



An overview of development of taxation and tax laws in Nigeria

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Abstract

Tax like law evolve overtime and at every point new tax laws are developed to provide for new areas of income creation. The essence is not just to collect taxes but to generate adequate revenue for the government. Thus, the legal and administrative frame work for taxation need periodic review to fill gaps and voids in existing tax laws and also make provision for new areas of income creation. The aim of this work is to examine the legal and administrative frame work of tax laws in Nigeria as a bedrock of revenue generation to the Nigerian government; with intention to identifying the loop holes in existing tax laws and administrative lapses. The researcher observed, apart from evasive attitude of tax payers, corruption and other vices leaning on ineffective laws culminated in revenue losses to the government. There is therefore, an urgent need to make adequate provision in the tax law not only to make tax payers pay more taxes but also to create a well-planned administrative authority with the backing of the law. This is essential to reduce tax avoidance and evasion, connivance between tax payers and tax collectors. It is hope that if potent laws are put in place even political actors will find it difficult to influence tax administration and will reduce the incidence of cronnism and patronage. This research work has contributed to knowledge as it has established that there is need to strengthen tax laws for effective tax administration in Nigeria.

Keywords: Tax, taxation, administration, development

Introduction

The world is administered by Constituted Government and for these government to function well, they collect taxes from citizen to fund their administrative and developmental policies. Though, there are various sources of funding governmental project: administrative and developmental project. Taxation is one of the major source of fund to government world over. The Black's Law Dictionary ^[1] defines tax as "a ratable portion of the produce of the property and labour of the individual citizen, taken by the nation in exercise of its sovereign right for the support of government for the administration of laws and as the means for continuing in operation of various functions of the State. Taxes therefore are a necessity – the price of a civilized society. ^[2] This price is paid by every taxable adult. Since the basic aim of taxation is to generate revenue capable of financing government expenditure at all levels of government, its importance cannot be overlooked.

Taxes has been explained as levies on individuals, groups, business or cooperate bodies by constituted authorities for funds used by state in the maintenance of peace, security, economic growth and development and the social engineering for the benefit of the citizenry. ^[3] Tax is also define as "money paid to the government which is based on the income or the cost of goods or services you have bought, while taxation is define as the system of taxing people. ^[4]

According to Chigbu, for the government to achieve full macro-economic objectives of price stability, full employment, external balance and sustainable economic growth and development in the long run, the government must have sound fiscal and monetary policy instruments in place. Taxation and government expenditure are the fiscal policies.

Tax is mandatory, a mandatory contribution that every income earner is compel by law to pay to the central fund of any government. In Nigeria, tax payment and collection is

backed by the Constitution of the Federal Republic of Nigeria. ^[5] There are various statutory provisions in Nigeria enacted to ensure prompt tax collection and compliance. These include:

1. Finance Act
2. Personal Income (Amendment) Act 2011
3. Company Income Tax
4. Value Added Tax
5. Petroleum Profit Tax etc.

These enacted laws empower the relevant authorities to collect taxes. Deriving their powers from the Supreme Law of the land.

Owing to the fact that taxes provide the major part of government revenue, the agencies are empowered to collect taxes on behalf of the government and remit to developmental authorities for proper and efficient distribution of the taxes collected for infrastructural and other development. Most people view the payment of taxes as a punishment and others frequently ask why they should pay taxes. This is asked out of ignorance, that what is the government doing with the money collected. Citizens often feel cheated in the obligation of paying taxes while some feel the taxes are too high, others feel they are not equitable. Tax payment should not be seen as a way the government uses to oppress or punish the citizen instead it should be seen as a necessary contribution toward infrastructural and economic growth gear towards a better life for the citizens. It should also be noted that prompt and accurate compliance with the tax laws give benefit in form of incentive to the faithful tax payer. This work examines critical areas of noncompliance and make suggestion on laws to create awareness and how to improve on tax compliance.

The efficiency of Tax Administration in Nigeria is in doubt primarily because the tax laws that provide that all taxable adults must pay tax also exempted some taxable adults from

paying taxes. It is also a common occurrence that some citizens avoid and evade payment of taxes and sometimes this is done with the help of the same laws that provide for the payment of the avoided tax. The combine effect of exemption, avoidance and evasion of taxes reduces the fund accruing to government from taxes. This research seeks to know the causes of these loopholes and see how they can be plug legally through Legal and Administrative framework. The research generally is to analyze the existing legal and institutional framework for taxation in Nigeria, harmonizing them and coin a possible mechanism that will ensure tax compliance and enforcement.

Objective of Taxation

Taxes are paid to oil the engine of government for smooth running. According to United State President, Franklin D. Roosevelt “Taxes after all are the dues that we pay for the privileges of membership in an organized society” [6]

These privileges are made available from the tax pool of the government. Traditionally, tax is the main source of revenue to government all over the world. For instance, the first income tax suggested in the U.S.A was used to finance the 1812 War between Northern and Southern State of America. [7] The Egyptian government also cause the first ever known taxation system to generate funds to build palace for the first Egyptian Pharaoh around 2800BC – 3000BC. This palace later housed other pharaohs [8] while on his divine assignment on earth, Jesus Christ was asked by the Pharisees saying;

Tell us then, what is your opinion? Is it right to pay the imperial tax to Caesar or not? [9]

Jesus replied them and said;

“So give back to Caesar what is Caesar’s, and to God what is God’s.” [10]

Taxes in model society are backed by law thus, it is no longer of loyalty but it is now an obligation every citizen or member owes its government in every organized society. The primary purpose of taxation is to generate revenue for government expenditure.

Ndukwe, a Nigerian Scholar has recapitulated that the importance of taxation lies primarily in its ability to raise capital formation for the public sector for the development and growth of the economy. [11]

In Nigeria like other nations in the world, taxes play the role of the back bone of the economy, it ensures the existence and wellbeing of the nation and its citizens through fund raising. However, the realities on ground proved that tax can be used to achieve more than just raising revenue for the government. [12]

The foremost function of taxation is to raise revenue to meet governmental expenditures and taxation has always been employed in this regard. The sources of government revenue are diverse but taxation is the major source as it spread into almost every sphere of governance and economic operations. Although there are a number of ways government can obtain revenue and needed economy resources which includes inflating the currency, or manipulating the banking system, borrowing and lending increase exports, etc., none of this is as suitable as a permanent means of financing a government as taxation does. [13]

Taxation can be used as a medium of economic simulation for growth when there is need to encourage local content, the government can place heavy taxes on imported finished

goods and/or remove taxes from imported raw materials needed to produce such finish good. Taxation can also be used for the redistribution of wealth by way of taxing wealthy people higher than low income earners. This can be the graduation or progressiveness of the value which the taxes are levied. It could also be the other way round depending on the economic principle at a particular time. [14] Taxation objective is then the intend viability of the Economy of the country, when it Is employed as a developmental tool.

Quality of a Good Tax System

Adams Smith has coined the “Cannon of Taxation as the characteristics of a good tax system in his work. The wealth of Nations [15] where he listed them as Equity, Economy or Cost, Stability, fairness or Impartiality Certainty, Administrative Efficiency, incentive and Economy Efficiency, Distribution effects, Simplicity, Compliance and Flexibility.

As economy grows and broader scopes achieved, these cannon have gone through broader reviews and recommendations. One of such is the elaborate report of the Meade Committee on the structure and Reform of Direct Taxation in the United Kingdom. We will have to discuss these cannons briefly.

Equity

This attitude is a two – way context, that is the “Horizontal equity” and the “Vertical equity”. The first states that those with the same income pays an equal amount of tax, the second state that those with different income pay different amount of tax. This attribute of equity, help to emphasis the ideal of equality before the law. It has brought about cooperation amongst taxpayers because making taxes proportional to income encourages the payers to feel equally treated. Tax payers see this context as a progressive taxation system.

Economy or Cost of Taxation

The cost of tax collection must be reasonable compared to the tax collected. The amount of tax collected should not be lower to the cost of collecting such amount. Thus, tax planners should be mindful of design and method employed for its collection. A tax system is considered to be good and efficient only when the cost of collecting is relatively low. For this to be achieve, many factors came into mind and the central or primary factors include –

- a. **The Tax Base:** Where the tax base is broad, the volume of tax collection will be proportionately high. [16]
- b. **The Degree of Willful Compliance:** The degree of will compliance reduces the cost of collection. This is true because if all tax payers willfully or voluntary pay their taxes then the cost of collection will be reduced. [17]
- c. **Tax Burden and the Excess Burden:** Another angle from which the economist looks at the economic efficiency of taxation is the issue of tax burden as an excess burden. The transfer of private resources to the public sector which is the tax burden always involves excess burden which arises from distortions to the price system caused by imposition of taxes.

The Quality of Stability

Graham Glenday once said; the overall tax revenue of any economy should produce stable revenue flows both within

and between years so that fiscal deficits and expenditure level are predictable. An unexpected drop in revenue can be absorbed (only) by some combination of inflationary financing “crowding out” private investment, resorting to foreign debt obligations, reducing expenditures or reducing operating and maintenance expenditures that lowers the efficiency of government operations. [18]

All or some of these are imperative because it would be difficult to amend tax laws or upgrade tax effort overnight to quickly take care of unexpected sharp drop in revenue. Generally, there are two components of revenue stability viz:

- a. Elasticity of Revenue
- b. Diversification of Revenue

Elasticity of revenue: Proportionally, revenue should grow as fast as the nation’s Gross Domestic Product (G.D.P). If tax revenue is not elastic, revenue quantum may remain stagnant even when the G.D.P is growing and the financial needs of government are increasing. Under such a situation, new administrative or compliance measures are put in place year in year out to enable tax revenue keep pace with the needs of government.

The ideal thing is to have a tax base that responds automatically and positively as the economy expands so that at a constant tax rate, and with the same numbers of taxes being administered, revenue will continue to increase.

The Quality of Fairness or Impartiality

A fair tax system is one that takes proportionately less money in tax from the poor than the rich. This is the argument under vertical equity. Vertical equity has adequately explained this position and that is if XYZ and ABC earn N100,000 and N1,000,000 per annum respectively and are assessed N20,000 and N200,000 respectively at a flat rate of 20%, the system has been unfair to itself for taxing ABC inadequately, and unfair to XYZ for taxing him more in proportion to his earning by applying the same rate to his income and that of ABC. The issue of fairness can be dealt with from the relief side of tax determination from the fixing of tax rates. It is quite clear from this, that the results from the marketing activities will be taxed under the Companies Income Tax Act.

Certainty

A tax which every person is bound to pay ought to be certain and not arbitrary. The scope of the tax should be clear, it must also be certain that the tax can, and will be enforced with a clear idea of how much revenue will be raised from it.

Administrative Efficiency

This involves the organizational structure of tax collection and general revenue structure including the relevant revenue laws. This must be seen to be a working system for the characteristics of the tax to be termed good. For example, the administrative cost should not be higher than the revenue to be raised and there must be an efficient administration of the tax system by trained tax personnel.

The tax system must also entail ease of understanding of administration is apparent efforts at reducing the cost of administration. Indeed, high cost of administration could be counter productive from the standpoint of enforcing the tax

and consequently from the standpoint of raising the required revenue.

The cost of administration of a given tax system must therefore be judged not only from official administrative costs, but also from the cost which the private tax payer must incur in order to determine his tax liabilities.

Incentive and Economy Efficiency

This deals mostly with the incentives and distinctive effects of direct taxation which are also known as “income effect” and the “substitution effect” of a tax burden. The gist of the treatment of these characteristics is to demonstrate how a tax system can have important effects on incentives and opportunity to work, to save, to invest in capital development, to take risks and to innovate, to use resources efficiently and to allocate them to users which best serve the needs of the community.

Distributional Effects

Every tax system undoubtedly has some distributional effects and the question that inevitably arises is who should bear the burden of the tax revenue needed to finance some particular level of budgetary expenditure. In some cases, it is possible and indeed appropriate to tax those members of the society who will benefit directly from that budgetary expenditure. While this may be true in some cases, the challenge facing government today is to make this a limited and narrow aspect of the role of taxation in the management of the economy. [19] In other cases, like on expenditure on national defense, it is even impossible to identify particular members of the society that benefit from such expenditure. Moreover, progressive taxation is among other things, often designed to improve the relative position of the poorer members of society.

Simplicity and Compliance

A good system should be coherent, simple and straightforward, but a caveat has to be placed here as simplicity per se is not all that is needed for a good tax system. A tax that is designed to deal with a complicated situation will inevitably be complicated in itself. Be that as it may, tax system should be clear to the tax payers. In fact, the tax payer should have a clear picture of what is and what is not taxable. The tax payer apart from knowing clearly what is to be taxed should also be made to understand the purpose that tax is intended to serve.

Development of Taxation and Tax Laws in Nigeria

In every organized society levying of taxes is found and this action is as old as organized human society. The evolutionary existence of taxation can be traced back to several thousands of years ago hence, Olugede pointed out that “Life must be lived forward but can only be understood backwards. [20] Taxes therefore dates to time immemorial. And the earliest form of tax appears to be voluntary though through persuasion and conviction. This practice is known as tithing and is traced back specifically to the Old Testament. In Genesis, it is stated “Then Mechizedek King of Salem brought out bread and wine. He was priest of God Most High and bless Abram saying, Blessed be Creator of heaven and earth. And praise be to God Most High who delivered your enemies into your hands. Then Abram gave him a tenth of everything. [21]

When the kingdom of Israel was established and kings reign over Israel, we saw several decrees calling for payment of taxes, this time not by conviction or persuasion but compulsion, not tithe but tax. During the reign of King Solomon, he has the duty for a massive developmental project. The building of God's Temple and other project. In order to finance these projects, he tax the people heavily. [22] Solomon was the third king of Israel, Saul rules over a poor nation as recorded in 1Samuel 13:22 but David who rule after him conquer the nations round Israel and Solomon was controlling the economic activities of these nation and collecting taxes and rent. Having established that taxing date back to bible history. We can now look at our country Nigeria.

A country's tax system is essentially a derivation of the history, economic structure and political economy of that country. Nigeria's tax system was built during the colonial era and has remained to some extent unchanged up to this present time. This is true because most of Nigeria tax laws are essentially copies of British tax law or other British Colonies such as Australia.

A system of Direct Taxation was in existence in Nigeria before the coming of the white and the advent of colonial rule. In the North which had an efficient and stable administration based on Islamic system, thus, in Northern Nigeria there were various forms of taxation such as "Zakat" – a tax levied on Moslem for charitable religious and educational purposes. "Kuridin Kasa" – an agricultural tax, Shukka – Shukka – is paid on all crops for the welfare of the community. There is another called "Jangal" is a pastoral tax on livestock intend for alms giving, it is some what related to Zakat. [23]

In Southern Nigeria, which has no well-established (organized) indigenous taxation system. It was not as organized and far-reaching as is obtained in the North. Towards the end of the 19th century, there had developed in the South – Western parts of the country in which some kingdoms headed by Obas with legislative, executive and judicial powers and all semblance of modern Government though at the elementary stage of governance. There are evidence that in the 19th century, taxes such as capitation, sales, excise and customs etc. were already in effect.

These taxes were imposed and collected by ward-heads known as Baale for and on behalf of the paramount rulers. The process involves the family collecting the capitation from individuals in their household during harvest and would take them to the Baale who after deducting their share, will convey the tax to the paramount ruler.

Apart from the tax payable by every adult for the maintenance of the royalty and Government, there were also taxes payable by every trader coming to trade within the jurisdiction called Owo Onibode, [24] and one paid by every seller coming to sell on the usual market days. The border fee Reminiscent for Custom Duty. There were payment of Death duties among the Egbas and the Iyebus. Tributes were also form of taxes though not paid in money. It is a kind of payment made in kind. A system where personal services are made obligatory, services such as clearing of communal roads, building of markets, halls and construction of bridges. These services continued even when the monetary computation of taxes has stated. They were usually carried out during festive period or as annual obligation for healthy and smooth running of communal infrastructures.

In Eastern part of Nigeria which appears to be stateless especially among the Ibos who were some how operating a republican-like government, who rule through council of elders and sometimes by village assemblage; the TIV, Bura, Igbira, Ika etc. there existed little or no form of organized taxation. This kind of liberal democratic set up was unable to guarantee the levying and or payment of taxes since there was no recognized head or leader who has or had the power to enforce taxes.

Income tax was introduced to the Nigeria colonial government by Lord Lugard in 1904 but the instrument that empowered the collection of Income tax in Northern Nigeria did not extend to the Southern part of Nigeria until the amalgamation of the Northern province with the colony and protectorate in 1914. This instrument was named the Native Revenue Ordinance of 1917, though this ordinance initially applied only to Northern Nigeria, it was later amended and its application extend to Abeokuta and Benin City in the then Western Region of Nigeria.

As time passes, tax system evolves and personal income tax was introduced in Eastern Region of Nigeria in 1927, accompanying the indirect rule system. The Eastern region known for its lack of organized leader structure could not comprehend the rationale behind the tax and this sparked the Aba Women Tax Riot of 1929. This disturbance results in loss of lives and distraction of properties.

Legal History of Taxes in Nigeria

Personal Income Tax in Nigeria was created in 1940 by the Direct Taxation Ordinance No. 4 and the Income Tax Ordinance No 3 which revoke all previous ordinances. The taxation of all Nigerians except people living in Lagos township was contained (or provided for) in the Direct Taxation Ordinance covering taxable persons which includes community defined as to comprise any town, village or settlement or any locality therein including a band of nomadic herdsmen and individuals residing within a community. [25] Income that were taxable under the ordinance includes:

1. Income from land
2. Rent derived from land
3. Yearly profits of the produce from land which were enjoyed by the community or individual.
4. Income from employment and pension
5. Dividend or interest and
6. The value of all livestock owned by the individual or the community. [26]

This ordinance is very important in the historical development of Income Tax Law in Nigeria because it was the first law or known statutory that applied throughout the country. Its nationwide coverage made it the bedrock of Nigeria Taxation System. This ordinance also provides for the appointment or the establishment of tax collection by the citizen or residents.

It is worthy of note that one of the major shortcomings of the ordinance was its failure to provide for a uniform tax rates throughout Nigeria. This was due to regional economic disparities and administrative considerations. Though was a tool to resource allocation reflecting the unique needs and circumstances of each region or state as the case may be. Another notable shortcoming is the lumping together of personal and company finances under one taxation law [27]

In a bid to improve on the tax law and generate more revenue through taxes, a new and more extensive law was passed in the year 1943 which repealed the 1940 tax law. The 1943 ordinance was not only more extensive, it also imposes higher rates of taxes in some types of income and in general it taxes income which accumulated over the tax year, derived from, were received in or imported into Nigeria and they include profit from trade, business, profession or vacation for whatever period of time such trade, business, profession or vacation may have been carried on or exercised in Nigeria.

In 1958, the Raison Fiscal Commission recommended the taxing of income of persons other than limited liability companies, which later formed part of the constitution order in council and become the basis of the Income Tax Management Act 1961. [28] The main Management Act 1961 became the harbinger to Company Tax of 1961, 1979 and 1990 as well as the Personal Income Tax Decree 1993 (Now Laws of Federation 2023 As Amended).

In trying to bring uniformity to the tax system of Nigeria, the military junta then in 1975 promulgated the Income Tax Management (Uniform Taxation Provisions Decree No 7.) This Decree unified reliefs and rates throughout Nigeria a major advantage (benefits) or resolving to some extent the proliferation of tax laws in Nigeria. [29] This single achievement remains until 1979 when all the state law were invalidated by the Personal Income Tax Act (P.I.T.A) was enacted not just as a tax law but as a uniform to regulate and operate as Personal Income Tax throughout Nigeria.

Another tax law that was enacted in Nigeria is the Petroleum Profit Tax Act, it was introduced in 1955 but became functional or effective in 1959. The tax law came to be as a result of the discovery of oil in large quantity in Nigeria and the emergence of the need to put in place a legal framework, regulate, central and manage oil exploration and production in Nigeria. The Petroleum Profit Tax Act remains the only law regulating the Petroleum Profit Tax throughout Nigeria.

Company Income Tax Act No. 28 of 1979 was enacted to check, observed Tax evasion on income by companies and to harmonize all the decree into a comprehensive law for effective regulation of companies taxation in Nigeria.

The Capital Gain Tax Act was enacted on the 1st of April 1967 to regulate abnormal profit maximization which was effecting the Nigeria economy adversely, through levying of tax on any gains accruing to any person on disposal of assets.

In the quest to generate more fund for education in Nigeria, the Education Tax was introduced in 1993, its primary aim is to source fund for Nigeria higher education funding. The Education Tax is imposed on companies registered in Nigeria to solve the problem of underfunding in Nigeria Educational System especially the tertiary institutions. In same 1993, Value Added Tax (VAT) was introduced to replace existing sale Tax which was operating on the basis of residency. Its introduction also led to increase revenue generation for the government.

Conclusion

In this work attempt has been made to evaluate the development of taxation and tax laws in Nigeria. It is discovered that tax is the oldest and most readily available sources of income to government in the whole world. It is the most-sure means of raising finances to fund

governmental projects and administrations. As important as taxation is to the country, it is observed that the legal framework for tax administration in Nigeria is weak and in some cases ambiguous, thus making tax assessment and collection very difficult, a situation that make tax payers to rely on visible loopholes in the laws to avoid tax or outright evasion due to frustration or tax apathy. It is therefore recommended that national taxation law should be reviewed so that incidences that encourage tax evasion and tax avoidance are reduced or stamped out completely.

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