within the period and one was withdrawn¹². The already passed bills are:

1. Bill for an Act to establish FIRS as an autonomous service;
2. Bill for an Act to amend the Companies Income Tax Act;
3. Bill for an Act to amend the Value Added Tax Act,
4. Bill for an Act to amend the National Automotive Council Act.

Three of the bills seek to amend the existing Personal Income Tax (PIT), Value Added Tax (VAT) and Companies Income Tax (CIT) regimes, respectively¹³. The resultant effect of all these is that, apart from the fact that, presently, the Nigerian tax system at the federal level is witnessing positive reforms which are aimed at simplifying the returns and payments processing, embracing the concept of real self-assessment tax regime that encourages voluntary compliance, among others¹⁴. There is also an increase in the target and actual collection of taxes since 2005 till date¹⁵, which is as a result of the reforms in the tax laws and amendments.

3.3 Existing Statutes on Internally Generated Revenue

The Nigerian Tax Laws have undergone significant amendments in the last few years especially with a view to excising obsolete provisions and making the laws as much as possible to reflect present day realities.¹⁶ Tax statutes refer to a whole body of enacted acts of legislation. In the context of taxation, it is a codified system of order that describes the legal implications of taxation, i.e. government levies

¹² Olokooba S.M. and others, Op cit.

¹³ Ibid.

¹⁴ Bamidele A.J., 'Revenue Collection Performance Trends: Past, Present and Future' A Paper Delivered at the Induction Programme of the Newly Recruited Staff of FIRS, September, 2010.

¹⁵ Olokooba S.M., 'A Legal Analysis of the Taxation of Banking Business in Nigeria (1990-2010)' An Unpublished Ph.D. Thesis submitted to the Faculty of Law, University of Ilorin, 2012.

¹⁶ Sokunbi T., Op cit. 6.

on economic transactions.¹⁷ Some of the advantages of having tax laws in statutes include the following:

- Tax laws provide a well-defined legal backing to the administration of each tax type states in clear terms the applicable rate.
- Tax laws stipulate what constitutes offence and the appropriate sanctions to each offence.
- They enshrine best practices in terms of ethical and professional conduct.

Joint Tax Board (JTB) initially created under S. 27 ITMA 1961 as amended is now deemed established under section 85 (1) of decree 104 of 1993 (PITA), is to avoid multiple collections of taxes from the same taxpayer, at least in theory, taxes of each tier of government in Nigeria have been clearly defined by the Joint Tax Board (JTB) as follows -

1. Federal Taxes includes
2. Companies Income Tax.
3. Custom and Excise Duties.
4. Value Added Tax.
5. Education Tax.
6. Personal Income Tax in respect of: -
7. Armed Forces, Police, etc.
8. Non-resident individuals and companies.
9. Staff of Nigeria Foreign Service.
10. Individuals resident in the Federal Capital Territory.
11. State Taxes:
12. Personal Income Tax.
13. Road Taxes
14. Pools betting and lotteries.
15. Business premises registration.
16. Development Levy.
17. Naming of street registration in state capitals.
18. Right of occupancy on land owned by state.
19. Market taxes on state financed taxes.
20. Local Government Taxes:
21. Shops and Kiosks rates.
22. Tenement rates.

¹⁷ Dike M.A.C., Op cit. 4.

23. On and off liquor license fee.
24. Slaughter slab fees.
25. Marriage, Birth and death Registration Fees (Rural Areas).
26. Right of Occupancy on land in rural areas.
27. Market Taxes and Levies.
28. Motor Park Levies.
29. Domestic Annual License Fees.
30. Bicycle, Truck, Canoe, Wheelbarrow, and Cart Fees.
31. Cattle tax payable by cattle farmers only.
32. Merriment and Road Closure Levy.
33. Radio and Television License Fees (other than radio and television transmitter).
34. Vehicle Radio License (Local Government Registration of the vehicle).
35. Wrong Parking Charges
36. Public Convenience and Refuse Disposal, Customary burial ground permit fees.
37. Religious Place Establishments Permit Fees.
38. Signboard and Advertisement Permit Fees.

3.3.6 Capital Gains Tax

Capital gain tax is a tax imposed on the capital gains or profits on sale or disposal of capital assets, and it is governed by Capital Gains Tax Act¹⁸. Capital gains tax was first introduced in Nigeria under the provisions of capital gains tax Act¹⁹ and made to apply throughout the Federation and companies inclusive.²⁰ Decree No. 30 of 1999 now applies throughout the Federation and relates to individuals, partnerships and companies. The rate of capital gains tax (CGT) was reduced from 20% to 10% with effect from 1st January, 1996.²¹ Capital Gains Tax is any income derived from sale of a capital asset. Gain, here, means increases resulting in the market value of assets to a person who does not regularly offer them for sale and in whose hands they do not constitute stock in trade. Capital gains may arise in two instances,

¹⁸ 2007, as amended.

¹⁹ No. 44 of 1967.

²⁰ Edotsu N.W., *Taxation in Nigeria: Principles and Practice* (Cavalet Publications 2008).

²¹ Ezemma J.C. and Mohammed K., 'The Challenges of Capital Gains Tax in Nigeria' *International Journal of Communication*. p.75 < journal.ijcunn.com/index.php/IJC/article> accessed August 31, 2018.

i.e. where the asset appreciates in value, while still in the hands of the owner, or maybe he realized gains, when the asset is sold or disposed of. Capital gains are payable on stocks, shares, securities, land and buildings, plant and machinery of every business assets such as good will and secret profits²². However, whatever justification made in respect of capital gains tax, it has been criticized as having a kind of a lock-in-effect on business, in the sense that it inhibits the sale of capital assets which have appreciated in value²³.

Capital Gains Tax Act creates offences and penalties, for non-compliance. However, the penalties prescribed in the Act are relatively low and not commensurate with the offences. Another problem with the Act is that, it allows the government to charge and collect tax on company's gain, but there is no provision in event of loss and, thus, taxpayer bears his loss alone. Furthermore, it is claimed that capital gains tax, in conjunction with income tax, is a case of double taxation, as the value of capital relates to the future income that the capital is expected to produce²⁴. Capital Gains Tax Act, further, has problems of unwieldy scope, clumsy process of determining taxable gain, the inability to discount for inflation, as stated above and inability of loss relief within transactions. As pointed out, by the study group on tax reform²⁵, the complex provisions of the Act made the implementation of the tax impracticable. Also, there is confusion regarding the target of the tax, which reduced the significance of the tax²⁶.

3.3.7 Personal Income Tax

This tax is imposed on individual taxable persons on their taxable incomes. Example of those taxpayers and their taxable incomes includes incomes of employees, sole proprietors and partners in their partnership business. The administrative authority vested with the power is the Joint Tax Board (JTB). Each state of the Federation has a State Board of Internal Revenue (SBIR) which is responsible for the assessment and collection of pay-as-you-earn taxes from taxable persons resident in that state, while the Federal Inland Revenue Service

²² Obaje E., 'Capital Gains Tax in Nigeria' Canadian Social Science Journal, Vol. 8, No. 3. p. 5.

²³ Ibid. 9.

²⁴ Ibid. 11.

²⁵ Study Group on Tax Reform, Nigeria Tax Reform in 2003.

²⁶ Ayodele O. Op cit.

is responsible for assessment and collection of such taxes from persons resident in Abuja, armed forces personnel, police officers of Nigeria, Foreign Service and non-residents, who derived income or profit from Nigeria²⁷.

3.3.8 Stamp Duties

This tax is provided for in the Stamp Duties Act²⁸. The tax applies to documents, example, conveyance documents concerning land transfers, bonds, debentures, covenants and warrants, but not to transactions or individuals. The tax applies an *ad valorem*²⁹ rate of the price or value mentioned in a document. Section 4(1) and (2) of the Act³⁰ provide that

The Federal Government shall be the only competent authority to impose, charge and collect duties upon instruments specified in the Schedule to this Act if such instrument relates to matters executed between a company and an individual, group or body of individuals. The State Governments shall collect duties in respect of instruments executed between persons or individuals at such rates to be imposed or charged as may be agreed with the Federal Government.

However, in practice either the federal or state government charge and collect stamp duties irrespective of the parties involve. Given the challenges of the Act, the Senate³¹ passed the Stamp Duties (Amendment) Bill, 2018. The Bill seeks to address ambiguities in the principal Act and to ensure that the provisions of the principal Act reflect current realities in Nigeria³². The Bill expands the definition of ‘Stamp’ to include electronically generated stamps or stamps embossed through a point of sale (POS) machine or an adhesive postage stamp with face value or specified value. This is a welcome development and in keeping with realities.

²⁷ Ossai C., Op cit. 31.

²⁸ Cap S8 Vol.14 LFN 2004.

²⁹ In proportion to the estimated value of the goods or transaction concerned.

³⁰ Cap S8 Vol.14 LFN 2004.

³¹ At its plenary session of Tuesday, 8 May 2018.

³² Policy and Legal Advocacy Centre (PLAC), ‘Senate Passes Stamp Duties Act (Amendment) Bill, 2018’ [2018] <https://placng.org/wp/2018> accessed August 31, 2018.

It should be noted that, the above tax-based revenues are not exhaustive, as there are other tax-based revenues, which include but not limited to, stamp duties, toll taxes, pools betting and lotteries, gaming and casino taxes, business premises registration and renewal levies, development levies, tenement rates naming of streets registration fees in State Capitals, Advertisement and permits, among others. However, despite the existence of those relevant tax laws and regulations that govern the procedure of assessment, collection, enforcement and general administration of those tax-based revenues in Nigeria, there are still multifarious administrative and procedural problems, some emanating from tax laws and regulations themselves, hence, the need for workable suggestions/recommendations and review/reform of the entire tax system, so as to bring the Nigerian tax system into a world accepted and standard tax system³³.

Some Notable Case Laws on Internally Generated Revenue

No doubt, the administration and collection of direct and indirect taxes (including VAT) are not free from challenges in Nigeria, as has been succinctly stated by Mohammed Bello, JSC in *Aberuagba v A.G. Ogun State*³⁴ thus:

In developed countries where retail trade is carried on in departmental stores, supermarkets, drug stores and shops where all sales are accounted for and the business addresses registered, it is convenient and safe for any government to appoint retailers as its agents for the collection of Sales Tax. Every penny collected will ordinarily reach the government. The position is entirely different in Nigeria. it is notorious fact that except in few departmental stores, shops and drug-stores, where accounts of sales are kept, the bulk of the retail trade is carried on by swam of amorphous trades in the market places and in their homes, on our streets and highways, under our bridges and trees. They do not keep record or account of their business dealings and they cannot be reached by any Government. It would be a bonanza to those retail traders to appoint them as agents for the collection of any sales tax. Except in the case of the few retailers that I have mentioned, not a kobo would reach the government. Consequently, for any meaningful sales tax to reach the government, it must be collected by agents, such as

³³ Musa M. A., Op cit. 84.

³⁴ [1995] NWLR (Pt.3) 385.

distributors, whose accountability to the government for the tax collected is assured³⁵.

After 1993, the appeal procedure before the VAT Tribunal were slightly different from the Appeal Commissioners, and so, problems started with the establishment of the VAT Tribunal under the VAT Act³⁶, which equated the VAT Tribunal with Federal High Court (FHC) and made appeals from the defunct VAT Tribunal to lie directly to the Court of Appeal³⁷. In addition, most of the problems emanated from the fact that the legal framework under VAT Act could not be questioned during the military rule due to the superiority of Decrees and Edicts over the unsuspended part of the Constitution³⁸. However, with the return to democratic rule, the Court of Appeal Lagos Division in the case of *Stabilini Visinoni Limited v Federal Board of Inland Revenue*³⁹, declared the VAT Tribunal to be unconstitutional. The court held that the VAT Tribunal was not an administrative Tribunal since appeals from it did not lie to the FHC⁴⁰, but directly to the Court of Appeal, thereby usurping the FHC's constitutional jurisdiction. The Court of Appeal also held that Section 20 of the 2nd Schedule to the VAT Act that had set up the VAT Tribunal was inconsistent with Section 251 of the 1999 CFRN which had solely conferred jurisdiction over federal revenue exclusively on the FHC, making the VAT Tribunal ultra vires. Thus, the VAT Tribunal, that was set up under Sections 20 and 24(1) of the 2nd Schedule to the VAT Act of 1993 suffered premature extinction post the coming into force of the 1999 CFRN. Similarly, in *Cadbury (Nig.) Plc v FBIR*⁴¹, the FBIR had directed Cadbury to render VAT returns based on Cadbury's payments to its parent company (Schweppes) in Britain. Upon Cadbury's refusal, FBIR instituted tax recovery proceedings before the VAT Tribunal. With FBIR's success at the VAT Tribunal, Cadbury appealed to the

³⁵ Ibid. 399.

³⁶ Sections 20 and 24 of the 2nd Schedule of the Value Added Tax Act of 1993 (Decree No. 102 of 1993).

³⁷ Sanni CITN in Obayemi O.K., Op cit. 14.

³⁸ See for instance the Constitution (Suspension and Modification) Decree No. 1 of 1984.

³⁹ [2009] 13 NWLR (PT 1157) 200; (2009) 1 T.L.R.N. 1.

⁴⁰ The Court of Appeal also held that the VAT Tribunal was not merely engaged in advisory role, but, that it engaged in deciding factual disputes between the parties.

⁴¹ [2010] 2 NWLR (Pt 1179) 561; (2010) 2 T.L.R.N. 16.

Court of Appeal, which sustained Cadbury's objection, holding that the VAT Tribunal had no jurisdiction to entertain VAT issues since such tax issues touched on the exclusive jurisdiction on federal revenue conferred solely upon the FHC.

Conclusion

Currently, Nigeria has its tax policy known as National Tax Policy with laudable objectives. Nigeria's IGR system has come a long way and much has been achieved but a lot still has to be done. There is no way a responsible government can enhance its country internally generated revenue without devising some form of strategy or strategies to not only achieve but sustain it. It is not in doubt that many States in Nigeria, including the Federal Government, are currently making efforts to diversify and increase their internally generated revenue. Methods or measures being put in place by these states range from extensive tax policy reforms to administrative measures like improved remittances and recording. However, any strategy has to address and take into account legal implications, policy matters and operational circumstances.

Given that we are in the technological age, technology is necessarily and essentially one of the methods by which states can enhance and sustain their internally generated revenue. To this end, there should be legislative instruments legalizing revenue generation and collection through the use of technology and phase out manual collection completely. The 2017 report of the National Bureau of Statistics is indicative of the fact that while a few states have woken up to the realization that the monthly allocation from FAAC is not sustainable and are deploying innovative and rigorous IGR's strategies to further their developments, a large number of states are still much dependent on FAAC to survive. In the whole, the Nigerian States have recorded improvements in internal revenue generation owing to their improved strategies, which include blockage of leakages.

The need to improve states' IGR has led some states like Lagos, Kano and Ogun to creating tax laws that were later declared null and void for duplicity of federal laws on same matter. There is urgent need for Constitutional amendment to address the jurisdictional issue between Federal High Court and the Tax Appeal Tribunal. However, the greatest factor frustrating enhanced revenue generation in Nigeria is

‘endless’ litigation. To this end, the Constitution should be amended to make decisions on tax matters from the Federal High Court final and unappealable, unless on breach of fair hearing to the Court of Appeal and not further than that.

In view of this research paper, (PITD), No 104 of 1993 identifies taxable persons, determines their assessable income and taxes. The Decree also determines the residence of the taxpayer and the source of origin of his income. With the promulgation of the PITD 104 of 1993, which aims at ensuring uniformity throughout the states of the federation, all the previous state edicts imposing one tax or the other were repealed and strengthened. Section 99 of PITD 1993 repealed ITMA and the income tax (armed forces and other persons special provision). Act, Two forms of taxes are administered under this Decree namely- PAY AS YOU EARN (PAYE) i.e. taxes from employment and tax from business. All the state internal revenue services administer personal income tax (PIT) for residents their capital territory, the police, armed force, foreign affairs officers and non-resident. Residents of federal capital territory. Abuja pay to FIRS while civilians in the police and military formations pay to their states of residence. Every individual other than personnel serving in the Nigerian armed force in non- civilian capacity who is resident in Nigeria is subject to tax under the PIT scheme.