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## LEGAL AND SOCIAL ANALYSES OF TAX REGIME IN NIGERIA

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### ABSTRACT

Taxation is one headache that a lot of people will want to do without. But they cannot do this in the light of the meaning of taxation and what it stands to represent in the development of a nation. Taxation provides revenue for governments and form part of the resources that governments exploit in order to run their affairs. As a result of this, taxation is an important part of the policy thrust of government revenue. Taxation has been a key source of government revenue from time immemorial. Owing to the need for government to meet its responsibilities as provided under the laws of the land, there is the need to raise revenue in order to meet these needs. These needs fall under the fundamental objectives and directive principles of state policy as enshrined under the Constitution of the Federal Republic of Nigeria.<sup>1</sup> It states that government is responsible for the welfare of the people, educational and economic objectives, among other things. Section 14 (2) (b) of the Constitution provides that; “the security and welfare of the people shall be the primary purpose of government.” Therefore, it becomes imperative for government to generate revenue in order to meet these set objectives. To this end, taxation is one of the chief sources of revenue for governments at all levels. The revenue exists in the form of taxes, levies, fees and other charges. The administration of these are products of legislation. Such legislation empowers government to administer the laws and carry out all that is necessary to meet the stated objectives.

*Keywords:* Taxation, Fiscal Control, Tax Law, Financial Regulation, Nigeria.

### 1. INTRODUCTION

The payment of taxes is a civic responsibility as well as patriotic duty of every citizen.<sup>2</sup> Over the years the laws regulating the administration of taxes have undergone changes aimed at improving the workings of the tax system in order to meet up with the realities of the day. Today there are various tax laws covering different areas such as, taxation of personal income, companies’ profits, value added tax, capital gains, petroleum profits, education, customs and excise duties, etc. Some of these laws have gone through amendments aimed at improving the tax system in the country.

<sup>1</sup> Constitution of the Federal Republic of Nigeria 1999 (As Amended).

<sup>2</sup> Anghar, P.A. and Alfred, S.I. (2012). Personal Income Tax Administration in Nigeria: Challenges and prospects for Increased Revenue Generation from Self Employed Person in the Society. *Global Business and Economics Journal*. Vol. 1 (1): 1-11.

This paper discusses the tax regimes operational in Nigeria and examines their peculiarities as well as their workings. Certain key terms like taxation, characteristics of taxation, types of taxes, operation of taxes, residency rule etc will be discussed in this work.

### 1.1 Definition of Taxation

Taxation is basically a compulsory payment imposed on individuals and corporate entities by law. It is a creation of law enacted by the law making organs of the different tiers of government in the federation. It is a compulsory levy imposed by public authority on the income or gains accruing to individuals and companies from production, distribution and consumption of goods and service as well as disposal of chargeable assets for the common good of all. The Black's Law Dictionary<sup>3</sup> defined tax as: "A charge, usually monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue. Most broadly, the term embraces all government impositions on the person, property, privileges, occupations, and enjoyment of the people, and includes duties, imports, and excise." In the Australian case of *Matthews v. Chicory Marketing Board*<sup>4</sup> tax was defined as: "... a compulsory exaction of money by a public authority for public purposes, or 'taxation is the raising of money for the purpose of government by means of contribution from individual persons.'"

According to the Supreme Court of the United States of America, per Justice Roberts in *United States v. Butler*,<sup>5</sup> "a tax in the general use of the term, and as used in the constitution, signifies an exaction for the support of government." Taxation has also been defined as a compulsory levy imposed by a public authority (government) of a territory (federal, state or local government) on the income or gains accruing to individuals, and companies from production, distribution and consumption of goods and services as well as disposal of chargeable assets for the common good of all.<sup>6</sup> Being compulsory in nature, it is an obligation which a citizen is compelled to pay once it has been imposed. It is a charge imposed by government authority upon properties, businesses and individuals. It is therefore the duty of the legislature to impose this duty on various categories of persons such as individuals, communities, families, executors, trustees, etc, for them to become liable to pay. Taxing powers are definitely issues that must be considered in any tax regime to bring about effective compliance with the characteristics of a good tax.

### 1.2 Imposition and Collection of Taxes in Nigeria

Section 4 and the Second Schedule to the 1999 Constitution<sup>7</sup> addresses the division of powers including taxing powers and revenue sharing, between the federal, state and local government councils. Under these provisions, functions assigned to the states are residual powers not explicitly assigned to the federal government. Section 4<sup>8</sup> clearly gives the Federal Government through the National Assembly the same powers to enact laws as it gives to the State Assembly in the interest of peace and good government, with the proviso that where there is conflict, the laws enacted by the Federal Government prevails.<sup>9</sup> It is therefore the constitutional responsibility of the National Assembly to make tax laws or amend existing laws as provided in the second schedule to the Constitution, and as may be required under section 4 of the Constitution.

<sup>3</sup> Garner, B.A. (ed). Black's Law Dictionary (9<sup>th</sup> ed. 2009). West: Thomson Reuters Business, USA. p. 1594.

<sup>4</sup> (1939) 60 C.CL.R. 263 at p. 276

<sup>5</sup> 297 U.S. 1 (1963) at p. 61.

<sup>6</sup> Mhtml: //hp/a-review-of-nigerian-tax-laws-the-lawyers-chronicle.....

<sup>7</sup> 1999 Constitution of the Federal Republic of Nigeria.

<sup>8</sup> Ibid.

<sup>9</sup> Section 4(5) of the Constitution.

The Nigerian Constitution also provides the powers of the State Houses of Assembly in relation to imposition of taxes. With regard to Federal taxes specifically in item D part II of the Nigerian Constitution, the powers of the House of Assembly of the various states are restricted to collection and administration of certain taxes subject to delegation by the National Assembly.

The various State Houses of Assembly are responsible for legislation that will enable the local governments in the State effectively discharge their duties with respect to the collection of rates, fees and levies which are within their jurisdiction. In this regard and in order to harmonize administration of rates, levies, fines, tolls and charges collectible by the States or Local Government Authorities, the Joint Tax Board shall advise on the proposed changes for enactment by the State Houses of Assembly.<sup>10</sup>

### 1.3 The Extent of Authority from the Legislation

Federation implies the existence in one country, more than one level of government, each with different expenditure responsibilities and taxing powers. In the Nigerian context, this consists of a government, with 36 states, Federal Capital Territory and 774 Local Governments.<sup>11</sup> Among the different levels of government, fiscal arrangements must be worked out properly to ensure balance of macroeconomic stability. The fiscal arrangement among the different tiers of government in a federal structure is often referred to as fiscal federalism, and these pose sever challenges to the country,<sup>12</sup> as it relates to the division of public sector functions and finances among different tiers of government.<sup>13</sup>

Dealing with the revenue rights and jurisdiction of the component levels of the Nigerian federal set-up has led to agitation for resource control and revenue allocation. These issues of economic control of each tier of government bring about fiscal federalism and have remained most dominant and contentious in the relationship between the government at the center and the federating units, within the Nigerian political landscape.<sup>14</sup>

In a country with a federal government structure, the different levels or tiers namely, the federal, states/regions or local governments are deemed to be autonomous and enjoy some modicum of independence in their area of competences. They have some “sovereign” powers as provided for in the Federal Constitution. Thus, a Federal Constitution, as a matter of necessity, gives rise to fiscal federalism. This makes it imperative that the country must work out the sharing formula for allocation of political, sovereign and economic powers to remain together as one sovereign state.<sup>15</sup>

### 1.4 Characteristics of Taxation<sup>16</sup>

From the definition of taxation, certain characteristics can be identified. They include the following;

<sup>10</sup> Ibid.

<sup>11</sup> Section 2(1), 3(1) and 3(6) of the Constitution of the Federal Republic of Nigeria 1999 (As Amended).

<sup>12</sup> Akindele, S.T. and Olaopa (2002). “Fiscal Federalism and Local Government Finance in Nigeria: An Examination of Revenue, Rights and Fiscal Jurisdiction” in *Contemporary Issues in Public Administration*. Omotoso, F. ed. Lagos: Bolabay Publications, pp. 46-64.

<sup>13</sup> Ozo Tanzi, Vito (1996). “Fiscal Federalism and Decentralization: A Review of Some Efficiency and Macroeconomic Aspects,” in *Annual World Bank Conference on Development Economics*. Washington. Michael Bruno and Boris Pleskovic, eds. p. 52.

<sup>14</sup> Tanzi, V. “Fiscal Federalism and Decentralization: A Review of some Efficiency and Macroeconomic Aspects”. In Bruno, M. and Pleskovic, B, (eds) *Annual World Bank Conference of Development Economic*, World Bank, 1995, pp. 317-322.

<sup>15</sup> Agbonika, J.A.M. and Agbonika, J.A.A., *Fiscal Federalism and Challenges of Administration of Personal Income Tax in Nigeria*. In *Topical Issues on Nigerian Tax Laws and Related Areas* ed. J.A.A. Agbonika, 2015, Ababa Press Ltd, pp. 409-435.

<sup>16</sup> Agbonika, J.A.A. *Problems of Personal Income Tax*, Ababa Press Ltd, Ibadan 2012, p. 17

- a) It must be a compulsory levy demanded by the government on its citizens. Any levy which is voluntary is not a tax but a contribution or a donation.
- b) It must be made to the government through a public authority with tax jurisdiction. The person to whom payment is made must be one that is empowered to so collect. Any payment made to an individual who is not empowered by law to collect tax is extortion.
- c) The basis of charge must be certain. There should be a known formula or basis for calculating the tax, which must be in money or money's worth. The word of the statutes must expressly impose tax to bring the person within a charging statute. Unless there are words of statute clearly imposing tax, a person cannot be compelled to make any payment under the name of taxation. In *Coltness Iron Company v. Black*,<sup>17</sup> Lord Blackburn stated 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. But when that burden is sufficiently shown, it is, I think vain to speculate on what would be the fairest and most equitable mode of levying that tax.

Also, in *Ayrshire Employers Mutual Insurance Association Ltd v. IRC*,<sup>18</sup> Lord President Normand further buttressed this principle when he stated that; "... the doctrine is 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." Once there is a taxing statute, it would be the starting point in trying to construe the intention of the parliament. In *Cape Brandy Syndicate v. IRC*,<sup>19</sup> Lord Rowlatt stated that: "In Taxing Act, one has to look merely at what is clearly said. There is no room for any intentment, there is no equity about a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." Where there is ambiguity in the taxing statute, such taxing statute should be construed in favor of the taxpayer.

- a) The levy must be for the common benefit or good of all rather than a personal benefit.
- b) It must be backed up by a legislation in the form of Acts, Decrees, Bye-Laws, or Edicts promulgated from time to time.
- c) There must be penalties/sanctions for non-compliance with provisions of the tax laws.
- d) Adam Smith,<sup>20</sup> an economist chose to use the descriptive approach in defining tax, by setting out certain criteria as the characteristics of a good tax. The following are the criteria he set out;<sup>21</sup>

i) *Equity:*

Tax must be equitable for it to be effective. The equity must be either horizontal or vertical. Horizontal equity requires those with the same income to pay equal amounts of tax, while vertical equity requires that those with different income should pay different amounts of tax. With this, the high earners should pay higher amounts than the low

<sup>17</sup> (1881) 6 APP. Case. 315, 45 LT 145, ITC 311

<sup>18</sup> (1944) 27 TC 344; (1944) SC 421

<sup>19</sup> (1921) 1 KB 64 at 71

<sup>20</sup> Adam Smith (1776) *Wealth of Nations*, Book V Chapter II, part II (New York: Macmillan & Co.) p.

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<sup>21</sup> *Ibid.*

earners and those whose income are the same should not pay amounts that are different from each other as this will not show equitable payments.

ii) *Neutrality:*

A tax is neutral if it does not discriminate between different activities in the economy. A tax that charges a higher tax on certain activities the government wishes to discourage such as liquor tobacco etc while granting relief to other sectors such as agriculture or manufacturing is obviously discriminatory and not neutral.

iii) *Certainty:*

The scope of tax must be clearly stated in certain terms. The taxpayer should be able to work out his tax liability from the charging provision and not on any arbitrary assumption. Where the wordings of the taxing provision is unclear or ambiguous, such ambiguity shall be resolved in favour of the taxpayer.

iv) *Administrative efficiency:*

Administrative cost should not exceed the revenue realized from the tax if the system is to be efficient. It is for this reason that the use of tax consultants rather than properly trained personnel is discouraged. The consultants are usually engaged at a very high cost to the government and this reduces the value of tax they may have collected. Tax consultancy in Nigeria is currently limited to the giving of tax advice.<sup>22</sup> Meade's Committee Report<sup>23</sup> also set out more characteristics of a good tax system as follows:

*Incentives and economic efficiency:*

A tax system which provides incentives can influence investments, work opportunities and savings of the taxpayers. The efficient allocation of the taxes in such a way as to serve the needs of the community would also be a visible reason for encouraging payment of taxes.

*Distributional effects:*

This is quite similar to Adam Smith's equity. It requires a fair and equitable distributional effect devoid of discrimination against taxpayers of the same level. The wealth should be distributed from those that are better off to the less privileged. The wealthy should therefore pay more than the poor.

*Simplicity:*

A good tax should be simple and clear to the taxpayer. It should not be so complex and difficult that he would require an expert to interpret it to him.

*Flexibility:*

Tax is flexible when every succeeding government can apply it without having to change the law to suit every new government. Where the new government has a different economic goal, this characteristic may not be feasible especially in countries where governments are not stable.

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<sup>22</sup> Section 12(3) Federal Inland Revenue Service (Establishment) Act, 2007.

<sup>23</sup> Meade's Committee Report on the Structure and Reform of Direct Taxation in the United Kingdom

## 2. OBJECTIVES AND FUNCTIONS OF TAXATION<sup>24</sup>

While a layperson might think that the only purpose for taxation is to raise money, modern governments show that taxation goes beyond the realization of revenue to more important roles like management of economic and social policies. Some of the objectives of taxation are as follows:

### a) Generation of Revenue to cater for government expenditures:

The principal object of taxation is to raise sufficient money for government in order to enable it meet its economic and social responsibilities to the citizenry. Government needs money for the provision of services such as education, health, defence, administration cost, law and order, building and maintenance of roads and sundry social services that will improve the social well being of the people. Money is also used for capital projects. The revenue realized from taxation is responsible for the actualization of most of these services by the government.

### b) Control and management of the Economy:

Taxation has become an important consideration in the planning of savings and investment and by harmonizing it with development strategy and changing economic structure, the government can use taxation as a powerful fiscal weapon to plan and direct the economy.<sup>25</sup> Taxation can be used in shaping, directing or redirecting the economic objectives of a nation. For example, the provision of a number of allowances, reliefs, incentives and/or bonuses in certain sectors of the economy may boost investment in those sectors while high taxes or tariffs in certain sectors of the economy will scare away investment in that area. Taxation can also be used to regulate or discourage some activities in the private sector, which are regarded as injurious or harmful and therefore undesirable. Activities such as drinking of alcoholic liquors, smoking of cigarettes, prostitution, gaming and betting come within this category.

### c) Distribution of income or wealth:

Taxation should have the effect of distributing wealth between the rich and the poor based on ability to pay proportionate to the taxpayer's income. This, it is hoped will bridge the gap between the rich and the poor as advocated under the characteristics of equity by Adam Smith.<sup>26</sup>

## 3. HISTORICAL DEVELOPMENT OF TAXATION IN NIGERIA

Taxation is as old as the society. Its evolution can be traced back to several thousand years ago. This fact is manifestly documented in the new testament of the Holy Bible. In the Gospel of St. Luke,<sup>27</sup> in response to the question as to whether or not taxes should be paid to Caesar, Jesus answered, "give unto Caesar what belongs to Caesar and to God what is God's." This was a confirmation by Jesus that he was in support of payment of tax to a lawful authority.<sup>28</sup> In Islamic religion, Zakat is the only form of tax an Islamic government can impose on its Muslim citizens for charitable reasons.<sup>29</sup> It is not merely a charity fund but can be spent on the collective needs of the people. Zakat money can be used to pay the salaries of all

<sup>24</sup> Ayua, I.A. (1999) *The Nigerian Tax Law*, 1<sup>st</sup> Edition, Spectrum Publication, Ibadan.

<sup>25</sup> Ibid.

<sup>26</sup> Op. cit.

<sup>27</sup> Chapter 20 verses 25

<sup>28</sup> Agbonika, J.A.A., op.cit

<sup>29</sup> Dr. Shehzad Saleem, *The Economy Concept of Taxation*. Available on [www.monthly-renaissance.com/the-islamic-concept-of-taxation-monthly-renai.../content...](http://www.monthly-renaissance.com/the-islamic-concept-of-taxation-monthly-renai.../content...)

government officials including that of the Head of State, to build all works in public interest, to cater for defence requirements and to establish an Islamic system of insurance. The Zakat envisaged by the Glorious Quran and Sunnah of the prophet totally meets the requirement of running a welfare state.

In Nigeria, there was no evidence of any scripted law on taxation established prior to the colonial control of what is now known as Nigeria. In the Northern part of Nigeria, there existed diverse systems of direct taxation amongst some organized ethnic nationalities where there was an organized form of political administration established in consequence of the Islamic jihad.<sup>30</sup> This political organization was accompanied by an efficient tax regime.<sup>31</sup> The taxes in existence then were:

- Kharaj tax: general tax on the farming community.
- Zakat: this is a form of tax imposed on muslims for charitable, religious purposes. When this is paid by a non-muslim, it is called “kudinkasa.”
- Shukka-shukka: is a tax on crop not liable to zakat.
- Jangali: is a cattle tax.
- Craft and trade tax for dyers, leather works, butchers, black smiths, hunters etc.
- Caravan tolls for movement of caravans.

The organization of the Muslim states in northern Nigeria made it easy for the colonialists to establish a tax regime by using the paramount rulers. Note that in other part of the North where Islam was not practiced, the colonialists did not find an organized system upon which to impose tax. In the Muslim states of Northern Nigeria, the immediate task was not to introduce tax but to consolidate the multiple taxes into a single tax.<sup>32</sup> In Western Nigeria there existed methods that could be well described as taxation which were employed. It took the form of tributes, levies and tariffs on movement of goods across the country’s borders.<sup>33</sup> Other forms of payments identified in Western Nigeria include:

- i) Ishakole: This was a form of tax levied on land used by local communities and could be paid in cash or kind.
- ii) Owo-ori: This means head payment and is paid by all individuals within a particular community.

Finally, in the Eastern part of Nigeria, taxation was not known, basically because, there was no recognized head to levy or collect taxes. An attempt by the Europeans to impose tax in 2007<sup>34</sup> met stiff resistance from the natives.<sup>35</sup> There however existed Igbonkwua type of levy paid by owners of palm trees before they are harvested and was payable to the village head since palm trees are seen as trees that belong to the whole community. There were also records of other commercial payments in form of obligatory services by age grades such as clearing of foot path, digging of wells, etc. Nigeria did not experience any form of tax legislation until the period of colonial rule.

<sup>30</sup> Smith M.G. (1976) The Gazette of Zaria Province.

<sup>31</sup> [www.answers.com/.../the\\_historical\\_development\\_of\\_taxation\\_in\\_nigeria](http://www.answers.com/.../the_historical_development_of_taxation_in_nigeria)

<sup>32</sup> Lord Lugard (1965) the Dual Mandate in British Tropical Africa, 3<sup>rd</sup> Edition, Frank Cass and Co. Ltd. London p. 236

<sup>33</sup> Ryder, A.E.C., The Benin kingdom, in Groundwork of Nigerian History Edited by Ikime Obaro, 1980, Heinemann Educational Books Ltd., Ibadan, UK, New York p. 118

<sup>34</sup> Through the Native Revenue (Amendment) Ordinance of 1927.

<sup>35</sup> Aba Women’s Riot of 1929 is a case in point.

### Northern Nigeria:

In northern Nigeria as stated above, the British colonialist found an organized system of taxation, their immediate task was to consolidate the multiplicity of taxes into a single uniform tax. Accordingly traditional or Islamic taxes were consolidated under the Land Revenue Proclamation of 1904. It is a historical fact that Northern Nigeria was the first to have a codified legislation on taxation.

### Western Nigeria:

After the amalgamation of the Northern and Southern protectorates in 1914, the Native Revenue Ordinance of 1917 was enacted. This was a garment legislation that covered the north and some parts of southern Nigeria except the township of Lagos. However, in 1918 precisely, the Native Revenue Ordinance of 1918 extended taxation to the whole of the Western region.<sup>36</sup>

### Eastern Region:

As noted earlier, the people in Eastern Nigeria had no centralized leadership under the authority of a single chief who was reposed with power to levy or enforce tax on all Ibos. Every community in the East considered itself as autonomous. The elders of each community confined their authorities and activities to their domain and could not speak for other communities in Ibo land. Consequently, the colonial government hesitated in introducing taxation in these areas for fear of resistance. However taxation was eventually introduced there in 1927 via the Native Revenue (Amendment) Ordinance of 1927. Expectedly, the development sparked off serious resistance to the tax which led to the Aba Women's Riot of 1929.<sup>37</sup> The reason being that they found it difficult to understand the basis for taxation of women. The selection of arbitrary chiefs by colonial masters to collect taxes was not only seen as sacrilegious, but also as a usurpation of their traditional order.<sup>38</sup> In 1940, two major laws were enacted to unify the various tax ordinances. They were:

- a) The Income Tax Ordinance No. 3 of 1940 which applied to expatriates and Nigerians living in the township of Lagos.
- b) The Direct Taxation Ordinance No. 4 of 1940 which applied to Nigerians except those in the township of Lagos.

The Direct Tax Ordinance was criticized for failing to provide uniform rates across the country and for failing to capture Europeans living outside Lagos. In 1943, a more comprehensive legislation known as the Tax Ordinance No. 29 of 1943 was enacted. This extended to Europeans all over the country and natives living within Lagos township and non-natives living outside Lagos. In 1946, Nigeria was divided into three regions for administrative reasons by the Richardson Constitution. The central government still continued to have full powers over tax matters since there was no division of powers between the central and the federating units. In 1954, Nigeria became a federation and it became imperative to discuss the issue of distribution of political and economic powers between the central government and its federating unit. This issue was referred to the Raiman committee to discuss at the London Constitutional Conference of 1957. The Raiman Commission recommended division of taxing powers between the federal government and the three regional governments. To avoid disparity among the regions, it further recommended that there should be unanimity on some enumerated

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<sup>36</sup> Ola, S.C. Historical Development of Taxation in the Western State of Nigeria. Government print 1974: available online on <https://brooks.google.co.uk>

<sup>37</sup> [www.about.com/history+of+tax+in+nigeria](http://www.about.com/history+of+tax+in+nigeria)

<sup>38</sup> Agbonika, J.A.A. op. cit



issues such as basis of charge, period of assessment, rates of income tax, income remitted from Nigeria or accruing into Nigeria, dividends, partnership etc. The recommendation gave birth to constitutional recognition in 1960 which eventually gave rise to the Income Tax Management Act (ITMA) of 1961. Section 70 of the Constitution of 1960 gave concurrent powers to both the federal and regional governments to make laws in respect of personal income tax and other issues. With the discovery of crude oil in commercial quantity in Oloibiri in 1956, it also became necessary for legislation to be made to cover its production, extraction and sale. The Petroleum Profit Tax Act of 1959 was an off shoot of this.

Because of the concurrent legislative powers granted in respect of personal income taxes the regions also enacted their own laws despite ITMA. For example, the Northern Nigerian Personal Tax Law of 1962, and the Eastern Regional Finance Law, 1962. In 1963, Nigeria became a republic and the entirety of section 70 of the 1960 Constitution was replicated under section 76. The Mid West zone was carved out of the Western zone thereby making the regions four. Each region had its own tax legislation in addition to ITMA and applied different rates of tax, reliefs and allowances.

In 1966, the military took over the government and on 27<sup>th</sup> May 1967, the government divided Nigeria into 12 states with Lagos as its capital. While Lagos state applied the Federal Personal Income Tax ITMA Act, other states were at liberty to adopt the tax laws of their parent region. This brought about diversity and multiplicity of tax laws. The military also promulgated the Income Tax Armed Forces and Other Person's Special Provision's Decree 1972.

This lack of uniformity and multiple tax regimes informed the promulgation of the Income Tax Management (Uniform Provisions) Decree 1975. With the military hand over in 1979 to a civilian regime, the concept of federalism was further entrenched in the Constitution of 1979 by section 2 (1) and (2). While each region was allowed to govern itself on issues of local concern, issues of common interest were to be managed by the federal government.<sup>39</sup> The Constitution gave exclusive jurisdiction to the National Assembly on issues listed in the exclusive legislative list such as petroleum profit tax, companies income tax, personal income tax and value added tax while it gave residual powers of legislation to items under the concurrent legislative list. By virtue of Item D, paragraphs 7 and 8 of the first schedule to the Constitution, while the federal government was empowered to legislate on tax matters, it could delegate the collection of such taxes to the States of residence of the taxable persons. This power given by S. 4 (2) and S. 150 of the 1979 Constitution strictly allowed the federal government to legislate on tax matters but that it can delegate collection of personal Income Tax to states and in the same vein, states can delegate powers of collection in respect of legislation enacted by them to the local government authorities.

In 1984, there was again a military take over bringing about the Constitution (Suspension and Modification) Special Provisions Decree No. 1 of 1984. Section 2 modified section 4 of the 1979 Constitution by replacing the phrase "National Assembly" with the "Federal Military Government." Item D (7) (b) also replaced the phrase in like manner.

In 1985, the federal military government enacted the Finance (Miscellaneous Taxation Provisions) Decree No. 4 to amend some tax legislation including ITMA 1961. The principal innovations were for interest accruing to persons to be taxable and for tax clearance certificates to be issued to taxpayers. In 1993, the Personal Income Tax Decree was promulgated to replace ITMA 1961 and the Income Tax (Armed Forces and Other Persons) Special Provision's Act. This is the current law on personal income tax and has been adopted by Laws of the Federation 2004.<sup>40</sup> This law came when the 1979 Constitution was still in operation. Amendments to it in 1997 and 1998 are contained in the Personal Income Tax (Amendment) Decrees No. 18, 19 and 21. The amendments clearly listed persons that are taxable by the federal government as well as

<sup>39</sup> Nwabueze (1982) *The Presidential Constitutions of Nigeria, 1979*, C. Hurst Co Ltd. London p. 37

<sup>40</sup> Cap p. 8, Vol. 13, *Laws of the Federation of Nigeria (LFN) 2004 (As Amended)*

the Taxes and Levies approved list for collection.<sup>41</sup> Yet another amendment to PITA was made in 2011 as the Personal Income Tax (Amendment) Act, 2011. The 1999 Constitution which ushered in the 4<sup>th</sup> Republic's transition to civil rule is a replica of the 1979 Constitution on tax issues. While section 4 empowers the National Assembly to make tax laws, Item D part II of the 2<sup>nd</sup> schedule provides for the right of the federal taxing authorities to delegate collection to the States. The 1999 Constitution created 36 states and the Federal Capital Territory.<sup>42</sup> While section 2 (1) PITA regulates the taxation of individuals in the armed forces, foreign service or Federal Capital Territory, taxation of other individuals are regulated by the State Board of Internal Revenue in which the person is resident.

#### 4. VARIOUS TAX LAWS IN NIGERIA<sup>43</sup>

The National Assembly is empowered by the 1999 Constitution to enact laws in respect of matters in the exclusive legislative list.<sup>44</sup> To this end, the National Assembly has enacted the following existing tax legislation in Nigeria:

- Companies Income Tax Act<sup>45</sup>
- Personal Income Tax Act<sup>46</sup>
- Petroleum Profit Tax Act<sup>47</sup>
- Value Added Tax Act<sup>48</sup>
- Capital Gains Tax Act<sup>49</sup>
- Stamp Duties Act<sup>50</sup>
- Custom Duties<sup>51</sup>
- Excise Duties<sup>52</sup>

##### 4.1 Companies Income Tax Act<sup>53</sup>

Companies Income Tax Act was promulgated in 1961 and went through several amendments until it was consolidated by the Companies Income Tax Act 1990<sup>54</sup> and later adopted by LFN 2004 and subsequently amended in 2007 C.I.T. Amendment Act. Section 9 CITA provides that tax is payable on the profit of any company for each year of assessment in which it is accruing in, derived from, brought into, or received in Nigeria in respect of the following:

- a) Nigerian Company; they will be taxed for the following,
- Premium
  - Dividend, interest, discounts, royalties, charges or annuities
  - Any source of annual profit not included above
  - Fees, dues, and allowances wherever paid for services rendered

<sup>41</sup> Now part 1 of the 1<sup>st</sup> schedule to the 1999 constitution.

<sup>42</sup> Part I of the 1<sup>st</sup> schedule to the 1999 constitution.

<sup>43</sup> [www.firs.gov.ng/tax.....Tax\\_Legislations](http://www.firs.gov.ng/tax.....Tax_Legislations)

<sup>44</sup> Part 1 of the 2<sup>nd</sup> schedule to the Constitution.

<sup>45</sup> Cap C 21, Vol. 3 Laws of the Federation of Nigeria, 2004 (As Amended).

<sup>46</sup> Cap P. 8, Vol. 13 *ibid* (As Amended).

<sup>47</sup> Cap. 13, Vol. 13 *ibid*.

<sup>48</sup> Cap vi, Vol. 15 *ibid*.

<sup>49</sup> Cap C1 Vol. 2 *ibid*.

<sup>50</sup> Cap S8 Vol. 14 *ibid*.

<sup>51</sup> Cap 45 Vol. 4 *ibid*.

<sup>52</sup> Cap 45 Vol. 4 *ibid*.

<sup>53</sup> Cap C 21, Vol. 3 LFN 2004 (As Amended)

<sup>54</sup> Cap 60 LFN 1990

- Any amount of profit or gains arising from the acquisition or disposal of short term monetary instruments, like Federal government securities, treasury bills, treasury and saving certificates, debenture certificate and treasury bonds.

b) For a non-Nigerian Company, certain conditions must be satisfied before it can be subjected to tax in Nigeria; they include:

- Returns: Every company including the one granted exemption from incorporation shall at least once a year without notice or demand, make and deliver returns to the Board.<sup>55</sup>
- For new companies, the returns shall be made within 18 months from the date of incorporation or 6 months after the end of the accounting year; whichever is earlier.<sup>56</sup>
- For existing companies, the returns must be made after 6 months of the accounting year end.<sup>57</sup>
- For companies in the Capital Market they should, not less than 7 days after the end of the month, file with the Board or any relevant tax authority a return in the prescribed form, of its transactions during the preceding month.

The time for filing any of the named returns made by taxpayers are before the expiration of due dates of returns. Note that profits of certain companies have been exempted from tax under the Act as long as such profits are not derived from trade or business carried on by such bodies. These include the profits of:

- Statutory or friendly registered societies.<sup>58</sup>
- Corporative societies registered under any enactment or law relating to corporative societies.<sup>59</sup>
- Companies engaged in ecclesiastical, charitable or educational activities of a public character.<sup>60</sup>
- Companies formed for promoting sporting activities where their profits are wholly expendable for such purposes.<sup>61</sup>
- Trade unions registered under the Trade Unions Act.<sup>62</sup>
- Dividends distributed by a trust.<sup>63</sup>
- Body corporate established by or under any local Government Law or Edict.<sup>64</sup>
- Body corporate being a purchasing authority established by an enactment and empowered to acquire any commodity for export from Nigeria.<sup>65</sup>
- Companies or corporations established by the laws of the various states for the purpose of fostering economic development of the states.<sup>66</sup>
- Furthermore, the time for filing any of the named returns to be made by taxpayers is before the expiration of due dates of returns. Failure to file returns as

<sup>55</sup> Section 370, Companies and Allied Matters Act, Laws of the Federation of Nigeria, 2004.

<sup>56</sup> Section 213(1) (a) and Section 370 CAMA read together.

<sup>57</sup> Ibid.

<sup>58</sup> Section 23 (1) (a). *ibid.*

<sup>59</sup> Section 23 (1) (b). *ibid.*

<sup>60</sup> Section 23 (1) (c). *ibid.*

<sup>61</sup> Section 23 (1) (d). *ibid.*

<sup>62</sup> Section 23 (1) (e). *ibid.*

<sup>63</sup> Section 23 (1) (f). *ibid.*

<sup>64</sup> Section 23 (1) (g). *ibid.*

<sup>65</sup> Section 23 (1) (h). *ibid.*

<sup>66</sup> Section 23 (1) (i). *ibid.*

stipulated above attracts penalties on the directors or officers of the company in default.<sup>67</sup>

#### c) Investment Tax Relief

A company which has incurred an expenditure on electricity, water, tarred road or telephone for the purpose of trade or business carried on by the company at a location which is at least 20 kilometers away from electricity, water, tarred road and telephone facilities provided by government can enjoy investment tax relief in the year such expenditure is incurred at rates similar to those under Rural Investment Allowance. The relief, which can be claimed for only three years, is not available to a company which has been granted a pioneer status.<sup>68</sup>

#### 4.2 Pioneer Status Legislation<sup>69</sup>

This is an incentive that grants a pioneer company a tax free holiday for 3 years in the first instance and additional 2 years. Dividend paid by the pioneer company is also exempted from tax. The terminology 'pioneer status' is used in reference to a tax holiday status which confers on the grantee, tax relief for a specified number of years (usually 5 years). The Industrial Development (Income Tax Relief) Act<sup>70</sup> declares a number of industries as pioneer industries. Thus, any company that produces products declared as pioneer products could be conferred with pioneer status. Such an activity must be one that has not been carried out anywhere in Nigeria before, or where the Federal Executive Council feels it is in public interest to so declare.<sup>71</sup> It should be noted however that even if a company's activities and/or products are pioneer in nature, the grant of pioneer status is not automatic. The criteria for granting pioneer status are related and/or based on the following considerations:

- a) The amount of underlying capital investment in a company (5 million and above) must be verifiable by physical inspection and supported by a report of the Industrial Inspectorate Division of the Federal Ministry of Industry before a pioneer certificate is granted.
- b) The socio-economic advantage of a company's activities to the Nigerian economy as set out in its feasibility study is also an important consideration. Without prejudice to the foregoing, the Nigerian Investment Promotion Commission (NIPC) is empowered to confer pioneer status and other investment incentives in any other deserving circumstances as the Council of the NIPC may approve.

#### 4.3 National Information Technology Development Fund

The fund was established under the National Information Technology Development Agency Act 2007(NITDA). Section 12 (2)(a) of the Act mandates companies and enterprises within the following categories and with an annual turnover of ₦100,000,000 and above to pay into the fund a levy of one percent of their profit before tax annually and such payments by the company shall be tax deductible. The companies and enterprises under these categories are:

- GSM service providers and all telecommunication companies
- Cyber companies and Internet providers
- Pension Managers and Pension related companies

<sup>67</sup> Section 378 of the Companies and Allied Matters Act imposes a penalty of fine on the directors and officers of the company who are in default. (Supra).

<sup>68</sup> Industrial Development (Income Tax Relief) Act. Cap 17 LFN 2004

<sup>69</sup> The pioneer status of a company is governed by the Industrial Development Income Tax Relief Act Cap 17, 2004.

<sup>70</sup> Cap 17 Laws of the Federation of Nigeria 2004

<sup>71</sup> Ibid.

- Banks and other Financial Institutions
- Insurance companies.<sup>72</sup>

#### 4.4 Industrial Training Fund (ITF)<sup>73</sup>

The industrial training fund was established in 1971 to encourage the acquisition of skills in industry or commerce in Nigeria with a view to generating expert knowledge in those areas. It provides direct training, vocational and apprentice training, research and consultancy services. It provides for reimbursement of up to 50% levy paid by employers of labour registered with it and administers the Student Industrial Work Experience Scheme (SIWES). It also provides resource development information, training technology services to industry and commerce to enhance their manpower capacity and in-house training delivery effort. The main thrust of ITF programmes and services is to stimulate human performance, improve productivity and induce value added production in industry and commerce through SIWES and vocational apprentice training programmes. The Fund also builds capacity for graduate and youth self-employment in the context of small scale industrialization in the economy.

It is an Act to set-up an Industrial Training Fund comprising sums provided by the Federal Government from contributions by employers in the prescribed matters and other related matters. The required contribution is 1% of number of payroll to be paid by employers by the prescribed date. By virtue of S. 6 of the ITF Act, every employer having 25 or more employees in his establishment shall in respect of each calendar year on the prescribed date, contribute to the fund, 1% of the amount of his annual payroll. All employers who pay this levy shall by virtue of section 8 of ITF Act, provide adequate training for their indigenous staff with a view to improving on the skills related to their job and evidence of such training shall be forwarded to the Fund. Such employers shall also accept students for industrial attachment purpose.

#### 4.5 Pension And Provident Schemes<sup>74</sup>

An employer is obliged to deduct and remit to a custodian within 7 days from the day the employee is paid his salary and such custodian shall notify the pension fund administrator (PFA) within 24 hours of the receipt of his contributions. Contributions and retirement benefits are tax exempt.

##### a) Sectoral Incentives:<sup>75</sup>

Local raw materials utilization: A 30 percent tax concession is available for five years to industries that attain minimum local raw materials utilization in Table 1A as follows:

Table 1A: Local Raw Materials Utilization

<u>Industrial sector</u>	<u>Minimum level</u>
Agro	80%
Engineering	70%
Agro Allied	60%
Chemical	60%
Petro-chemical	70%

<sup>72</sup> S. 12(2)(a) NITDA

<sup>73</sup> Industrial Training Fund Act CAP 182 LFN 2004 as amended on 2011

<sup>74</sup> Pension Reform Act No. 2, 2004

<sup>75</sup> This section is as per information from Nigeria investment promotion commission (NICP) which is subject to review from time to time.

- b) Labour Intensive Mode of Production: A 15 percent tax concession is available for five years. The rate is graduated in such a way that an industry employing 1,000 persons or more will enjoy the 15 percent tax concession while an industry employing 100 will enjoy only 6 percent, while those employing 200 will enjoy 7 percent and so on.
- c) Local Value Added: A 10 percent tax concession is available for five years. This applies essentially to engineering industries, where some finished products serve as inputs. The concession is aimed at encouraging local fabrication rather than the mere assembly of completely knocked down parts.
- d) In-Plant Training: A 2 percent tax concession is available for five years computed as a percentage of the cost of facilities provided for training.
- e) Export-Oriented Industries: A 10 percent tax concession is available for five years. This concession will apply to the industries that export not less than 60 percent of their products. The emphasis here is on the encouragement of the pre-establishment stage of an export-oriented enterprise.
- f) Infrastructure: 20 percent cost of providing basic infrastructure such as roads, water, electricity where they do not exist is tax deductible once and for all. It can therefore not be deductible for subsequent years.
- g) Investment in Economically Disadvantaged Areas: A 100 percent tax holiday for 7 years and an additional 5 percent depreciation is available.
- h) Research and Development (R and D): 120 percent research and development tax deductible expenses are allowed, provided the research and development is carried out in Nigeria; and 140 percent is allowed for R and D on local raw materials.
- i) Abolition of Excise Duty: In order to boost local industries, stimulate trade and reduce business costs, the Government decided that all excise duties be abolished with effect from 1st January, 1998 but from 1st January 1999 excise duties were re-introduced on the following specific products: Spirits and other spirituous alcohol; Cigarettes, Cigars, Cheroots and Cigarillos; Other manufactured tobacco and tobacco manufactured substitutes.
- j) Double Taxation Agreements: Additional double taxation agreements are being negotiated and concluded with various countries. The idea is to eliminate double taxation on investment income and encourage the inflow of foreign investments generally.<sup>76</sup>
- k) Re-Investment Allowance: This incentive is granted to companies engaged in manufacturing which incur qualifying capital expenditure for the purpose of approved expansion etc. The incentive is in the form of a generous allowance of capital expenditure incurred by companies for the following: Expansion of production capacity; Modernization of production facilities; and Diversification into related products. This Scheme is desirable to encourage the re-investment of profits at a time that such investment is declining.
- l) Added Incentive to Agriculture: Without prejudice to Government's commitment to the on-going liberalization process in the financial sector, banks are now enjoined to continue

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<sup>76</sup> Tax Treaty – Double Taxation Agreements between Nigeria and other countries. Source FIRS. Also on [resourcedat.com/.../tax-treaty-double-...](http://resourcedat.com/.../tax-treaty-double-...)

to recognize the difference in the gestation periods for each category of agricultural projects and observe the grace periods on various agricultural loans.<sup>77</sup>

#### 4.6 Income Exempted From Tax<sup>78</sup>

- a) Dividends received from franked investment income in wholly export oriented businesses.
- b) Interest due on any foreign loan granted on or after 1st April, 1978 as prescribed in Table 1 Schedule 3 of CITA, 2004.
- c) Interest on foreign currency domiciliary accounts.
- d) Interest earned on a deposit in Nigeria by a non-resident company where the deposit account was opened wholly with foreign currencies transferred to Nigeria with effect from 1st January, 1990.
- e) Interest earned by banks on loans granted for agricultural trade or business and for purposes of manufacturing goods for export. In the case of loans for agricultural trade or business, the following conditions must be fulfilled:
  - Moratorium period should not be less than 18 months.
  - Rate of interest should not be more than the “base lending rate” (of the bank granting the loan) at the time the loan was granted. Base lending rate is defined as the weighted average of the cost of funds to any bank.
  - For loans granted for the purpose of manufacturing goods for export, a bank is required to present a certificate issued by the Nigerian Export Promotion Council stating that 50% of the goods manufactured by the company which was granted the loan was exported.<sup>79</sup>
- f) Profit in respect of goods exported.
- g) Profit of a company whose supplies are exclusively inputs to the manufacturing of products for export.
- h) Interest earned by banks on loans granted.<sup>80</sup>
  - For local fabrication of plant and machinery
  - Under the Family Economic Advancement Programme (FEAP)
- i) Interest, dividend, royalty or rent derived outside Nigeria and brought into the country through an authorized channel.
- j) Dividend received from small companies in the manufacturing sector in the first five years of operation.
- k) The profit of a company established within the export processing zone or free trade zone.

#### 4.7 Self Assessment Tax System

All companies are to file a self-assessment when delivering their tax returns to the tax office. The self assessment is an indication that a company has assessed itself on the date the self-assessment form is signed by a principal officer of a company defined as the Managing Director, an Executive Director or the Company Secretary. Although the tax office requires a taxpayer to file and pay, approval is usually granted for payment to be made in installment as a form of encouragement to self assessment filers.

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<sup>77</sup> Nigerian Mineral & Mining Sector Investment and Business Guide in U.S.A. International Business Publications, 2007 Business and Economics. Also available on <https://books.google.nl/books?isbn=1433037076>

<sup>78</sup> Section 23(1) CITA

<sup>79</sup> Section 35 CITA

<sup>80</sup> Section 38 CITA

#### 4.8 Penalty for Late Filing of Returns and Payment of Tax

Tax returns are required to be filed not later than 6 months after the end of a company's accounting year.<sup>81</sup> Any failure to comply with this requirement attracts a penalty of ₦25,000 in the first month of failure and ₦5,000 for each subsequent month in which failure continues.<sup>82</sup> The penalty is imposed without recourse to any court of law. The privilege to pay by installments is lost and the company will be compelled to pay provisional tax for subsequent years. It also loses the 1% bonus for early filers.

Any tax assessed on a company is payable within two months from the date on the assessment notice or 14th December of an assessment year, whichever is earlier. A penalty of 10% per annum is imposed on any sums paid after the due date. Interest at prevailing commercial rate is also to be paid.<sup>83</sup> It shall also be liable to a fine of ₦100,000 or imprisonment for 6 months or both. It is worthy of note that there is a disparity between the penalty imposed by the provisions of the FIRS Act 2007 and that imposed by CITA, 2007 as amended. In such a situation the provisions of the FIRS Act prevails under S. 68 (2) FIRS Act.

#### 4.9 Personal Income Tax Act<sup>84</sup>

Personal Income Tax is imposed on the Income of a taxable person such as individuals, communities, families, executors and trustees.<sup>85</sup> The tax authority responsible for administration of this tax type is the State Board of Internal Revenue for each of the 36 states in the country.<sup>86</sup> When this tax is imposed on the Income of residents of FCT Abuja, armed forces, Nigerian police, staff of Ministry of Foreign Affairs and non-resident individuals, it is administered by Federal Inland Revenue Service.<sup>87</sup> Personal Income Tax is usually assessed through:

(a) Pay as you earn PAYE system

(b) Direct Assessment – for sole trader/enterprises and partnerships.

The Sixth Schedule to PITA provides the following tax table for payment of personal income tax after deduction of all personal allowances and reliefs.

Table 2: Personal Income Tax is imposed on the Income

TI	RT	TP	TI	TP
₦	%	₦	₦	₦
First 300,000	7	21,000	300,000	21,000
Next 300,000	11	33,000	600,000	54,000
Next 500,000	15	75,000	1,100,000	129,000
Next 500,000	19	95,000	1,600,000	224,000
Next 1,600,000	21	112,000	3,200,000	336,000
Over 3,200,000	24	224,000	over 3,200,00	560,000

Key: TI=Taxable Income; RT= Rate of Tax; TP= Tax Payable

Tax administration is shared between the federal, state and local governments. State Board Internal Revenue Offices administer personal income tax on the basis of residence. Individuals resident in Nigeria are to pay their taxes to the State Tax Office where they are resident on 1st January of each year.

<sup>81</sup> Section 55 to 60 CITA deals with the procedure for filing returns.

<sup>82</sup> Section 55(3) CITA

<sup>83</sup> Section 40-49 FIRS Act 2007

<sup>84</sup> Cap P8 2004 LFN, as amended on 14<sup>th</sup> June 2011

<sup>85</sup> Section 2(3) to (6) PITA

<sup>86</sup> Established under section 87 PITA

<sup>87</sup> Section 2(2) PITA



Non-resident individuals, staff of the Nigerian Armed Forces, Officers of the Nigeria Foreign Services, persons resident within the Federal Capital Territory, Abuja and persons employed in the Nigeria Police Force (other than in a civilian capacity) are to pay their taxes to the Federal Inland Revenue Service. The 183 days residency rule for liability to Nigerian tax is to be considered on a 12 month basis and not merely within an assessment year. Taxable income is imposed on any salary, wage, fee, allowance or other gain or profit from employment including compensations, bonuses, premiums, benefits or other prerequisites allowed, given or granted by any person to any employee other than so much of any sums as may be admitted by the relevant tax authority to represent reimbursement to the employee or expenses incurred by him in the performance of his duties and from which it is not intended that the employee should make any profit or gain other than reimbursement to the employee of expenses incurred by him in the performance of his duties; medical and dental expenses, passage to and from Nigeria incurred by the employee etc.<sup>88</sup>

#### 4.10 Taxable Benefits in Kind

Apart from wages and salaries, tax can also be imposed on benefits in kind such as the following:

Type	Basis
1. Free Accommodation occupied	Rentable value of accommodation
2. Free use of a company's asset	5% of cost of the asset e.g. car
3. Asset rented or hired for use of own employee	Cost of rental or hire

#### Income Tax Reliefs

Before a person's tax is calculated under the new tax table provided by the 6<sup>th</sup> schedule to PITAA, he is entitled to deduct the following amounts in respect of which the taxpayer is granted reliefs.

- |   |  |
|---|--|
| 1. Consolidated relief Allowance  | ₦200,000 plus 20% gross emoluments   |
| 2. National Housing Fund Contribution   | Free   |
| 3. National Health Insurance Scheme   | Free   |
| 4. Life Assurance Premium   | Free   |
| 5. National Pension Scheme  | Free   |
| 6. Gratuity   | Free   |
| 7. Reimbursement to employee<br>For Expenses incurred in the<br>Performance of his duties | Free provided it is not intended that<br>the employee should make any profit |

The self assessment system is the required mode unless the taxpayer fails in his obligation, in which case the government would have to impose the best of judgment assessment. The due date of filing returns for PIT is on or before 31st March annually. Employers must within 10 days of end of each month pay to the designated bank of the relevant tax authority (RTA), all taxes deducted under PAYE regulations, accompanying returns as required by each RTA. Failure of PITAA to delete S. 33 which deals with other reliefs creates some confusion, especially when it carried out some extensive amendments including repeals. Such allowances are in the following areas:

1. Wife allowance of ₦300 to a former wife of a taxpayer who has been granted alimony by a court.<sup>89</sup>

<sup>88</sup> Section 3 PITAA

<sup>89</sup> Section 33(4)(a)

2. Children allowance of ₦2,500 per child up to the maximum of 4. Such children must be in full time education if over 16 years and be unmarried.<sup>90</sup>
3. Dependant relative's allowance of ₦2,000 for maintenance of a dependant relative of taxpayer who must be a widowed mother of a taxpayer or spouse and must be above 63 years.<sup>91</sup>
4. Disabled person's allowance of ₦3,000 or 20% of the disabled person's earned income.<sup>92</sup>
5. Rent allowance of ₦10,000 for Abuja and Lagos, ₦6,000 for State capitals and ₦4,000 for other places.
6. Motor vehicle allowance of 2,435 etc.

Although it is arguable that the section not haven been deleted, subsists, the tax administrators could rely on the wording of PITAA to the effect that after the allowance of the ₦200,000 consolidated relief, the rest of the taxpayer's income should be taxed according to the tax table in the 6<sup>th</sup> Schedule to the Act.<sup>93</sup> By implication, this seems to exclude all allowances under section 33 PITA. Note however that taxation is based on the clear wordings of the law and not assumptions or implication.<sup>94</sup> This is a call for a clear position of the Act on all those allowances and reliefs to avoid double enjoyment of allowance first by consolidation and secondly by section 33. Where there is ambiguity in the tax statute such ambiguity must be resolved in favour of the taxpayer.<sup>95</sup>

#### Residency Rule

The Personal Income Tax Act is one of the tax laws enacted by the National Assembly in which the power to collect and administer tax is delegated to the States in respect of persons resident in each State. Section 2 (2) of the said Act provides that:

“In the case of an individual, other than an itinerant worker and persons covered under paragraph (b) of subsection (1) of this Section, tax for any year of assessment may be collected only by the State in which the individual is deemed to be resident for that year under the provisions of the First Schedule to this Act...”

This is what is referred to as the Residency rule and it means no more than that the power to collect personal income tax on the income of an individual resides in the tax authority of his place of residence and not, that of his place of work. In *Shittu v. Nigeria Agricultural & Cooperative Bank Ltd* per Obadina J.C.A.; delivering the lead judgment confirmed the position of the law on Residency as follows:

“Section 2 (2) of the Personal Income Tax Act, empowers the State Government to impose Personal Income Tax for every year of assessment on the Personal Income of individuals who are resident for the year in the State under the provisions of the First Schedule to the Act.”

<sup>90</sup> Section 33(4)(b)

<sup>91</sup> Section 33(4) proviso c(ii)

<sup>92</sup> Section 33(4) proviso (b)

<sup>93</sup> Section 33(i)

<sup>94</sup> In *Cape Brandy Syndicate VIRC (1921) 1 KB 64* Lord Rowlatt stated that, in taxing Act, one has to look merely at what is clearly said. There is no room for any intendment, there is no equity about a tax. Nothing is to be implied. One can only look fairly at the language used.

<sup>95</sup> *CIR v. Luke (1963) AC 557, 40 TC 630.*

In Nigeria, the residency rule appears even more compelling, because it is a Nation of Federating entity. How for instance do you determine which of the thirty six State Boards of Internal Revenue is entitled to exercise the power to tax the income of an individual who is resident in a particular state in Nigeria and earns income in another? Suppose this person resides in two or more states within Nigeria, how can you determine whether an individual's residence itself is conclusive in all cases as to which tax authority can exercise the power to tax? The answers to these lie in what is referred to as the residency rule. In *United Bank for Africa Plc. v. Odimayo*,<sup>96</sup> the Court of Appeal had said: "One is said to reside if he lives, dwells, lodges or abides at a designated place. Residence is accordingly about personal presence at some place of abode with purpose to remain for some undetermined period. One can be said to reside in a place without necessarily staying permanently there. Residence conveys the fact of abode and the intention of remaining. It means more than the physical presence."

Place of residence "in relation to an individual means a place available for his domestic use in Nigeria on a relevant day, and does not include any hotel, rest house or other place at which he is temporarily lodging unless no permanent place is available for his use on that day."<sup>97</sup> The 1<sup>st</sup> Schedule on the issue of determination of residence has been amended to include work place, terminals, oil platforms, etc.<sup>98</sup> Section 32 PITAA provides that, in the case of an individual who works in the branch office or operational site of a company or other body corporate, the place at which the branch office or operational site is situate.

#### 4.11 Highlights from PIT (Amendment) Act.<sup>99</sup>

- (i) Itinerant Worker – these are persons who move from one place to the other, other than members of the Armed Forces.  
If these categories of workers work for a minimum of 20 days in at least 3 months of every assessment year they will be liable to pay tax in those states.
- (ii) Minimum Tax threshold is now payable at 1% of Gross earnings instead of 0.5%.
- (iii) An expatriate would be liable to tax in Nigeria if his employment costs are charged to a Nigerian company or borne by a fixed base in Nigeria e.g. Apportioned remuneration cost of Head Office charged to fixed base would be taxable in Nigeria.
- (iv) In calculating 183 days stay rule in Nigeria, as contained in section 10(1) (a) (ii) of PITA 2004, annual leave, or temporary period of absence from Nigeria would now be considered.<sup>100</sup>
- (v) Exemption of Employment income from tax on the basis that the income has been taxed elsewhere is now limited to countries with which Nigeria has Double Taxation Agreement (D.T.A).
- (vi) Every Employer is now required to file with relevant tax authority all emoluments paid to its employees in the preceding year, not later than 31st January every year. Failure to comply attracts a penalty on conviction of ₦500,000 for corporate and ₦50, 000 in the case of Individuals.<sup>101</sup>
- (vii) It is now mandatory for Banks, MDAs to verify all tax clearance certificates TCCs submitted to them. Failure attracts a fine of ₦5million or imprisonment for 3 years or both.
- (viii) Consolidated Relief Allowance is a flat rate of ₦200,000 plus 20% of Gross Income. This allowance supposedly replaces the former Reliefs and allowances claimable by

<sup>96</sup> (2005) 2 NWLR (Pt 909) 21 at 38 E-F

<sup>97</sup> Temidayo Sokunbi, An Overview of Revenue Law in Nigeria available on [www.citn.org/.../an-overview...](http://www.citn.org/.../an-overview...)

<sup>98</sup> Section 32 Personal Income Tax (Amendment) Act, 2011.

<sup>99</sup> No. 20 of 2011, signed by president on 14<sup>th</sup> June 2011

<sup>100</sup> Section 4, Personal Income Tax (Amendment) Act, 2011.

<sup>101</sup> Section 20(3) PITAA 2011.

employees or taxpayers.<sup>102</sup> However failure of the Act to delete Section 33 PITA gives room for speculation as to whether or not those reliefs still exist. Another confusion is as to the extent or scope of the consolidated allowance as stated by S. 5 PITAA which provides for a consolidated relief of ₦200,000 or 1% of gross income whichever is higher. Paragraph 1 of the 6<sup>th</sup> schedule which provides the tax table, grants an allowance of a flat rate of ₦200,000 plus 20% of gross income. Obviously there is a wide margin of difference between these two positions and will need to be resolved by a clear stipulation of legislation.

- (ix) The 1st Schedule on Determination of residence was amended to expand the definition of principal place of residence to include place of work, terminals, oil platforms, etc.
- (x) 3rd Schedule of the PIT Act was amended to make it mandatory for certain office holders such as the President and Vice President of the Federal Republic of Nigeria, State Governors and Deputies to be liable to PIT, on their official emoluments.
- (xi) 6th Schedule of the PIT Act was amended to reflect new tax table.

## 6. INDUSTRY SPECIFIC TAXES, EXEMPTIONS AND RELIEFS

### 6.1 Petroleum Profit Tax

Taxation of companies in oil and gas industry, in Nigeria are principally classified into three classes.

- (a) Upstream – comprising exploration, survey, development, drilling, appraisal wells, pipeline, transportation of crude oil.
- (b) Downstream Crude oil marketing, petroleum product marketing, refineries, petrochemicals, oil servicing, distribution, gas utilization, transportation of crude oil in ocean tankers.
- (c) Midstream – Midstream activities take place after the initial production as domestic operations including processing, storage, transporting of oil, natural gas and natural liquids. Upstream is taxable under Petroleum Profit Tax Act while downstream and midstream are taxable under Companies Income Tax Act.

#### Business arrangement under oil and gas can be classified into:

- (i) Joint Venture Contract (JVC) (ii) Profit Sharing Contract (PSC) (iii) Risk Service Contract (RSC). These business arrangements also influence the fiscal and tax regimes in Nigeria.

#### Tax Rates

- a) JVCs – are eligible in the 1st five years of contract to pay - 65.75% and after five years - 85% as petroleum profit tax.
- b) RSC- Same as above
- c) PSC – 50%

Oil revenue can be generated in any of the following ways; receiving percentage from participating joint ventures, and PSC, royalties, bonuses, taxes, bank charges, etc. Rewards from PSC include the cost of oil, royalty from oil, tax oil and profit from sale of oil. Petroleum Profits Tax<sup>103</sup> can be seen at a glance in terms of rates, royalties, investment tax credit and capital allowance.

<sup>102</sup> Section 5, *ibid.*

<sup>103</sup> Petroleum Profits Tax Act Cap P 13 L.F.N. 2004)

Table 3: Current Tax Threshold and Reliefs in the Oil and Gas Sectors

<u>Rate of tax</u>	
On exports after 5 years	85%
On domestic sales of oil and gas in the first 5 years	65.75%
On deep offshore PSC	50%
<u>Rates of Royalty<sup>104</sup></u>	
Onshore production	20%
Offshore production in areas up to 100 metres water depth	18.50%
Offshore production in areas beyond 100 metres water depth	16.67%
On deep offshore PSC:	
Up to 200 meters	16%
201-500 meters	12%
501-800 meters	8%
801-1000 meters	4%
In excess of 1000 metres depth	0%
<u>Capital Allowance</u>	
Year 1 to Year 4 (Rate per annum)	20%
Year 5	19%
<u>Investment Tax Credit</u>	
Onshore operations	5%
Offshore operations in areas up to 100 metres water depth	10%
Offshore operations in areas between 100 & 200 metres water depth	15%
Offshore operations in areas beyond 200 metres water depth	20%
For deep offshore PSCs executed prior to 1st July 1998	50%

### 6.2 Value Added Tax (VAT) Decree<sup>105</sup>

Value Added Tax Act was enacted in 1993 by virtue of Decree 102. This is a charge on the increase in the value of the goods or services by the factors of production in improving, storing, packaging or transforming the goods. Value added tax (VAT) was introduced on 1st January, 1994 to replace Sales Tax which had a very narrow coverage.<sup>106</sup> Taxable persons are obliged to register under the VAT Act. The tax which is at a single rate of 5% of taxable goods and services is to be borne by the final consumer but collected at each stage of the production and distribution chain. Supply of all goods and services except those specifically exempted are subject to VAT. Non-resident companies which transact business in Nigeria are also required to register for VAT and render returns.

<sup>104</sup> For onshore, see Petroleum (Drilling and Production) Amendment Regulations 1995, while for offshore royalties, the rates are in Deep Offshore and Inland Basin Production Sharing Contract Decree No. 9 of 1999.

<sup>105</sup> No. 102 of 1993 (CAP V1, Vol. 15 Laws of the Federation of Nigeria L.F.N. 2004)

<sup>106</sup> Sales Tax operated under the Sales Tax Act STA No. 7 of 1986. It was replaced for a number of reasons such as;

- (i) Its low coverage in that it only covered nine categories of goods in addition to sales and services in registered hotels, motels and similar establishments. This was contrary to the fundamental principle of consumption tax which was expected to cut across all consumable goods and services.
- (ii) The STA of 1986 covered only locally manufactured goods thereby leaving out imported goods from which a sizable amount of tax would have been raised.
- (iii) Since the areas of coverage were quite low, states with maximum resistance from taxpayers in terms of consumption of items not covered, raised low tax yield.

Vatable goods and services as provided by section 2 VAT Act are listed in columns I and II of Schedule 1 and 2 to the Act as follows:

- a) All goods manufactured and assembled in Nigeria.
- b) Goods imported into Nigeria
- c) Second hand goods
- d) Household furniture and equipment
- e) Petrol and all petroleum products
- f) Jewels and jewelries
- g) Textile, clothing, carpets and rugs
- h) Beef, wine, liquor, spirits, soft drink, bottled water.
- i) Cigarettes and tobacco
- j) Vehicles and their spare parts.
- k) Aircraft, their bodies and spare parts.
- l) Perfumes, cosmetics and toiletries.
- m) Soaps and detergents.
- n) Mining and minerals.
- o) Office furniture and equipment
- p) Electrical materials.
- q) Other goods that may be determined from time to time.

By virtue of S. 46 VATA, supply of services means any service provided for a consideration. Taxable goods and services are those not listed in the First Schedule to the Act, column II as exempted goods or services. "Any service" includes amongst other things, the grant, assignment or surrender of any right. Examples include, procuring a gathering at which goods are sold, procuring a relief payment, agreeing to act as agent, making payments under a credit card scheme, redeeming vouchers at a discount, granting a commodity option, covenanting to refurbish premises, accepting a lease, procuring discounts for members of a buying group, relinquishing a trade name and providing publicity benefits for a sponsor.<sup>107</sup> According to Professor Abdulrazaq,<sup>108</sup> the following specific activities would amount to supply of services;

- a) The transfer of any undivided share in the property of goods, e.g sale of jointly owned property without first dividing it.
- b) Transfer of possession of goods e.g lease, hire, rentals or loan of goods.
- c) Using business goods for private or non-business purposes.
- d) Exchange of reconditioned articles for unserviceable articles of a similar kind, when carried out by a trader who regularly offers to provide such facilities.

Exempted goods:

The following goods and services are specifically exempted from value added tax:

- a) All medical and pharmaceutical products.
- b) Basic food items.
- c) Books and educational materials.
- d) Baby products.
- e) Fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment.
- f) All exports.
- g) Plant and machinery imported for use in the Export Processing Zone.
- h) Plant, machinery and equipment purchased for utilization of gas in downstream operations.

<sup>107</sup> Abdulrazaq, M.T. Introduction to VAT in Nigeria (with VAT Act) Ababa Press 2011 p. 9

<sup>108</sup> Ibid.

- i) Tractors, ploughs, agricultural equipment and implements purchased for agricultural purposes.

Exempted services:

- a) Medical services
- b) Services by Community Banks, Peoples' Bank and Mortgage institutions.
- c) Plays and performances conducted by educational institutions as part of learning.
- d) All exported services.

The input-output tax mechanism adopted by VAT is a welcome idea since it makes it self policing.<sup>109</sup> Output is the VAT that a registered VAT seller calculates and charges a buyer of his own goods and services. This is the VAT that is due on VATable goods and supplies,<sup>110</sup> and is derived by multiplying the tax value of the aggregate supply by the tax rate. Input on the other hand, is the tax charged on goods and services used in the business activity.<sup>111</sup> It is what is charged on business purchases and expenses.<sup>112</sup> Thus, when a person purchases goods for sale, he must pay input tax to the tax authority, but as people begin to consume by purchasing from him, he deducts output tax from them. The tax collected by a taxable person is called output VAT while the initial tax paid by him is called input VAT. If the output tax exceeds the input tax, the taxpayer remits the excess to the Board and if the input tax exceeds the output tax, it is refundable.<sup>113</sup> In export trade, the total input taxes incurred on production is refundable.<sup>114</sup>

The meaning and scope of exempted goods and services are not defined. The taxable person will not have any output VAT against which the input can be offset. The structure of VAT is such that a taxable person is able to take credit for the VAT paid by it on its inputs. The processes are contained in Sections 12, 13, 14, 15 and 16 of the VAT Act. The process entails the following;

- a) That the taxable person ascertains the VAT collected by him on his supplies during the reporting period.
- b) He will ascertain the VAT paid by him on purchases used by him to provide the taxable goods during the same reporting period.
- c) Find out the difference between the VAT on supplies to determine the amount of VAT either payable to FIRS or refundable to the registered person.

The taxable person is thus allowed to indemnify itself against any loss and the rate of VAT that is ultimately borne by the final consumer under Section 4 VATA is kept at 5%. This way, the registered person only acts as an unpaid agent of FIRS without bearing the tax burden which only falls on the final consumer in the chain of consumption. Even though he pays the initial output tax, he gets refunded by consumers who purchase from him.

Section 16 VATA is an area which could generate controversy in that it allows a registered person to deduct input VAT from its output VAT and claim refund if the input exceeds output VAT. Although this did not seem feasible at first, the FIRS now has a set procedure under S. 23 FIRS Act for claiming refund from the Central Bank of Nigeria. According to Sanni,<sup>115</sup> the bright line for determining whether a good or service is taxable is

<sup>109</sup> The administration and problems of value added tax in Nigeria on: [www.academia.edu/.../THE\\_administration\\_...](http://www.academia.edu/.../THE_administration_...)

<sup>110</sup> S. 12(1) VATA.

<sup>111</sup> S. 12(2) VATA.

<sup>112</sup> Value – added – tax - (vat) – 9304 – Federal Inland Revenue Service on [www.firs.gov.ng/.../](http://www.firs.gov.ng/.../)

<sup>113</sup> Ibid.

<sup>114</sup> [www.vanguardngr.com/.../value-added-tax-in-nigeria...](http://www.vanguardngr.com/.../value-added-tax-in-nigeria...)

<sup>115</sup> Abiola Sanni Current Law and Practice of Value Added Tax in Nigeria. British Journal of Arts and Social Sciences, vol. 5, No. 2, 2012.

whether it is specifically exempted in the First Schedule or not. Apart from goods and services exempted by the VAT Act,<sup>116</sup> all others are chargeable to tax.

### 6.3 Capital Gains Tax

This is the tax assessed on gains accruing on the disposal of chargeable assets by an organization or individual who ordinarily does not have it as a stock in trade. It is taxed at the rate of 10%. The disposal must be of a chargeable asset,<sup>117</sup> which include<sup>118</sup> options, debts and incorporeal assets, currencies other than Nigerian currency, and all qualifying capital expenditures.<sup>119</sup> The Act stipulates that all forms of property shall be deemed to be assets for the purpose of the Act, whether they are situated in Nigeria or not.

#### Exemptions:

The Act exempts from tax, losses accrued in the disposal of assets by virtue of S. 5 CGTA. It also exempts gains which accrue as a result of the disposal of assets of a deceased person where it is acquired by his personal representative or other person on whom the asset devolves.<sup>120</sup> Also exempted from this tax are persons whose lands have been compulsorily acquired by the government.<sup>121</sup> Note that, for the purpose of computing capital gains, the value of the property is the value which it might reasonably be expected to fetch in the open market.<sup>122</sup>

<sup>116</sup> Part 1, First Schedule to the Value Added Tax Act and Section 3.

<sup>117</sup> Section 2 Capital Gains Act, Cap C8 LFN 2004

<sup>118</sup> Section 3 (a) – (c) CGTA.

<sup>119</sup> Meaning of options, debts, and incorporeal assets:

Option: This is the right which a person has to buy or sell property at an agreed price. If the right is not exercised within the agreed period, it is forfeited. When an option is disposed, capital gains tax is charged on the amount paid for the option since no cognizance is given to its cost of acquisition. When the subject matter which has an option attached is subsequently disposed, capital gains shall be assessed on the actual cost of the option. Such options exist for example, in hire-purchase transactions. In hire-purchase transactions, the hirer is given an option to purchase the goods or terminate the agreement. That option is an asset which could be retained and exercised, sold or assigned to a third party.

Debts: Where a person (being a debtor) owes another (being a creditor) a particular sum of money, goods or services, a debt is said to have arisen. Capital gains will arise where an asset acquired in exchange for the debt is disposed. No capital gains tax will arise if the asset acquired in exchange for a debt is not disposed. The chargeable gains shall be the difference between the amount of debt and the value obtained on the disposal of the asset acquired in exchange of the debt.

Incorporeal properties: These are not physical assets but are in accounting sense fictitious assets or assets that exist in rights or paper. Examples include patents, copyright, trademarks, etc. Capital gain is charged on actual sale proceed upon its disposal.<sup>119</sup> Taxable gains only arise upon the disposal of the asset purchased. Where the property is situate outside Nigeria, the disposal of such assets shall become subject to Capital Gains Tax where;

- (a) The disposal of asset is by an individual who is in Nigeria for some temporary purpose only and does not intend to reside in Nigeria.
- (b) The disposal of asset is by an individual who has been in Nigeria for a period exceeding 182 days within the year of assessment.

Where the disposal of asset is by any trustee of a trust or settlement and the seat of administration of the trust or settlement is situate outside Nigeria during the whole of that year of assessment or where the disposal is by a non-Nigerian company within the meaning of the Act, the tax shall only be charged on the amounts (if any) received or brought into Nigeria in respect of the chargeable gains.<sup>119</sup>

<sup>120</sup> Section 8 (1) and (2) CGTA.

<sup>121</sup> Section 9, *ibid.*

<sup>122</sup> Section 21, *ibid.*



#### 6.4 Education Tax

An education tax at the rate of 2% on the assessable profit of a company is payable. The tax applies to all companies registered in Nigeria. The assessment and collection of the tax are to be undertaken by the Federal Inland Revenue Service which is to pay over monies so collected to the Tertiary Education Trust Board of Trustees established under the Tertiary Education Trust Fund Act.<sup>123</sup>

The Act specifies that in disbursing the tax between the various levels of education, it concentrates on tertiary institutions rather than the mode used by the repealed, Education tax which gave higher education section 50%, primary education 30% and secondary education 20% of the tax collected in any given year. In application of the tax accruing to tertiary education, the fund is split between universities, polytechnics and colleges of education, in the ratio of distribution of 2:1:1.<sup>124</sup> The funds have helped a little in repositioning the education delivery in the several projects executed under the TET Fund Scheme. Tertiary Education Tax is a laudable initiative to salvage Nigeria's ailing tertiary educational system. A lot of training opportunities have been granted under this scheme through short courses, workshops and conferences. Scholarships have also been granted for higher education and sponsorship of research and development. Unfortunately, the very familiar monster called corruption has taken the shine off this project. It is suggested that until government learns to put in place monitoring and evaluation machinery for constant appraisal of this funds, nothing can be achieved from them.<sup>125</sup> Some recipients have also fraudulently made claims from the fund in respect of trainings or conferences that they have not attended.<sup>126</sup> This is indeed unfortunate.

Although it has been argued to be an extra liability on companies especially since they would have paid 30% CITA or 85% PPTA as the case may be, it is viewed by others as a social obligation placed on all companies to ensure that they contribute their own quota towards developing educational facilities in the country.

#### 6.5 FIRS Establishment Act 2007

The recommendation of Professor Dotun Philip's study group in 2003 on the reform of tax in Nigeria brought about the Federal Inland Revenue Service (Establishment) Act of 2007 as well as the National Tax Policy of Nigeria which have among other things given the FIRS autonomy to run tax administration effectively and have also provided a single document to regulate the tax policy of Nigeria. The FIRS was established by the Federal Inland Revenue Service (establishment) Act,<sup>127</sup> and is by section 3 vested with the power to do all such things as may be deemed necessary and expedient for the assessment and collection of taxes due to the Federal Government.

This body is autonomous as a statutory body and is not placed under any parastatal's supervision. It operates like the Central Bank of Nigeria (CBN) and the Securities and Exchange Commission (SEC). By virtue of Sections 2, 25 and 68 FIRS Act as well as the First schedule to the Act, the FIRS is charged with the administration of Federal tax statutes such as Personal Income Tax Act (PITA), Companies Income Tax Act (CITA), Capital Gains Tax Act, VAT, etc. It can therefore sue and be sued in its name and is vested with power to prosecute anyone who offends any provision of the Act. To this end, they now have their own legal unit and need not rely on lawyers from the Federal Ministry of Justice for prosecution of their cases.

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<sup>123</sup> Which was passed into law in 2011.

<sup>124</sup> Agbonika, J.A.A. op cit. p. 156

<sup>125</sup> Ibid.

<sup>126</sup> KSU Bulletin

<sup>127</sup> No. 13 of 2007

## 7. STAMP DUTIES

These are payments made on the stamping of documents in order to make them admissible in the law court or make the related transactions legitimate. There are flat rates and ad-valorem duties. Stamp duties are administered by the Commissioner of Stamp Duties,<sup>128</sup> and are administered jointly by federal and state authorities depending on the type and nature of the instrument.<sup>129</sup> Stamp duties are applicable to a number of transactions and instruments. They include;

- a) Promissory notes and guarantees,<sup>130</sup>
- b) Bills of exchange,<sup>131</sup>
- c) Bill of lading,<sup>132</sup>
- d) Bill of sale,<sup>133</sup>
- e) Contract notes,<sup>134</sup>
- f) Contracts or agreements under seal,<sup>135</sup>
- g) Duty on gifts inter vivos,<sup>136</sup>
- h) License to enter upon land coupled with a grant, provided a premium has been paid by the licensee,<sup>137</sup>
- i) Leases,<sup>138</sup>
- j) Letters of allotment,<sup>139</sup>
- k) Every letter or power of attorney for the purpose of appointing a proxy to vote,<sup>140</sup>
- l) Market security,<sup>141</sup>
- m) Policies of insurance,<sup>142</sup>
- n) Receipts,<sup>143</sup>
- o) Share warrants,<sup>144</sup>
- p) Duty on capital of companies,<sup>145</sup>
- q) Duty on loan capital.<sup>146</sup>

The Act has empowered the Governor of a State, or the President, as the case may be, to make regulations for compounding any duty; or for delivery of accounts by, and collecting duty from, the persons making or issuing the instruments upon which the duty is charged.<sup>147</sup> Non chargeable instruments are documents from Ministries and Parastatals, shipping agreements, tax treaty agreements, etc.

<sup>128</sup> Section 6, Stamp Duties Act.

<sup>129</sup> Section 4 (1) & (2), *ibid.*

<sup>130</sup> Section 38 Stamp Duties Act.

<sup>131</sup> Section 40 (1), *ibid.*

<sup>132</sup> Section 44, *ibid.*

<sup>133</sup> Section 45, *ibid.*

<sup>134</sup> Section 49 (2), *ibid.*

<sup>135</sup> Section 58, *ibid.*

<sup>136</sup> Section 63, *ibid.*

<sup>137</sup> Section 64, *ibid.*

<sup>138</sup> Section 69, *ibid.*

<sup>139</sup> Section 72, *ibid.*

<sup>140</sup> Section 74 (1), *ibid.*

<sup>141</sup> Section 78, *ibid.*

<sup>142</sup> Section 84-88, *ibid.*

<sup>143</sup> Section 89-91, *ibid.*

<sup>144</sup> Section 96, *ibid.*

<sup>145</sup> Section 100-101, *ibid.*

<sup>146</sup> Section 102 (2), *ibid.*

<sup>147</sup> Section 107 (a) – (b), *ibid.*

## 8. ADMINISTRATION OF TAX<sup>148</sup> IN NIGERIA

The administration of tax in Nigeria is vested in various tax administrative authorities spread among the three tiers of government.

### 8.1 Federal Tax Authorities

- a) The Federal Inland Revenue Service (FIRS): This body was established by the Federal Inland Revenue (Establishment) Act, No. 13 of 2007, and is by Section 3 vested with the powers to do all such things as may be deemed necessary and expedient for the assessment and collection of taxes due to the federal government.
- b) Joint Tax Board: the Joint Tax Board was created by Section 86(1) of the Personal Income Tax Act 2004.<sup>149</sup> The Board helps to coordinate the various aspects of taxation between all states of the federation as well as promote uniformity in rates and other indices relating to personal income tax in Nigeria. It is empowered to advise the Federal Government in respect of double taxation, promote uniformity in application and incidence of tax as well as impose its decision in matters or interpretation of the Act on any State.<sup>150</sup>

#### 8.1.1 Taxes collected by the Federal Government

Part 1<sup>151</sup> – This schedule contains the list of taxes that are collectable by the Federal Government of Nigeria FGN through the Joint Tax Board which are 8 in number.

- a) Companies income tax
- b) Withholding tax on companies, residents of the Federal Capital Territory, Abuja and non-resident individuals.
- c) Petroleum profit tax.
- d) Value added tax.
- e) Education tax.
- f) Capital gains tax on residents of the Federal Capital Territory, Abuja and non-resident individuals.
- g) Stamp duties on bodies corporate and residents of the Federal Capital Territory, Abuja.
- h) Personal income tax in respect of-
  - Members of Armed Forces of the Federation.
  - Members of the Nigeria police force.
  - Residents of the Federal Capital Territory, Abuja.
  - Staff of the Ministry of Foreign Affairs and non-resident individuals.

### 8.2 State Tax Authorities

The relevant tax authorities for administering tax at the State level are:

- a) The State Board of Internal Revenue (SIRS): This was created by Section 87 (1) of the Personal Income Tax Act.
- b) The Technical Committee of the State Board<sup>152</sup> and
- c) The Joint State Revenue Committee.<sup>153</sup> They are to collect taxes of residents of the State and deal with issues that require technical expertise.

<sup>148</sup> [Nigeriantaxation.blogspot.com/?m=i](http://Nigeriantaxation.blogspot.com/?m=i)

<sup>149</sup> As amended in 2011.

<sup>150</sup> Section 86 (a) (a)-(e) PITA.

<sup>151</sup> Taxes and Levies (Approved List for Collection) Act 1998.

<sup>152</sup> Section 88 PITA.

### 8.2.1 Taxes and levies collected by States<sup>154</sup>

Part 2 contains Schedule for States collection which are 11 in number.

- a) Personal income tax in respect of –
  - (i) pay-as-you-earn; and
  - (ii) direct taxation (self-assessment)
- b) Withholding tax (individuals only)
- c) Capital gains tax (individuals only)
- d) Stamp duties on instrument executed by individuals
- e) Pools betting and lotteries, gaming and casino taxes
- f) Road taxes
- g) Business premises registration fee in respect of –
  - i) Urban areas as defined by each state, maximum of –
  - ii) ₦10, 000 for registration; and
  - iii) ₦5, 000 per annum for renewal of registration; and
 Rural areas – ₦2, 000 for registration; and ₦1, 000 per annum for renewal of registration
- h) Development levy (individuals only) not more than ₦100 per annum on all taxable individuals.
- i) Naming of street registration fees in the state capital.
- j) Right of occupancy fees on lands owned by the state Government in urban areas of the state.
- k) Market taxes and levies where state finance is involved.

### 8.3 Local Government Tax Authorities

The local government previously had no statutorily recognized tax authorities. Their respective revenue departments were responsible for collection of taxes, rates and levies. However, the local government revenue committee was created under Section 90 of the Personal Income Tax Act, to assist in collection of taxes and levies. Its function is to collect and assess all taxes, fines and rates under its jurisdiction and account for the amount collected in a manner prescribed by the Chairman of the local government.<sup>155</sup>

The Taxes and levies (Approved list for collection) Act 1998 was promulgated by the Military Government to check multiplicity of taxes in Nigeria. Under the current Nigerian law, taxation is enforced by the three tiers of government namely the federal, state and local government.<sup>156</sup> With each having its sphere clearly spelt out in the Taxes and Levies (approved list for collection) Decree 1998. It empowers the local, state and federal government to collect the designated taxes.

#### 8.3.1 Taxes collected by Local Governments

Part 3 of the Taxes and Levies (approved list for collection) Decree 1998 provides the Schedule for Local Government Areas and they are 20 in number.

- a) Shops and, kiosks rates
- b) Tenement rates
- c) On and off liquor licence fees
- d) Slaughter slab fees

<sup>153</sup> Section 92 PITA.

<sup>154</sup> Ibid.

<sup>155</sup> Section 91 (1) PITA.

<sup>156</sup> [www.nigeria.org.uk/.../taxation-and-fiscal-regulations-in-nigeria...](http://www.nigeria.org.uk/.../taxation-and-fiscal-regulations-in-nigeria...)

- e) Marriage, birth and death registration fees
- f) Naming of street registration fee, excluding any street in the state capital
- g) Right of occupancy fee on land in rural areas, excluding those collectable by the Federal and State Governments
- h) Market taxes and levies excluding any market where state finance is involved
- i) Motor park levies
- j) Domestic animal licence fees
- k) Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck
- l) Cattle tax payable by cattle farmers only
- m) Merriment and road closure levy
- n) Radio and television licence fees (other than radio and television transmitter)
- o) Vehicle radio licence fee (to be imposed by the local government of the state in which the car is registered)
- p) Wrong parking charges
- q) Public convenience, sewage and refuse disposal fees
- r) Customary burial ground permit fees
- s) Religious places establishment permit fees
- t) Signboard and advertisement

## 9. ENFORCEMENT OF TAXES

Although the executive arm of the government is reposed with the power of collection of taxes and its general administration, it is the legislative arm of government that has the power of enacting legislation that regulates taxes. Unless and until the legislature makes law on the payments of a particular tax, such tax would not be due for payment by the taxpayer or even be demanded by the government. Every citizen has the civic responsibility to pay tax imposed by legislation on him. Where he fails to do so within the legally stipulated time, the relevant tax authority can take steps to compel payments.

### 9.1 Mode Of Enforcement And Sanctions

Ordinarily, a taxpayer is expected to assess himself to tax by filing the relevant returns.<sup>157</sup> Where he fails to do this or does so in a manner that seems to understate his account, the relevant tax authority would need to resort to all the tax enforcement machineries available to them under the law to compel payment. The Act seeks to impose sanctions in the following ways:<sup>158</sup>

- (a) Distraints and power to enter and search premises: As a preliminary step to litigation, the relevant tax laws made elaborate provisions conferring powers on the relevant tax authorities to enter upon any property and search it for the purpose of discovering documents or records necessary for a fair and correct assessment of the income.<sup>159</sup> This is done either where the taxpayer fails to render returns or provides one that is not believed by the relevant tax authority to be true.
- (b) Power to remove books and documents: An officer of the service authorized by the Executive Chairman may remove books or documents accessed under section 29 of the FIRS Act to make copies.

<sup>157</sup> Section 54-59 PITA, Section 65-70 CITA.

<sup>158</sup> Part V of the Federal Inland Revenue (Establishment) Act, 2007

<sup>159</sup> Section 53 PITA, Section 64 CITA.

- (c) Power of substitution: The Service may by notice in writing appoint any person to be the agent of a taxable person.
- (d) Call for returns, books, documents and information.
- (e) Power to access lands, buildings, books and documents.

### 9.2 Power of Enforcement<sup>160</sup>

- a) The Service may co-opt the assistance and co-operation of any of the law enforcement agencies in the discharge of its duties under this Act.
- b) The law enforcement officer shall aid and assist an authorized officer in the execution of any warrant of distraint and levying of distraint.
- c) Any officer armed with a warrant issued by a judicial officer and accompanied by a number of law enforcement officers as may be determined by the executive chairman shall:-
  - (i) enter any premises covered by such warrant and search for, seize and take possession of any book, document or other articles used or suspected to have been used in the commission of an offence;
  - (ii) inspect, make copies of, or take extracts including digital copies from any book, record, document or computer, regardless of the medium used for their storage or maintenance;
  - (iii) search any person who is in or on such premises;
  - (iv) open, examine and search any article, container or receptacle;
  - (v) open any outer or inner door or window of any premises and enter or otherwise forcibly enter the premise and every part thereof; or remove by reasonable force any obstruction to such entry, search, seizure or removal as he is empowered to effect “ No person shall be bodily searched under this section except by a person who is of the same gender as the person to be bodily searched.”<sup>161</sup>

In exercising their rights, they may impose a government assessment known as the best of judgment assessment. A person aggrieved by such assessment can appeal against such assessment within 30 days from the date of notice to the Tax Appeal Tribunal.<sup>162</sup> The Tax Appeal Tribunal is by virtue of S. 59 empowered to deal with all matters or disputes arising from companies income, petroleum profit tax, Capital Gains Tax, Personal Income Tax, Value Added Tax, Stamp Duties, Customs & Excise, and any other laws of the National Assembly made from time to time.<sup>163</sup> It is also important to note that the Tax Appeal Tribunal is a machinery set up by the executive organ of the government to first seek out ways to resolve tax disputes before deciding whether or not to go to the Federal High Court. By virtue of S. 251 of the Constitution of the Federal Republic of Nigeria all cases relating to the revenue of the nation go to the Federal High Court. Although it has been argued that the Tax Appeal Tribunal in dealing with revenue matters usurps the jurisdiction specifically reserved for the Federal High Court by the Constitution,<sup>164</sup> Justice Buba of the Federal High Court has resolved this in the case of *Nigerian National Petroleum Corporation (NNPC) v. Tax Appeal Tribunal (Lagos zone)*<sup>165</sup> where he held that the jurisdiction of the Tax Appeal Tribunal did not interfere with the

<sup>160</sup> Section 36 FIRSEA 2007

<sup>161</sup> M. T. Abdulrazaq, *Nigerian Tax Offences and Penalty*. Princeton Publishing Company, 2<sup>nd</sup> Edition, 2014 p. 58

<sup>162</sup> Section 59 FIRS Act 2007.

<sup>163</sup> 5<sup>th</sup> schedule to the FIRS Act, 2007.

<sup>164</sup> Agbonika, J.A.A. *Tax Dispute Resolution in Nigeria: A Storm in a Tea Cup*. Journal of Law, Policy and Globalization Vol. 29, 2014 pp. 147-156

<sup>165</sup> Suit No. FHC/L/CS/630/2013

exclusive jurisdiction of the Federal High Court since it was an administrative body set up to determine preliminary matters before proceeding to the Federal High Court. This case gave a lease of life to the TAT which had earlier been struck down by the judgement of Justice Adeniyi Ademola in the case of *TSKJ II Constrices Internationals Sociadade LDA v. FIRS*<sup>166</sup> for interfering with the constitutional powers of the Federal High Court as preserved by Section 251.

## 10. CHALLENGES OF AN EFFECTIVE TAX SYSTEM IN NIGERIA

Before a country considers how best to administer its tax, it must possess a clear picture of the scope of its tax system. The quantity and quality of resources required by tax administrators are to a large extent determined by the type of tax system which is introduced. A nation's tax goals are not achieved by designing a tax system which is fair. Any fair system which is not administered as planned becomes inequitable. Thus, a good tax system is capable of financing the necessary level of public spending in the most efficient and equitable way possible. It should also:

- a) Raise enough revenue to finance essential expenditures without recourses to excessive public sector borrowing,
- b) Raise the revenue in ways that are equitable and minimize its disincentive effects on economic activities,
- c) Do so in ways that do not deviate substantially from international norms.<sup>167</sup> The Nigerian Tax system is lopsided and dominated by oil revenue and therefore the establishments of effective and efficient tax systems face some formidable challenges. The challenges include non availability of tax statistics, inability to prioritize tax effort, poor tax administration, multiplicity of taxes, structural problems in the economy that affect the maximization of VAT, and finally, the challenge of underground economy.<sup>168</sup> With the current drop in price and sale of oil, Nigeria is beginning to diversify into other areas of the economy such as intellectual property, agriculture and indeed taxation.

## 11. CONCLUSION

The foregoing is an attempt to give a general picture of the Nigerian tax system. It is quite clear that many of its characteristics derive from our colonial experience. However, while the English tax system has developed at a much faster pace, and sometimes in a different direction, ours have remained relatively stagnant. This is attributable to the fact that enforcement of tax laws in Nigeria have not been strict. Most evaders through schemes and laundering have escaped unchecked. Cases going to court are very few and the stress caused by lack of development has been glaring. For the same reasons, law faculties and lawyers have paid little attention to tax matters. In addition to addressing the problem of corruption and entrenching real money in public service delivery, there is need for continuous dialogue between the government and citizens on taxation matters. This should not, however, replace the need for tax education and information campaigns on critical issues relating to tax administration. The government must be honest and more transparent with regard to the way public funds are dispensed. Defaulters must be prosecuted for tax evasion, or else, the general public will not take taxation seriously. Nigerian tax laws are noted for their complex structure. Tax laws must be understandable to all. They should therefore, be expressed simply, clearly and intelligibly. The annual amendments that are incorporated into the yearly budgets should be

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<sup>166</sup> Suit No. FHC/ABJ/TA/11/12

<sup>167</sup> Agbonika, J.A.A. op cit pp. 330-340

<sup>168</sup> Mhtl:file://C:\Users\hp\Tax system in Nigeria – challenges and the way forward.....

aligned with the principal legislation to avoid confusion. However, it appears that all governments in Nigeria are now keen about taxes and tax collection. This is bound to give the necessary impetus to the tax laws and it is hoped that the current diversification will help the Nigerian system to grow at a fast pace.

## 12. THE WAY FORWARD<sup>169</sup>

The government cannot enforce the law without educating its personnel, who should in turn educate the masses about the need to pay tax voluntarily and the law of tax. There is need to educate staff of some government and private organizations about collection or administration of tax. Also included in this tax education are the staff of Federal Inland Revenue Service FIRS, Economic and Financial Crime Commission (EFCC) and Joint Tax Force (JTF) on taxation. Tax education may encourage the citizens to carry out their obligations voluntarily. Tax administration can achieve good results only if the following conditions are met: simple tax rules and procedures, convenience to taxpayers, minimal compliance costs, easy access to information, and mutual trust and fairness. The new age of Computer technology must be combined with the political will to enforce tax collection if it is to yield potential for greater revenue. Technology without accompanying enforcement procedures will not help in increasing revenue. The system assigns a unique number to each taxpayer which aids in identifying, assessing and collecting direct taxes, such as personal income tax, companies income tax, and property tax. In this way, the master file of the taxpayer can become an important instrument for audit. If the taxpayer identification number (TIN) is tied to other means of identification, such as drivers' licenses, National Identification, Voters Card, or passport, it can be a potentially powerful means for tax enforcement.

Explore ways of using the mass media to publicize such things as new tax laws, taxpayers' annual returns obligations, the penalties for evasion, the enforcement activities which are conducted, the type of people who are caught trying to avoid their tax paying responsibilities, etc. Corrupt-free and efficient administrative machinery with personnel who are adequately trained, well-equipped and motivated would enable Nigeria to make appreciable progress in revenue diversification from oil to tax.

Auditing is a vital but neglected function. Tax administrators often employ resources for checking refunds from withholding tax schemes rather than going after the more difficult but higher revenue yields that would come from aggressive auditing of self-employed, professional and business firms. If significant numbers of taxpayers have stopped filing returns, and if large numbers of firms show suspiciously small profits, there is a need for more audit. Measures to strengthen auditing capacity should be explored. They include hiring and training new auditors, cross-checking information from large taxpayers on income tax and VAT returns, and those who voluntarily accept auditor's preliminary assessment report to have their penalties reduced while penalties are to be progressively increased for those taxpayers who appeal and fail.

Legislators and tax administrators must recognize that tax systems will be effective in the long term only if they have the cooperation of the vast majority of taxpayers. There are a number of things which a legislature can do. For instance, it can start by reducing demands on taxpayer funds. Perceptions that tax rates are too high can have a significant effect on compliance. Related to this is the taxpayers' perception of how wisely a government spends taxpayers' money. If taxpayers perceive that the government is wasting taxpayer's money, compliance is likely to decline. Governments must not only aim to eliminate waste, they must also convince taxpayers that their money is being spent wisely. Lagos State has done a good job in this direction and taxpayers encourage themselves with the slogan *Eko onibaje* meaning, Lagos will not be destroyed. With the realization that taxes paid will help in making Lagos a

<sup>169</sup> Agbonika, J.A.A. op. cit. pp. 411-429



better place, taxpayers voluntarily subscribe to payment. The physical infrastructure such as roads, schools, hospitals, etc, seen by masses also helps to add credence to this slogan.

Tax administration machinery should have an effective redress and refund system so that disputes can be settled easily and corruption checked. To avoid the present situation where states impose illegal taxes and levies, there should be a unified, effective and unbiased tax administration with full representation from the three tiers of government. This should not, however, compromise the diversified revenue efforts and the uniqueness at each level of government. To complement this effort, specialized tax judges who have been appointed to adjudicate on tax matters in the Tax Appeal Tribunal should be given constitutional recognition and respect,<sup>170</sup> to avoid intermittent disruptions of their proceedings for reasons of jurisdiction.

Funding for tax authorities and customer services should be increased to 10 percent of the targeted revenue to ensure efficient administration. Officials employed within these services must adopt a client friendly attitude for assisting taxpayers/importers as the need arises. Nigeria has numerous tax incentive structures, but these need to be made internationally competitive. While acknowledging the efforts of the Nigerian government to put the country's ports into shape, they are still below international standards, and should be improved to ensure competitiveness. Tax incentives have not had much impact in Nigeria as most taxpayers will prefer to operate in a well developed environment than go to places without light, good roads or telephone connection. Total rejection of the present approach is not warranted, but its use should be restricted to such important sectors as oil and gas, export-oriented industries located in rural areas and solid minerals development, etc.

The current situation in which the buoyant taxes are handled and controlled by the federal government is an issue for concern in a federal system. Thus, there is need to align tax responsibilities with tax power. The authority to issue taxes should be devolved to lower tiers of government. This could have positive implications for the fiscal coordination and macroeconomic management of the country. JTB's new position that tax consultants should not be involved in primary taxation functions is a step in the right direction because it upholds the tenets of the Taxes and Levies Act of 1998. This has been followed up by the FIRS Act which further states that the role of consultant should be restricted to the giving of advice on tax matters.<sup>171</sup> Consultants contravening the law should be prosecuted by the Attorney General, and relevant professional associations should take disciplinary steps against erring tax consultants. To tap income from the self-employed or informal sector activities, a broad-based comprehensive scheme should be designed so as to fully harness the potential from this revenue source.

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<sup>170</sup> Section 59 FIRS Act, 2007.

<sup>171</sup> Section 12 (4) FIRS Act, 2007.