GENERAL OVERVIEW OF THE LAW OF TAXATION IN NIGERIA.

Gloria Otedola Ikhelowa, Esq.
Matthew Burkaa & Co.

Abstract

This article's focal point is the general concept of the law of taxation in Nigeria. In this article, the meaning of taxation, forms of taxation and legal framework regulating the law of taxation in the country is explored. The author also explores some salient topical issues in taxation. The author takes a remarkable step forward to analyze recent developments in the laws regulating taxation in Nigeria, as well as their effects on tax practice in Nigeria.

1. Introduction

Taxation is indeed one of the most important revenue sources for many nations like Nigeria. According to the Organization for Economic Cooperation and Development (OECD) in 2017, tax has been ranked as the main supply of revenue in international locations consisting of the UK, France, Sweden, Norway, and different excessive earnings for the government.[1] In Africa, tax revenue has substantially contributed closely to the monetary increase of various countries. In Nigeria, taxation has been existent even earlier than the amalgamation in 1914 of the Northern and Southern protectorates to shape the territory now referred to as Nigeria.[2]

2.0. Definition of Tax

The definition of tax, as peculiar with law, is not an easy task, hence there is no universally accepted definition. Attempts have been made by authors to profer indications and features on what taxation is.

In the Revenue Statistics of the OECD in 2022, taxes are defined as; "compulsory, unrequited payments to the general government or to a supranational authority". Taxes are unrequited in the sense that benefits provided by government are not normally in proportion to their payments.[3]

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[1]Ezekwere Uzochukwu and ors , "Taxation and Nigerian Economy" (Proceedings of the 7th Annual International Academic Conference on Accounting and Finance Disruptive Technology: Accounting Practices, Financial and Sustainability Reporting) https://icanig.org/documents/18.%20TAXATION%20AND%20NIGERIAN%20ECONOMY.pdf

[2] ibid

[3] OECD," Revenue Statistics 2022- The impact of COVID-19 on OECD tax revenues." (2022) 1

According to Olokooba, tax can summarily be said to be "a compulsory and definite amount fixed by law and levied annually on adult citizens of a particular country". A tax is an annual pecuniary burden laid upon individual or property to support government expenditure or to check and control of some socio-economic vices in the society.[4]

3.0. Categorization of Taxes

Theories and methods have been postulated by authors for the categorization of taxes. These theories are discussed below.

3.1. The income theory:

In classifying taxes under this theory, reliance is placed on the taxable percentage from the total amount of income earned by the taxpayer annually.[5] Under this theory taxes are classified into Proportional, Progressive and Regressive tax systems.

3.1.1. Proportional Tax System:

This is an income tax system that levies the same percentage tax to everyone regardless of income. A proportional tax is the same for low, middle, and high-income taxpayers. Proportional taxes are sometimes referred to as flat taxes.[6]

3.1.2. Progressive Tax system:

It involves a tax rate that increases (or progresses) as taxable income increases. It imposes a lower tax rate on low-income earners and a higher tax rate on those with a higher income. This is usually achieved by creating tax brackets that group taxpayers by income range.[7]

3.1.3. Regressive Tax System:

This is a tax which structure is such that the revenue yield becomes smaller as the value of the property taxed increases.[8] This kind of tax takes a declining proportion of income as income rises.[9]

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[4] Saka Muhammed Olokooba, *Nigerian Taxation Law, Practice and Procedures Simplified (2019)*15

[5] (n 4) at 19

[6] Julian Kagan, 'Proportional Tax Meaning, Example, Pros and Cons' Investopedia https://www.investopedia.com/terms/p/proportionaltax.asp#:~:text=In%20a%20proportional%20tax%20system,%241%20million%20would%20pay%20%24200%2C000.

[7] Julia Kagan, 'What Is a Progressive Tax? Advantages and Disadvantages' Investopedia https://www.investopedia.com/terms/p/progressivetax.asp

[8] Ayua I.A. *The Nigerian Tax Law*, (1st edn. Spectrum Law publishing, 1996)

[9] Abdulrazaq M.T, *Principles and Practice of Nigerian Tax Planning and Management* (Batay Law Publications Ltd Ilorin, 1993), p. 15

3.2. The Incidence theory:

Under this theory, the incidence reflects the point or side where the burden of taxation falls. For instance, where the taxable percentage in the taxpayer's income is directly levied and paid by him, the incidence of such tax falls directly on the taxpayer.[10] Under this theory taxes are classified as direct and indirect taxes.

3.2.1. Direct tax system:

A direct tax is a tax levied directly on the taxpayer's income. The payment of this type of tax is either by self-assessment or by notification called 'assessment notice' from the tax authorities, informing the taxpayers on what pay.[11]

Examples of direct taxes are: Companies Income Tax, Pay As you Earn (PAYE) Capital Gains Tax, and Capital Transfer Tax.

3.2.2. Indirect tax system:

This is the added percentage of tax which is normally imposed on goods or commodities before reaching the final consumer. The incidence of such tax naturally is hidden and will look as if it is part of the market price of such commodities. Stamp Duty, Excise Duty and Custom Duty, Value Added Tax are examples of indirect taxes.[12]

3.3. Basis of taxing:

Taxes may be classified based on the mode of payment of the tax. That is whether per unit or ad valorem. Per unit or specific tax is one that is specified as a fixed amount for each unit of a good sold.[13] While ad valorem is that tax that is specified as a percentage of value. Sales, income, and property taxes are three of the more popular ad valorem taxes devised by government. The total ad valorem tax paid increases with the value of what's being taxed.[14]

4.0. Legal Framework of Taxation in Nigeria:

Section 4(1) of the Constitution of the Federal Republic of Nigeria, 1999 as amended (the Constitution hereinafter) vests the legislative powers of the Federal Republic of Nigeria on the National Assembly and they shall have power to legislate

[10] Olokooba (n 4) at 19
[11] Ibid at 24
[12] (n 4) at 25
[13] Economic Glossary https://glossary.econguru.com/economic-term/per+unit+tax
[14] Economic Glossary https://glossary.econguru.com/economic-term/ad+valorem+tax

on any matter included in the exclusive legislative list set out in part I of the second schedule to the constitution[15].

In the same vein, section 4(6) of the constitution vests the legislative powers of a state in the federation in the House of Assembly of that state and they shall have the power to legislate on any matter not listed in the exclusive legislative list[16]

Items 58 and 59 of Part 1 of the second schedule to the constitution lists 'stamp duties', 'taxation of incomes', 'profits' and 'capital gains' as within the exclusive legislative power of the national assembly.

Furthermore, Item 7 of part 2 of the second schedule to the constitution, which provides for the concurrent legislative lists grants the National Assembly, in the exercise of its powers to impose any tax or duty on capital gains, incomes or profits or persons other than companies; and documents or transactions by way of stamp duties, the power to provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a State or other authority of a State.

Item 9 of that same part and schedule grants the House of Assembly of a state the power to make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a local government council. Therefore, taxes are collected at all levels of government.

To curb the problem of multiple taxation, the Federal Government in 1997, ordered for the publication of the Taxes and Levies Approved List for Collection. This publication was done via a **Joint Tax Board** release of 31st March 1997 which took effect from 1 April 1997. The same was eventually promulgated into law as Taxes and Levies (Approved List for Collection) Decree No 21 of 1998.[17]

The payment of tax in Nigeria is backed by law, section 24(f) of the constitution provides:

> *It shall be the duty of every citizen to declare his income honestly to appropriate and lawful agencies and pay his tax promptly.*

To ensure the prompt payment of taxes in Nigeria, both federal and state legislatures are authorized to enact laws on how, when and what to be paid as a tax. Tax laws are the laws that guide and regulate the general conduct in taxation.[18]

[15] S. 4(2) CFRN, 1999 as amended

[16] Ibid at S.4(7)

[17] Abdulrazaq M, *Principles and Practice of Nigerian Tax Planning and Management*, (2013) . The Decree is now known as Taxes and Levies (Approved List for Collection) Act CAP T.2 Laws of the Federation of Nigeria 2004. There was an amendment to the schedule of the act in 2015.

[18] Olookoba (n 4) at 29

Some of the laws that regulate taxation in Nigeria are:

- *Personal Income Tax Act, Cap P8 LFN 2004* (as amended in 2011), which imposes income tax on individuals, communities and families and on executors and trustees, and to provide for the assessment and collection and administration of the tax.
- *Companies Income Tax Act, Cap C21, LFN 2004* (as amended) which is the principal law that regulates the taxation of companies in Nigeria.
- *Finance Act ,2023*
- *Value Added Tax Act, Cap V1, LFN 2004,* which is a consumption tax that is charged on the supply of all goods and services other than those listed as exempt in the first schedule to the VAT Act.
- *Stamp Duties Act, Cap 411 LFN, 1990* which regulates the payments of stamp duties and stamping of specific instruments in Nigeria.
- *Petroleum Profit Tax Act, Cap 354 LFN, 1990* which regulates the taxation of the income of companies in petroleum operation.
- *Capital Gains Tax Act, Cap C1 LFN 2004 (as amended)*. This Act imposes a tax of 10% on the total amount of chargeable gains (after making such deductions as may be allowed in the computation of such gains)
- *Taxes and Levies (Approved List of Collection) Act, Cap T2, LFN 2004.* (as amended) which stipulates the different taxes and levies that are collectible by the three tiers of government in Nigeria
- *Tertiary Education Trust Fund (Establishment, Etc.) Act 2011* that establishes the Tertiary Education Trust Fund charged with the responsibility for imposing, managing and disbursing the education tax to public tertiary institutions in Nigeria.
- *Federal Inland Revenue Service (Establishment) Act, 2007,* an Act that was enacted to provide for the establishment of the Federal Inland Revenue Service, charged with the powers of assessment, collection of, and accounting for revenues accruable to the Government of the Federation.
- Fiscal Policy Measures, 2023

5.0. Issues in taxation:

5.1. Multiplicity of taxation:

There is no clear legal definition of multiple taxation. According to a World Bank document on the matter, multiple taxation is often referred to when same asset or event is taxed multiple times by different jurisdictions in a federal system.[19]

Under the law, multiple taxation includes a situation where the same income is subjected to more than one tax treatment. It is sometimes called double taxation, triple taxation as the case may be.[20] Double taxation, however, also involves international tax agreement between one country and another; but it can be used to describe an incidence of multiple taxation where the income of taxpayer is subjected to two tax treatment either by the same tier of government or by different tiers in one country.[21]

Item 8 of Part 2 of the Second Schedule to the Constitution provides:

> *Where an Act of the National Assembly provides for the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a State in accordance with paragraph 7 hereof, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one State.*[22]

The constitution recognizes and prohibits the incidence of multiple or double taxation. Double taxation is a giant clog in the wheel of effective taxation system in Nigeria.

The 1999 Constitution of the Federal Republic of Nigeria guarantees fiscal federalism. Under the Constitution, the federal, the state and the local government have autonomous powers on tax collection. It implies that the different tiers of government have the right to impose and collect taxes within the dictate of the Constitution and other relevant laws.[23] There is a high tendency of multiple taxation when every tier exercises this power.

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[19] Nihal Pitigala and Mombert Hoppe,' Impact of Multiple Taxation on Competitiveness in Nigeria' (2011) Africa Trade Policy note (World Bank)1 https://documents1.worldbank.org/curated/en/142421468291634393/pdf/638010BRI0Impa00Box0361527B0PUBLIC0.pdf

[20] Famous, RF, (2010), Eliminating multiple taxation in the capital market- the capital market perspective

[21] Nnaemeka Boniface Amadi, 'Understanding the Fundamental Issues of Multiple Taxation in Nigeria: The Theoretical and Historical Approach' (2020)64 International Journal of African and Asian Studies 38 https://www.researchgate.net/profile/Nnaemeka-Amadi/publication/360208705_Understanding_the_Fundamental_Issues_of_Multiple_Taxation_in_Nigeria_The_Theoretical_and_Historical_Approach/links/626858018e6d637bd1015bf8/Understanding-the-Fundamental-Issues-of-Multiple-Taxation-in-Nigeria-The-Theoretical-and-Historical-Approach.pdf

[22] CFRN 1999 as amended

[23] Amadi (n 19) at 41

According to the Chartered Institute of Taxation of Nigeria (CITN) in 2010, administration of income tax is characterized by low compliance level due to the practices of multiple taxes in Nigeria.

In addition to proper codification of tax laws in Nigeria, other ways of curbing multiple taxation are; enforcement of compliance with the Taxies and Levies (Approved List for collection) Act as amended, provision of more tax incentives and implementation of such incentives, reduction of the number of taxes, ensuring transparency, accountability and due process in tax collection, etc.

5.2. Tax Evasion and Tax Avoidance:

Tax evasion according to Abdulrazaq is "a contravention of the tax laws, whereby a taxable individual or company neglects to pay tax due, or reduces the tax liability by making fraudulent or untrue claims on the income tax form"[24].Tax evasion has been interpreted to mean an illegal practice where a person, organization or corporation deliberately evades paying their authentic tax liability.[25]

Tax avoidance, on the other hand; "arises in a situation where the taxpayer arranges his financial affairs in a way that would make him pay the least possible amount of tax without infringing the legal rules". [26] Tax Avoidance is not illegal, it is often done by witty taxable persons or entities who minimize taxable incomes by taking advantage of the loopholes in the tax laws. It is the lawful means of altering a person's taxable income in order to reduce the amount of tax owed. [27]It is usually achieved by claiming tax deductions and credit. Tax avoidance involves sound financial planning techniques that will eventually lead to maximum exemption from Tax, for example Capital Gain Tax. It has been defined as "a lawful trick towards the circumvention of tax payment."[28]

Tax evasion and avoidance have become a major hindrance to revenue development and a major issue to be addressed in the area of taxation.

Steps Taken by the Government to Tackle Tax Evasion and Tax Avoidance:

The Federal government has over the years taken remarkable steps to curb tax evasion and avoidance by promulgating new laws and amending existing ones to

[24] Abdulrazaq M.T, *Tax Offences and Penalties.* (1993) 37

[25] Adeiye Adenekan, "Tax Avoidance and Evasion in Nigeria" (2020) Michaelmas Chambers https://www.michaelmaschambers.com/insight-page.php?i=14&a=tax-avoidance-and-evasion-in-nigeria#:~:text=Tax%20Avoidance%20is%20not%20illegal,the%20amount%20of%20tax%20owed.

[26] Onyeka V.N. and Nwakwo C. "The Effect of Tax Evasion and Avoidance on Nigeria's Economic Growth." (2016)8 European Journal of Business Management.

[27] (n 25)

[28] ibid

checkmate these negative practices. Some of these steps are highlighted in the following:

1. The Finance Act of 2019 in section 28 amended section 49 of the Personal Income Tax Act, by inserting a new subsection 1 thus:

   > *A person engaged in banking shall require that a person intending to open a bank account for the purposes of the person's business operations shall provide a tax identification number as a precondition for opening or continue operating of such bank account*

   The Tax Identification Number is a number issued to individuals and organizations to track tax obligations and payments they make to the Government. Providing a Tax Identification Number will enable the Federal Inland Revenue Service track taxable persons who are in the habit of evading tax.[29]

2. The provisions of Sections 33(4) (5) and (6) of the Personal Income Tax Act, granting children and dependent relatives allowance have been deleted under the Finance Act 2019. This may not be favourable to persons who fraudulently increase the number of children they have or old parents under their care for the purpose of enjoying tax deductions.[30]

3. Section 8(1) of the Value Added Tax Act provides that a taxable person under the Act should register with the Federal Inland Revenue Service within six months of the commencement of the Act or six months of the commencement of business by the person whichever is earlier.

   Section 8(2) provides punishment for persons who fail to register with the board within the time specified to the tune of Fifty thousand Naira for the first month within which the failure occurs, and Twenty-Five Thousand Naira for each subsequent month in which the failure continues. (Substitution of fine amount was made by the Finance Act of 2019).

4. The Finance Act of 2020, amended the interpretation section, 46 of the Value Added Tax Act by substituting the definition of goods and services. Services were defined to include:

[29] (n 25)
[30] Ibid

> *Any intangible or incorporeal (product, asset or property) over which a person has ownership or rights, or from which he derives benefits, and which can be transferred from one person to another, excluding interest in land and building, money or security.*

Therefore, incorporeal properties such as Rights, Patents, Trademarks, Royalty, etc. are now subject to Value Added Tax. The old Value Added Tax Act did not define goods. Hence, tax payers declared that incorporeal property was not subject to VAT on the grounds that such properties did not constitute 'goods & services' as provided by the erstwhile provisions of the VAT Act.[31] The provision of the law is now express, hence tax payers can no longer avoid the incidence of tax on these services.

5.3. Tax Incentives and Exemptions:

Tax exemptions and incentives are measures taken by the government to encourage industries to improve their level of productivity as well as encourage voluntary compliance with tax legislations.

It is a deliberate reduction in (or total exemption of) tax liability granted in order to encourage a particular economic sector to act in some desirable way (e.g., to invest more, produce more, employ more, pollute less etc.)[32]. Government grants tax incentives ranging from personal incentives to corporate tax incentives, investment tax reliefs, pioneer industries tax, etc.[33]

Tax incentives promote foreign and domestic investments, and overall promotes economic growth.

Nigeria has various tax incentives that are intended to encourage investment in key sectors of the economy, some of which are:

1. **Tax holidays**:

   Pioneer companies investing in specified industrial activities may, on application, be granted a tax holiday for three years initially, which may be extended for up to two years upon satisfaction of specified conditions. Examples of economic activities that may be granted a tax holiday include glass and glassware manufacturing, manufacturing of fertilizers, and steel

[31] (n 25)

[32] Kabiel B.D. "Corporate Tax Incentives in Nigeria", (2011) The Asian Economic Review. https://www.researchgate.net/publication/265790426_Corporate_Tax_Incentives_in_Nigeria

[33] Olookoba (n 4) at 163

manufacturing.[34] A new company that engages in the mining of solid minerals is exempt from tax for the first three years of its operation. Small or medium sized companies engaged in primary agricultural production are eligible for an initial tax-free period of four years, which may be extended for an additional two-year period, subject to satisfactory performance.[35]

2. **Rural location incentives:**
   Certain incentives are available to companies located in rural areas. The incentives take the form of tax reductions at graduated rates for enterprises located at least 20 kilometers from available electricity, water, and tarred roads.

3. **Export incentives:**
   Export processing zones (EPZs) and free trade zones (FTZs) are locations within Nigeria designated by the government as free areas where export trade activities can be carried on free of tax and foreign exchange restrictions.[36]

4. **Gas utilization incentives:**
   Companies engaged in gas utilization are entitled to:
   - A tax-free period for up to five years.
   - Accelerated capital allowance after the tax-free period.
   - Tax-free dividends during the tax-free period.
   - Investors in gas pipelines can obtain an additional tax-free period of five years.[37]

5. **Tourism incentives:**
   Twenty- five percent of the income derived from tourism by hotels in convertible currencies is exempt from tax if such income is put in a reserve fund to be utilized within five years for expansion or construction of new hotels and other facilities for tourism development.[38]

[34] PWC, " Nigeria Corporate - Tax credits and incentives" (2023) https://taxsummaries.pwc.com/nigeria/corporate/tax-credits-and-incentives
[35]ibid
[36] Ibid
[37] Ibid
[38](n 34)

6.0. Development of the Law of Taxation in Recent Times:

6.1. The Finance Act, 2023:

On the 28th of May 2023, the former President Muhammadu Buhari, GCFR, signed the Finance Bill, of 2023 into law as Finance Act, 2023.[39] The act introduced significant changes to the provisions of the following legislations regulating taxation:

- Capital Gains Tax Act, Cap C1 LFN 2004 (as amended).
- Companies Income Tax Act Cap C21, LFN 2004 (as amended)
- Tertiary Education Trust Fund (Establishment, Etc) Act, 2011
- Customs, Excise Tariff, Etc. (Consolidation) Act
- Personal Income Tax Act, Cap P8 LFN 2004 as amended in 2011
- Petroleum Profit Tax Act, Cap 354 LFN, 1990
- Value Added Tax Act, Cap V1, LFN 2004
- Stamp Duties Act, Cap 411 LFN, 1990

Some of the key highlights of the Finance Act of 2023 are:

1. It increased tertiary education tax from 2.5 percent to 3 percent
2. Capital losses will now be deductible against chargeable gains
3. The Finance Act 2023 recognizes the importance of digital economy.
4. The Finance Act 2023 includes revised VAT filing deadline for FIRS appointed agents
5. The investment Allowance on purchase of plant and machinery has been removed.[40]

This act aims to strike a balance between fiscal stability and economic growth while addressing emerging challenges in the digital economy, sustainable economic growth and improving the tax administration.[41]

6.2. The Fiscal Policy Measures 2023

The federal government approved the Fiscal Policy Measures 2023 to replace the Fiscal Policy Measures 2022.[42]

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[39] Wale Ajayi,"Highlights of Finance Act, 2023" (Tax Alert, KPMG) No 6.1 2023 https://kpmg.com/ng/en/home/insight/2023/06/tax-alert.html?utm_source=mondaq&utm_medium+syndication&utm_term+Tax&utm_content+articleoriginal&utm_campaign+article

[40] Ernst & Young LLP, "Nigeria/Highlights of Finance Act 2023" (2023) Tax News Update <https://www.ey.com/en_gl/tax-alerts/nigeria---highlights-of-finance-act-2023>

[41] ibid

[42] PWC Tax Alert, "Highlights of Nigeria's 2023 Fiscal Policy Measures" (2023) https://pwcnigeria.typepad.com/files/pwc-tax-alert---highlights-of-nigerias-2023-fiscal-policy-measures-2.pdf

Some of the major highlights of the FPM 2023 are:

1. Supplementary Protection Measures (SPM) for the implementation of the ECOWAS Common External Tarrif (CET) 2022 to 2026
2. Import Prohibition List (Trade), applicable only to certain goods originating from non- ECOWAS member states
3. Changes in excise duty rates on certain items such as tobacco and alcoholic beverages
4. Introduction of Green Taxes on single use plastics and certain categories of vehicles
5. Reduced import duties rates on certain manufacturing items available to verifiable manufacturers[43]

Conclusion

The pivotal role taxation plays in revenue generation in any government can not be undermined. Taxes whether direct or indirect are undoubtably a major source of government's income. Good citizens should pay their taxes as and when due. Agencies should be set up to check the menace of double and multiple taxation. Also, it is highly recommended that the entire taxation process in Nigeria, from the stage of the registration of tax payers to the issuance of tax clearance certificate be digitized for ease of administration.

[43] ibid