



## The finance act, 2019: a fiscal stimulus for economic diversification, corporate mergers and acquisitions in Nigeria

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### Abstract

The traditional or classical function of taxation is that of raising government revenue. However, taxation has now become a manifold instrument for reshaping economic landscape of ailing economies while still maintaining the revenue raising function. The Nigerian economy is monocultural in nature depending on oil. Again, with the increasing integration of the economy into the emerging global economy, it does appear that corporate entities in the country are too weak to withstand competition in the global market. Consequently, attempts are being made to diversify the economy and encourage corporate mergers and acquisitions to provide a stronger base for their operations. The Finance Act, 2019 which has amended several tax laws is geared towards achievements in this direction. Through the doctrinal approach, this paper has found that the amendments in the Finance Act, though, well intended, the provisions in respect of tax incentives as a stimulus for investment in the agricultural sector and mergers and acquisitions may be frustrated by beneficiaries. The amendment has also increased VAT rate from 5% to 7.5%. Though this regime has the capacity to increase revenue generation, it also has the potentials to increase the prices of taxable goods and services. The paper finally recommends that rather than engaging in a wasteful regime of tax incentives, government can stimulate investment through provision of basic infrastructure like water, good roads, and power supply. Again, rather than increase VAT rate, the tax administrative machinery should be strengthened towards more efficiency which can lead to higher revenue yields, the paper concludes.

**Keywords:** finance, economic, diversification, mergers, acquisitions, corporate

### 1. Introduction

Taxation in its classical form represents a revenue yielding venture without more. In the colonial society, taxation was simply a tool for raising revenue by the colonial authorities for effective administration of the colonial territories. However, times have changed and taxation is now an outstanding instrument for economic development and social control. The realisation that taxation has the potentials to be a manifold instrument which can meaningfully be employed to attain the economic and social aspirations of a nation started gaining global prominence in the 20<sup>th</sup> century. Since then, taxation has globally occupied a front seat in national efforts to eradicate underdevelopment and deeply install development and growth in both developed and developing economies.

There is no gain saying that in order to stimulate both foreign and local investments, the legal regime must be friendly. It is in this regard that successive Nigerian governments have placed importance on the creation of a friendly local tax regime. Thus, tax laws in the country have always been deliberately fashioned to provide tax incentives as stimulus for both local and foreign investments.

Again, the cardinal economic development strategy of the federal government of Nigeria from 1999 to date is privatisation, commercialisation and liberalisation, generally termed "Economic Globalisation". This era has witnessed an increasing relaxation of investment regulations and reliefs aimed at stimulating investment, transfer of

government investments into private hands, and mergers and acquisitions of corporate entities for maximum efficiency. Within this same period, the Nigerian economy has witnessed increased integration into the global capitalist economy through increased private capital taking over government share-holding in public companies.

There have been legislative efforts at achieving economic development and growth through the tax regimes in Nigeria. However, economic indicators seem not to have positively responded to these fiscal efforts. Infact, recent reports have indicated a worrisome downward trend for the Nigeria economy <sup>[1]</sup>. It is against the backdrop of economic downturn that the Finance Act <sup>[2]</sup> has been enacted to address some major issues identified in our tax laws as impediments to development and growth of the national economy and ensure development through increased revenue generation, diversification of the economy, and corporate mergers and acquisitions. This paper therefore examines the efficacy of the Finance Act <sup>[3]</sup> under that backdrop.

The paper begins with a clarification of concepts which form the bedrock of the discourse. It then proceeds to discuss the functions of taxation to appreciate the background under which the Finance Act can serve as a viable tool for the stimulation of investment and development in identified sectors of the economy. The paper finally examines the roles of the Finance Act in enhancing revenue generation, economic development and how it can

positively impact on corporate mergers and acquisitions to enhance maximum output.

## 2. Conceptual Clarifications

### Economic Diversification

Economic diversification refers to a deliberate policy to invest in a wider range of productive economic activities in the economy as opposed to a single product driven economy. Nigeria, though richly endowed with a variety of natural resources, largely depends on oil as the main stay of the economy.

### Mergers and Acquisitions

Mergers have been defined as “a combination of two or more companies in which the assets and liabilities of the selling firm are absorbed by the buying firm” Section 119 of the Securities and Investment Act, 2007 defines a merger to mean “any amalgamation of the undertakings or any part of the undertakings or interest of two or more companies or the undertakings of part of the undertakings of one or more companies and one or more bodies corporate”. Section 119(2) goes further to provide two ways through which a merger can be achieved which are as follows:

- a. purchase or lease of the shares, interest or assets of the company in question; or
- b. amalgamation of other combination with other company in question.

Although the buying firm may be a considerably different organisation after the merger, it retains the original identity.<sup>4</sup> In another breath, it has been argued that merger is a situation where one corporation is absorbed into another corporation and ceases to exist<sup>5</sup>. The corporation that continues to exist is called the surviving corporation while the other is called the merged corporation.<sup>6</sup> The surviving corporation gains all the rights, privileges, powers, duties, obligations, and liabilities of the merged corporation. These definitions indicate a picture of coming together of separate companies for the purpose of efficiency.

Acquisition, according to Krishnamurti and Vishwanah<sup>7</sup> (2008), is the purchase by one company (the acquirer) of a substantial part of the assets or securities of another (undertakings) company. Though, the terms “Merger” and “Acquisitions” are synonymously used, there exists a thin line between the two. While merger refers to the fusion of two or more entities into one on equal terms, acquisition implies the purchase of a substantial interest of one company by another.

In all, both merger and acquisition are in the interest of growth, development and efficiency of the companies. In Nigeria, the industry that has taken the greatest benefit of merger and acquisition is the banking industry. In 2019, Access Bank absorbed Diamond Bank<sup>8</sup> and Skye Bank<sup>9</sup> was taken over by Polaris Bank in 2018 for more efficiency (the banking industry has witnessed frequent mergers and acquisitions among smaller banks and bigger ones resulting into more efficiency).

### Functions of Taxation

To properly examine the potentials of the Finance Act at achieving any desirable improvement on the economy and lives of Nigerians generally, it is apposite to identify the functions of the Nigerian tax system against which the relevant provisions of the Act will be measured. The

functions of taxation and their relevance in the economic development therefore form the crux of the ensuing discussion.

### Raising of Government Revenue

The traditional or classical purpose of taxation is the raising of funds to meet or satisfy government expenditure. Infact, from time immemorial, taxation in one form or the other, has been the most important source of government revenue. However, times have changed, so also circumstances. While raising revenue is still a major objective of the tax system, nevertheless, there are other equally important objectives. These are the redistribution of wealth, the management of the economy, and most recently, social function.

The classical function of taxation is to raise revenue to meet government expenditure. Thus, taxation has been employed to raise sufficient revenue to satisfy the needs of the government such as the provision of services like defence, law and order, health services and education.

Consumption taxes have a very good track record in terms of raising revenue. The Value Added Tax (VAT) has been successful in raising revenue even in developing countries with weak tax administration, which are largely unable to collect the personal income tax from majority of the population. In Latin America, for example, consumption taxes accounted for 52% of the total revenue in 1996-2002, compared to only 72% for (mostly corporate) income taxes. In Africa, the figures for the same period were 35% for consumption rates<sup>10</sup>.

### Redistribution of Wealth

The second objective is the redistribution of income and wealth. With the increasing disparity in wealth distribution and with a view to forestalling social upheaval that may likely result therefrom, governments have often resorted to using the tax system to redistribute wealth. This has two dimensions<sup>11</sup>. The first is the doctrine that taxation should be based on the ability to pay, so that the burden of taxation ought to be heavier for the rich than the poor, with taxes being used to pay for services for the less fortunate. This can take the form of imposing a progressive rate of tax on incomes. The idea is that the tax system ought to reduce inequality<sup>12</sup>.

The second dimension sees the present distribution of wealth as being unjust and so attempts to reverse the situation by fixing taxes at confiscatory rates in favour of the poor. This principle is embodied in the Personal Income Tax, popularly called “Pay-As-You-Earn” (PAYE), and tax reliefs in yearly budgets<sup>13</sup>.

In the United States of America, the post-civil war industrialisation and urbanisation led to a shift from a mostly agrarian society to one dominated by large industrial corporations and a sharp rise in inequality, as measured by the distribution of income or wealth. This state of affairs was viewed by progressive law makers of both parties as inequitable and the existing tax system was considered ineffective in remedying the situation as it relied completely on consumption taxes, which were regarded as regressive because the poor consume a higher proportion of their income than the rich<sup>14</sup>. Significantly, until World War II, the income tax applied only to the richest Americans, because the exemption levels were set high enough to leave the bottom 90% of the population outside the reach of the income tax. Redistribution was considered to require only

taxing the rich, and beginning in World War I, the rich were subject to income tax at very high rates<sup>[15]</sup>.

The socio-political argument in favour of redistribution from a societal, non-welfarist perspective is based on the observation of the negative effects of extreme inequalities<sup>[16]</sup>. In particular, as Crane Brinton and Ted Gurr have shown, revolutions are most likely to occur in societies that have experienced a period of economic growth that lifts the standard of living and expectations of all members of a given society followed by an external or internal shock that reduces the standard of living of the majority while leaving the rich unaffected<sup>[17]</sup>. This "J-curve" theory of revolutions, according to Reuven S. Avi-Yonah<sup>[18]</sup>, suggests that rising inequality, even when accompanied by an improved standard of living for the entire society, poses significant hazards. It is doubtful whether inequalities in income can produce any hazard in Nigeria.

Redistribution through income taxation certainly has limit. A high marginal tax rate can produce the disincentive effects which makes the workers take to leisure than to extra work. It has been shown that distinctive effects are indications of economic inefficiency and waste<sup>[19]</sup>. Ayua is of the view that disincentive effects can take different forms including emigration to countries of low tax rates, and involvement in black economic activities<sup>[20]</sup>. The United States of America's experience in particular has shown that an extremely high rate of the income tax for regulatory purposes has frequently clashed<sup>[21]</sup>. The situation is even worse in developing economies which are experiencing economic imperialism where transnationals or multinational corporations usually move their capital out of peripheral economies whenever the legal environment is no longer conducive for optimum profit maximisation. Other kinds of distortion likely to be caused by high marginal tax rate include substitution of one form of business organisation for another as differences in tax treatment of the various kinds of business may lead to the choice of those most favourably treated by the tax system, and a high incidence of tax avoidance and tax evasion. Despite these, the redistributive function of taxation is desirable in Nigeria, the merits having outweighed the demerits.

### Management of the Economy

The third objective of taxation is management of the economy. Taxation has become an important consideration in the planning of savings and investment and by harmonising it with development strategy and changing economic structure, the government can use taxation as a powerful fiscal weapon to plan and direct the economy. By so doing, steep booms and deep recessions can be avoided<sup>[22]</sup>. Thus, taxation can be used in shaping the economic growth and development of a country. For example, in directing the course of the economy, taxation is often employed to encourage or discourage certain economic activities through the provision of tax incentive and grant of capital or investment allowances.

In short, the tax system is a very potent weapon for economic regulation in the following respects. First, taxes affect the amount that is available for spending by the private sector of the economy. Correspondingly, an increase or decrease in tax rates will affect the amount available for government spending. Not only that, such increase no matter how minimal may have inflationary effect on the economy.

Secondly, through selective grant of incentives, allowances, or tax holidays, the tax system can be used either consciously or otherwise to encourage private investments in certain areas. Also, this phenomenon may not be a conscious government policy but purely accidental. This occurs frequently in relation to the ability of the taxpayers to take advantage of the loopholes in or of badly drafted tax legislation.

### Environmental Function

Classically, the objectives or functions of taxation have been restricted to the raising of revenue, redistribution of wealth, and management of economy. However, taxation also performs environmental functions. Taxation has recently been found to be a potent weapon for curbing environmental pollution to some extent. Tax incentives have been used in Nigeria to effectively minimise petroleum related environmental pollution.

The natural gas which is being produced today is incidental to oil exploration and ninety percent of it was flared before 1975. In 1970, when oil production hit 2 million barrels per day, about 2 billion cubic feet of associated natural gas was produced on a daily basis. With the flaring of ninety percent of that, Nigeria's flared gas at that rate of oil production was estimated at the equivalent of 300,000 barrels of oil per day<sup>[23]</sup>. By 1997, oil companies in Nigeria flared about 2 billion cubic feet of gas daily<sup>[24]</sup>. Flaring solve the problem of immediate explosion but contaminates the atmosphere. Consequent upon this, the Nigerian government has taken fiscal measures which are capable of reducing the amount of gas being flared in the country.

Government in partnership with some oil companies is already involved in the Liquefied Natural Gas (LNG) project with an investment of over US\$ 3 billion.<sup>25</sup> There is a special legislation on the project which spells out clear terms in respect of incentives, guarantee and assurances given to foreign investors in the project. The special legislation, Nigeria LNG (Fiscal Incentives, Guarantees and Assurance) Act<sup>[26]</sup> regulates the partnership.

Contractors and sub-contractors in respect of all necessary import of plant, machinery, goods and materials for use in the construction of, or incorporation in the plant, jetties, shipping, transmission facilities and ancillary works used in the company's business, and in respect of any major spare parts needed in the event of a plant failure and ordered within two years of commissioning that part of the plant for which the particular spare parts are required.

The Government has therefore, through the foregoing fiscal measures been deliberately steering the wheel of investments to the exploitation and utilisation of natural gas, especially for commercial purposes and thereby reducing the dangers posed to the environment by gas flaring.

Secondly, tax can be imposed to discourage particular undesirable social activities like drinking alcohol, smoking and betting. In this regard, import duties were increased on alcoholic and tobacco imports generally called the "sin" industry by the 1998 Federal budget to discourage their consumption.

In all ramifications, taxation can be used to uplift the welfare and living standard of the people, put smiles on the faces of the governed and redirect the course of the economy without losing its traditional grip of revenue generation. Particularly for Nigeria, it is worthy of note that taxation has a potent effect in restructuring an ailing

economy like ours.

### 3. Relevant Amendments by the Finance Act, 2019

The Finance Act has made copious amendments to the Companies Income Act <sup>[27]</sup>, Petroleum Profits Tax Act <sup>[28]</sup>, Value Added Tax Act <sup>[29]</sup>, Customs and Excise Tariff Etc. (Consolidation) Act <sup>[30]</sup>, Capital Gains Tax Act <sup>[31]</sup> and Stamp Duties Act <sup>[32]</sup>. These amendments are designed to stimulate economic diversification, and corporate mergers and acquisitions, in addition to raising of government revenue.

#### a. Economic Management

One of the most relevant amendments by the Finance Act to the Companies Income Tax Act is contained in Section (1c) which provides that:

Any company which is engaged in agricultural production shall be granted the following incentives in addition to other incentives in this Act –

- a. an initial tax-free period of five years which may be subject to satisfactory performance of agricultural production, be renewed for an additional maximum period of three years and
- b. such company cannot be granted similar incentives under any Act in Nigeria.

This amendment is a welcome development as it has the capacity to, greatly improve agricultural production and diversify the economy through the provision of tax incentives. The neglect of the agricultural sector has been lamented by Uzonwanne when she stated that:

Today, agriculture has suffered from long years of neglect, mismanagement, inconsistent and poorly conceived government policies, lack of government meaningful incentive to farmers, lack of basic infrastructure and a lot of bureaucratic bottlenecks in executing policies and agricultural programmes among government agencies <sup>[33]</sup>

The importance of agriculture in any economy cannot be overemphasised. Before the discovery of oil in Nigeria in commercial quantity, agriculture was the main stay of the economy. Agricultural crops like cocoa, groundnuts and rubber were exported in large quantities. However, with the discovery of oil in 1956, attention was diverted from the agricultural sector to the oil sector. Several factors have now necessitated the governments rethink in favour of agriculture. First, fluctuations in oil global oil prices since 2014 have occasioned economic crisis among oil producing countries, Nigeria not an exception. Secondly, oil being a mineral deposit may depreciate or get exhausted entirely. It is in recognition of the unreliability of oil as a sole source of government revenue that successive Nigerian governments have found it worthy to diversify the economy by encouraging investment in the agricultural sector. Before this amendment by the Finance Act, the Companies Income Tax Act <sup>[34]</sup> had already provided for a five-year tax-free period in favour of companies for pioneer Agro-Allied Companies and an exemption from taxation on interest payable on bank loans for agriculture.

In spite of this tax friendly regime for investment in the agricultural sector, not much can be said to have been achieved. This has been largely due to the fact that the conditions for grant of bank loans for agricultural purposes are so stiff and beyond the reach of the peasant farmer. Consequently, the peasant farmer who is the actual producer of food in the country has no access to bank loans and

therefore has no opportunity to take advantage of these tax incentives to improve food production. Unfortunately, the wealthy Nigerians that benefit such tax incentives do not usually invest in the agricultural sector, thus leaving the agricultural sector to still suffer neglect.

The drawback of tax incentives generally as a tool to stimulate investment in a particularly sector is that in most cases, the beneficiary relocates to another tax jurisdiction with better or similar incentives package or moves to another industry or sector of the economy, usually at the end of the period for the incentive. The disadvantage of the regime of tax incentives as a strategy for encouraging investment, therefore, is that of loss of government revenue without a corresponding increase in investment in the particular sector of the economy. For instance, in 2009, the federal government to its dismay discovered that the sum of N200 Billion Naira was lost to Telecommunication firms like Zain, MTN and Globacom as tax waivers over the preceding five years as pioneers <sup>[35]</sup>. According to the then Federal Inland Revenue Director General, Mrs. IfuekoOmoigui-Okuro, the country could no longer afford to enter into such luxury to new entrants into the sector <sup>[36]</sup>. Consequently, Nigeria then commenced a tactical withdrawal strategy from wasteful tax incentive regime. The reasoning being that the country can do better by pursuing further a tax incentive free regime, with selective grant of incentives only where necessary.

Though well intended, the amendment of the Companies Income Tax Act by the Finance Act in Section (1c) a and b must be vigorously pursued to ensure that the tax incentive provision is not abused like previous ones. It is of particular interest to note that according to the amendment, the enjoyment of the tax incentive is renewable at the expiration of five years subject to a satisfactory performance of agricultural production by the beneficiary company. This is a clear demonstration of the government's desire to manage and redirect the economy towards diversification of the economy in favour of the agricultural sector.

Also aimed at diversifying the economy, is the amendments of the Value Added Tax (VAT) Act <sup>[37]</sup> and the Capital Gains Tax Act <sup>[38]</sup> by the Finance Act. Specifically, as a substitute for Section 42 of the VAT, a new Section 42 has been introduced by the Finance Act which offers a tax concession in favour of corporate mergers and acquisitions. The Section provides thus:

42 where a trade or business carried on by a company is sold or transferred to a Nigerian company for the purpose of better organisation of that trade or business or the transfer of its management to Nigeria, and any asset employed in such trade or business is sold or transferred, no tax shall apply under this Act to the sale or transfer of the assets to the extent that one company has control over the other or both are controlled by some other person or are members of the same recognised group of companies and have been so for a consecutive period of at least 365 days prior to the date of reorganisation:

Provided that if the acquiring company were to make a subsequent disposal of the assets thereby acquired within the succeeding 365 days after the date of transaction, any concessions enjoyed under this subsection shall be rescinded and the companies shall be treated as if they did not qualify for the concessions stipulated in this subsection as at the date of the initial reorganisation.

Section 49 of the Finance Act which amends Section 32 of

the Capital Gains Tax (CGT) Act is in spirit and content verbatim with Section 42 of the Finance Act.

These amendments provide a tax subsidy for Nigerian investors and have the potentials to stimulate mergers and acquisitions by investors in the country. Mergers and acquisitions have the capacity to facilitate business growth, operating synergy, financial synergy, diversification and empire building. The provision of tax incentives is part of the larger strategy of the globalisation agenda aimed at breaking down all national barriers for the free flow of labour and capital for more efficiency.

Before the amendment, a person acquiring any asset for business purposes was a taxable person under the Value Added Tax (VAT) Act <sup>[39]</sup>. The Section defined a taxable person to mean a person who independently carries out in any place an economic activity as a producer, wholesale trader, supplier of goods, supplier of services (including mining and other related activities) or person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business; and includes a person and an agency of Government acting in that capacity.

Similarly, under Section 32 of the Capital Gains Tax Act, any sale, lease, transfer or assignment, a compulsory acquisition or any dispossession of an asset notwithstanding that no asset is acquired by the person paying the capital sum are chargeable gains. For the purpose of capital gains taxation, a disposal of assets include part disposal where all propriety rights or interests over assets have been disposed of or where part of the assets is not disposed of. Consequently, a corporate merger or acquisition is a disposal for tax purposes.

The combined effect of these amendments is that transactions involving mergers and acquisitions are subjected to either value added tax or capital gains tax, whichever is appropriate. However, with the current amendments by the Finance Act, assets involved in the acquisition or merger of businesses are exempted from tax. This is a direct invitation to Nigerian businessmen to merge or acquire businesses for more efficiency. The subsidy provided under this legal regime may be very beneficial to the banking industry where mergers, acquisitions and takeovers are already taking place on a large scale.

A proviso has however been provided in the amendments to the effect that where an acquiring company disposes of assets acquired for business within 365 days, the tax cession would be withdrawn. This is to prevent sharp practices and abuse of the tax incentive regime by companies.

In further pursuance of the economic management function of taxation, the Finance Act has amended Section 21(1) of the Customs and Excise Tariff Etc. (Consolidation) Act <sup>[40]</sup>, by introducing a new subsection (1) to read as follows:

1. Goods imported and those manufactured in Nigeria and specified in the Fifth Schedule to this Act shall be charged with duties of excise at the rates specified under the duty column in the subsection provided that this subsection shall not apply to –
  - a. goods that are not locally produced in Nigeria; and
  - b. raw materials that are not locally available in Nigeria.

This is designed for the protection of local industries which produce particular line of goods and raw materials.

#### **b. Raising of Government Revenue**

Raising revenue to meet government expenditure is the classical function of the tax system. Thus, taxation has been employed to raise sufficient revenue to satisfy the needs of government such as the provision of services like defence, law and order, health services and education. Consumption taxes have a very good track record in terms of raising revenue.

Globally, there has been a trend towards a shift from direct to indirect taxation. The European Commission has advanced the following arguments in favour of indirect taxation <sup>[41]</sup>.

First, that the rebalancing of taxes towards indirect taxation has the potentials to reduce tax evasion. This argument is particularly true in view of the fact that indirect taxes being expenditure based can hardly be avoided or evaded once the taxpayer decided to consume an item on which the tax is imposed.

Secondly, a regime of indirect taxation will broaden the tax base and increase revenue generation. For instance, the VAT which is a classical example of indirect taxation affects all types of household items spreads the burden of taxation to wider, thereby increase revenue generation. Thirdly, it has been argued that through the shift from direct to indirect taxes, the burden of taxation would no longer fall solely on domestic producers but would also affect import <sup>[42]</sup>.

In recognition of the foregoing potentials of the VAT to efficiently mobilise revenue for development, the legislature has amended Section 4 of the Value Added Tax Act through the Finance Act by increasing the rate of tax from 5% to 7.5%. The implication is that consumers of vatiable goods and services will now pay higher as tax.

However, though designed to increase revenue generation, the legislature missed the point by this amendment. The said amendment does not take into cognisance the function of taxation designed to distribute wealth between the rich and the poor, neither does it adhere to the equity principle of taxation. Both the poor and the rich pay the same amount of tax through expenditures.

The increase in the VAT rate is also capable of impacting negatively on consumers' incomes and consequently, purchasing powers. The increase in the tax rate will have a trickle-down effect on incomes of consumers who will have to pay higher prices. That is, the high VAT rate is capable of creating a situation of consumer detriment for the taxpayer by taking away a reasonable proportion of his income, thereby making him poorer. The fact that poor consumers buy in small quantities, rely on expensive markets that are close to them (for they cannot travel far for cheaper goods) and are generally unaware of opportunities for securing good value for goods and services they buy, all combine to exemplify the consumer detriment. In a country like Nigeria, this may extend to consumer's lack of resources to purchase quality products despite their availability at local markets. A high tax regime, as in the VAT rate, is bound to heighten the already high poverty rate in the country. This scenario explains why the United States is now considering a downward review of VAT rate <sup>[43]</sup>.

#### **4. Summary/Findings**

Taxation has been found to be the main tool for regulation or management of economies globally. The classical function of taxation is raising of government revenue for government expenditure. However, times have changed so

circumstances. While raising revenue is still a major objective of the tax system, nevertheless, there are other equally important objectives. These are the redistribution of wealth, management of the economy, and recently, environmental function.

Since the 1990s globalisation and greater capital mobility have led to corporate mergers and acquisitions across the globe, Nigeria not an exception. In Nigeria, fluctuations in the global oil prices have made nonsense of over dependence on oil as the main stay of the economy. The combined effect of these developments in Nigeria is the fashioning of a tax incentive regime to stimulate economic diversification, corporate mergers, acquisitions, and takeovers. Consequently, tax laws have been amended through the Finance Act, 2019 to strengthen this tax incentive regime and the move towards increased revenue generation for development. This is part of the globalisation agenda which include the breaking down of investment barriers including the provision of a friendly tax environment for trade and investment by foreign capital to flourish.

Under the economic management function of taxation, the Finance Act has made provisions for tax incentives in the agricultural sector to boost agricultural production. This is in realisation of the fact that the economy must be diversified in view of uncertainties associated with oil as the main stay of the economy. It is however doubtful if this regime of tax incentives will make any meaningful impact on agricultural production since similar efforts in the past have not yielded the desired results largely due to the lame nature of tax incentives as a stimulus for investment.

In further pursuit of diversification of the economy, the Finance Act has also provided a tax incentive regime to encourage corporate mergers and acquisitions. With “globalisation” as a new economic policy, the competitive trend of the global market does not permit the survival of weak and smaller corporate organisations. The legal environment is therefore being created for mergers and acquisitions for more efficiency. This amendment is in pursuit of that agenda.

The amendment of the Customs and Excise Tariff Etc. (Consolidation) Act is designed to protect local industries in the country. However, the idea behind this protection afforded local industries can be faulted. Once protected, local industries never mature but remain “infants” forever. In this era of globalisation, industries must be prepared to produce at global standards. Only then can Nigerian products meet international standards. The production of quality goods by Nigerians industries can be beneficial in two major ways. First, Nigerians will consume home made goods and desist from the preference of imported goods and therefore save the country much needed foreign exchange reserves. Secondly, goods, made in Nigeria can be exported to other countries and therefore improve the country’s balance of payments.

In pursuance of the revenue raising function of taxation, the Finance Act has further increased the VAT rate from 5% to 7.5%. This amendment has the capacity to impact positively on revenue generation as indirect taxes are more difficult to evade or avoid. However, the amendment is bound to increase the prices of vatable goods and services in an already inflation infected economy, and thereby worsen the consumer detriment hypothesis.

## 5. The Way Forward

It has been found that the provision of tax incentives as a stimulus for investment in any economic sector had hardly produced desirable results. In most cases, the beneficiaries of such tax concessions usually relocate to other tax jurisdictions or industries at the expiration of the period for such tax concessions. Investors seem to be attracted more by the availability of infrastructures than tax exemptions or tax holidays. The government can therefore do well through the provision of infrastructures like water, good roads and power supply. In most cases tax incentives end up with substantial loss of government revenue.

Secondly, to prevent abusive use of tax incentives, a provision making it mandatory for companies enjoying a particular tax incentive to remain in the industry for a particular number of years can be meaningfully employed. This can stop the practice of some companies relocating to other jurisdictions or industries at the expiration of the tax holiday.

Thirdly, the increase in VAT rate from 5% to 7.5% is bound to increase prices of vatable goods and services and cause more hardship for Nigerians. In other to increase revenue generation without economic distortions, there must be put in place a more efficient tax administrative machinery to close revenue leakages. There is no gain saying that the productivity of the Nigerian tax system is very low due to the weak administrative machinery.

## 6. Conclusion

This paper has undertaken a critical analysis of the Finance Act which has occasioned copious amendments to the Companies Income Tax Act, Value Added Tax Act, Capital Gains Tax Act the Customs and Excise Tariff Etc. (Consolidation) Act against the backdrop of the desire by the government to create a conducive tax regime that is capable of stimulating diversifying the economy, promoting corporate mergers, acquisitions and takeovers.

Though previous efforts through the provision of tax incentives in the agricultural sector in the country seem to have served no useful purpose, the present amendment is better fashioned to check some of the identified abuses associated with previous similar tax concessions. Worth mentioning is the fact that a renewal of the tax concession to any beneficiary is dependent on how well the first grant has been utilised.

In terms of tax concessions in respect of assets acquired in the process of corporate mergers and acquisitions, the amendment has also provided a safe guide against possible abuse. For the acquiring company will be deprived of the said concession if it disposes of the asset acquired within 365 days.

As for the increase in the VAT rate, though the amendment is capable of increasing revenue generation, it has the trickledown effect of impoverishing Nigerians by taxing them out of existence. In all, the Nigerian tax system can be redesigned to generate adequate revenue for the government and still put smiles on the faces of the governed.

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