

**ANALYSIS OF THE APPLICATION OF TAX POLICIES ON  
REVENUE GENERATION IN NIGERIA**

**BY**

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## DECLARATION

I hereby declare that this dissertation titled “*Analysis of the Application of Tax Policies on Revenue Generation in Nigeria*” has been produced by me under the supervision of Prof. D.C John and Prof.I. F. Akande.It has not been presented on any previous application for higher degree. All quotations are indicated in the footnotes and sources of information are duly acknowledged by means of list of references.

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## CERTIFICATION

This dissertation titled: “*Analysis of the Application of Tax Policies on Revenue Generation in Nigeria*” by Abdulazeez Muhammad, ISMAIL, meets the regulations governing the award of Master of Laws Degree of the Ahmadu Bello University Zaria and is approved for its contributions to knowledge and literary presentation.

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## **DEDICATION**

This work is dedicated to my parents, for availing me the bliss of education.

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## **LIST OF ABBREVIATIONS**

BAC -	Board of Appeal Commission
BIR -	Board of Internal Revenue
CGTA-	Capital Gains Tax Act
CITA -	Companies Income Tax Act
FBIR -	Federal Board of Inland Revenue
FCT -	Federal Capital Territory
FIRS -	Federal Inland Revenue Service
FMF -	Federal Ministry of Finance
JTB -	Joint Tax Board
NCRA -	National Customs and Revenue Agency
NCS -	National Customs Service
NNPC -	Nigerian National Petroleum Corporation
NTP -	National Tax Policy
PPTA -	Petroleum Profit Tax Act
PITA -	Personal Income Tax Act
SBIR -	State Board of Internal Revenue
SDA -	Stamp Duty Act

SG -	Study Group
SIRS -	State Internal Revenue Service
TAT -	Tax Appeal Tribunal
VAT -	Value Added Tax
VATB -	Value Added Tax Board
VATT -	Value Added Tax Tribunal

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## ABSTRACT

*This work critically examines the problems in the application of tax policies that invariably affect revenue generation in Nigeria. Tax policies are not effective enough to generate revenue. The study tried to examine how tax policies application can help generate revenue in the Nigerian national tax policy administration. From the inception of modern taxation in Nigeria in the first decade of the 20th century the problem of poor tax administration has been the cankerworms that militate against an optimum revenue generation which affect negatively the government ability to render essential services to the citizenry. With the above problems in mind, various reforms were initiated aimed at improving the standard of tax administration in order to ensure an improved revenue generation by the government. The first of such reform were the Native Revenue Proclamation of 1906 which systematized all pre-colonial taxes that existed in Northern Nigeria which was re-issued in 1914 and extended to the West and East in 1918 and 1927 respectively. Other reforms followed in 1943, 1958 (Income Tax Ordinance of 1958), 1961(Companies Income Tax Act No 22 of 1961) and 1993 (Finance MiscellaneousTaxation) Provision Act of 1993).The above reforms all aimed at improving the standard of tax administration in Nigeria. Major reform in the history of tax administration however came in 2007 with the granting of administrative and financial autonomy to the Federal Inland Revenue Service and establishment of more effective disputes settlement mechanisms within the system by the Federal Inland Revenue Service (Establishment) Act. 2007 (FIRS Act). The passage of FIRS Act, was an actualization of a longtime reform started a century and a year ago precisely in 1906. For the first time in the history of tax administration in Nigeria the FIRS by the 2007 Act were empowered with various administrative and enforcement mechanisms that allow a taxpayer to assess himself for tax and empowered the FIRS to enforce payment internally through various mechanisms such as Distrain, Surcharge, Substitution, and Surtax.Hence, the aim and objectives of this work is to examine the application of policies that might help in the growth and development of revenue in Nigeria through taxation.In this vain, the doctrinal method of research is applied by considering the primary sources such as the tax statutes and the secondary sources to wit national tax policy documents to achieve the desired goals of this study. It was in the light of these reforms that this researcher carried out a study of the new reform through the FIRS Act, and analyses the various administrative and enforcement mechanisms provided by the new Act (FIRS Act) and considered their efficiency and effectiveness in improving the standard of tax administration in Nigeria. The study however found that the Act contained an unnecessary and controversial policy of centralization of tax administration, a possible reduction of the powers of various States Board of Internal Revenue and other gaps in the provisions of the Act.The study found out that the weak application and enforcement of the national tax policies affects revenue generation in Nigeria. It is therefore recommended that strict application and enforcement of the tax policieswill enhance revenue generation. It is also recommended that there should be amendments of some provisions of the taxing Acts that will give more room in respect to the good application of Nigerian tax policies.*

## CHAPTER ONE

### GENERAL INTRODUCTION

#### 1.1 Background to the Study

The Nigerian tax system is centered on three major pivots which are tax policy; tax administration; and tax legislation. A tax policy is a general framework that provides guidelines for the operations of the tax system.<sup>1</sup> The negative variances or shortfalls between the potential tax collection levels and the actual tax revenue generation in the Nigerian tax system were attributed in large part to the non-existence of a "formal, well-articulated and documented National Tax Policy which provides a set of fundamental principles which all taxes in Nigeria should comply with at all times".<sup>2</sup> Instead of a properly documented tax, the fiscal objectives of successive administrations have, at various times, dictated the operations of the Nigerian tax system.

Considering due diligence to the current Nigerian Tax legislation and National Tax policy as it relates to revenue generation issues under the international tax regime, it is worthwhile to look at the international tax regime. This was first developed in the 1920s, when the League of Nations first undertook to study ways to avoid international double taxation, and has been embodied both in the model tax treaties developed by the Organization for Economic Co-operation and Development (OECD) and the United Nations and in the multitude of bilateral tax treaties that are based on those models<sup>3</sup>. The existence of the regime shows that in spite of the

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<sup>1</sup>Dike, M. A. C, (2010) *Tax Policy and Legislation: Tax Policies and Laws Governing FIRS Operations*. Presentation at the May 3<sup>rd</sup>, 2010 Induction Programme for New FIRS Staff.

<sup>2</sup>Ibid.

<sup>3</sup>Organization for Economic Co-operation and Development, Model Tax Convention on Income and Capital, 1 Tax Treaties (CCH) P 191 (Sept. 1, 1992); United Nations Department of International Economic & Social Affairs, United Nations Model Double Taxation Convention between Developed and Developing Countries, U.N. Doc. ST/ESA/102.

sovereign rights of each State to determine its own taxation policies, a universally acceptable regime that will be followed by majority of the countries can be arrived at.

For instance, issues of transfer pricing, though this do not fall within the scope of this work, is a topical issue in international taxation. The interest in the issue goes beyond taxation and strategic business planning of the Multinational Enterprises (MNE) to politics. The interest of the tax officer lies in ensuring that the transfer prices for inter group transactions within his jurisdiction reflect the open market situation and where the transfer prices and the open market prices diverge, he has to make appropriate adjustments. The MNEs, as taxpayers, see transfer pricing as the method for measuring the transfers among members within the group. Governments are interested in transfer pricing because of its revenue potentials and its possibility of providing avenues for tax fraud. Principally, the political interest lies in the fact that what a country loses through the shift of profits is a gain to another country to which the profit is shifted<sup>4</sup>. No wonder then that disputes easily arise between parties.

The breakdown of negotiations can lead to costly litigation for the taxpayer in both jurisdictions. Further, it is likely that the taxpayer will have lower after-tax profits than it should, either by paying extra tax or by incurring significant and unnecessary expenses. While no one is arguing that most important business decisions are driven solely by tax considerations, the breakdown in the amicable resolution of a tax dispute can have significant impact on the bottom line. Such negative implications will lead a business to consider seriously where it carries out overseas functions; if those functions are mobile, those decisions will often be tax-driven. If a country becomes known as one that historically has refused to compromise in tax dispute negotiations, even the hint that a MNE will lose any of the tax benefits of doing business in that

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<sup>4</sup>Arogundade, J. A. (2005) *Nigerian Income Tax and its International Dimension*. Spectrum Books Ltd., Ibadan. 1<sup>st</sup> Ed. p.474.



country may lead it to conduct its business elsewhere. Conversely, those countries known to act more reasonably in negotiations may be able to attract more business, ultimately mitigating any tax base erosion they may encounter by capitulating in individual cases.

Thus, the weight taxation issues raised above and how it have on international relations, this research work shall endeavor a discourse of the international tax regime as presently constituted before zeroing in on Nigerian tax legislation, tax policy and revenue generation.

## **1.2 Statement of the Research Problem**

Over the years, revenue drive from taxes has been very low and no physical development actually took place, hence, the impact of taxation is not been felt. The existence of large body of legislation, lack of understanding by taxpayer to pay tax, inept tax administrative machineries, fraudulent activities of tax administrators, inadequate tax policies implementation are some of the problem of this study.

Thus, this research work attempts to find answers to the following questions:

- i. Is the administration of Nigerian tax laws and National tax Policies effective to generate the needed revenue to the country?
- ii. If yes, then what is the nature of these tax laws and thenational tax policy in relation to the general administration of the tax regime considering the experience of the world today in the wake of globalization?
- iii. How can the Nigerian national tax policy address the issues raised above?

### **1.3 Aim and Objectives of the Research**

The aim/of this project is to analyse the effectiveness of the administration of tax laws and policy for revenue generation in Nigeria. The following are the objectives:

- i. To examine the administration of Nigerian tax laws and national tax policy in relation to revenue generation.
- ii. To assess the nature of the Nigerian tax laws and tax policy administration in Nigeria and how it can generate revenue.
- iii. To recommend the best approach to enacting tax laws and policies that can enhance revenue generation in Nigeria.

### **1.4 Scope and Limitations of the Research**

The scope of this research work shall cover Nigeria and examples are drawn from international tax regime. On the national scene, the Nigerian tax legislation, national tax policy will be examined. Nigeria is unique as a developing country that is always attracting foreign investors (mostly from developed nations) to come and do business within her shores. Different packages or incentives by way of tax waiver for example, are guaranteed these investors if they heed the call. For these reasons, Nigeria tax statutes and cases shall be used in this research work.

Many Multination Enterprises (MNEs) cannot boast of entirely belonging to a single nation rather they have international characteristics. This is because stakeholders in these enterprises are drawn from various countries and the business concern of the MNEs also stretches across different national borders each with divergent domestic tax laws, policy and governments. This brings the scope of the study to fall within the examination of Nigerian tax laws, national tax

policy so as to ensure uniformity with the international standard on tax regimes within the scope and limitations of this study.

### **1.5 Justification of the Research**

Since Nigeria has a new tax laws and national tax policy meant to ensure revenue generation, this research work is significant to developing nations like Nigeria who open their borders to MNEs and grapple with how best to retain a fair share of the profits from the investments. It is important to the developed nations because many of the investors who are stakeholders in the MNEs are from developed countries and these countries have an important role to play in ensuring that double taxation is prevented.

This work is justified since its essence is to study our tax laws and national tax policy alongside the revenue generation issues that set out the modes by which conflicts arising from it can either be settled without the tax practitioners or administrators having to search through so many statutes, international and domestic journals, conventions and regulations to determine what dispute resolution mechanism to best apply. This research would be useful to scholars of international economic law and international taxation, taxation students, tax administrators and anyone who has a taste for knowledge on revenue generation through taxation generally.

### **1.6 Research Methodology**

The doctrinal method of research is employed in this study. In this vain the primary sources include tax laws, statutes, tax treaties, conventions, protocols and tax cases are analysed. The secondary sources include textbooks on law of taxation, law journals, periodicals, seminar papers and articles, newspapers, other research works, example thesis, and the internet materials are examined.

## 1.7 Literature Review

There are some legal academic scholars on taxation laws, policy and revenue development. This work will critically evaluate some of these academic literatures written by authors on the subject matter with a view to show the relevance of this research work in its contribution to knowledge on the study.

One of such persons is Arogundade<sup>5</sup>, in his book: “*Nigerian Income Tax and its International Dimension*”. He explained the Nigerian income tax with international taxation. The book deals with international tax concepts and the Nigerian income tax principles; principle of law and practice of chargeable income determination in Nigeria; assessment determination and collection procedure in Nigeria and principle of double taxation avoidance.

For this research purpose, the book could have been useful when discussing international taxation and revenue generation but, he did not consider the Nigerian national tax policy. This is because, the learned author only dealt on transfer pricing and zeroed it on the practice in Nigeria. The learned author did not discuss the dispute resolution process as relates to tax laws and policy which this study shall focus on.

Likewise, Arcotia<sup>6</sup>, in his article titled: “*Introduction to Transfer Pricing*” that captures the legal framework of transfer pricing, process for setting and reviewing transfer prices, and transfer pricing adjustments and administrative approaches to avoiding and resolving transfer pricing disputes.

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<sup>5</sup>Arogundade, J.A. (2005) *Nigerian Income Tax and its International Dimension*, Spectrum Books Ltd., Ibadan. 1<sup>st</sup> Edition p.56

<sup>6</sup>Arcotia, H. et al (2010) *Introduction to Transfer Pricing*, IBFD International Tax Academy, [www.ibfd.org](http://www.ibfd.org), accessed on 5th June 2017 @ 2.12pm

However, the learned authors did not discuss Nigerian national tax policy and international tax regime. The issues treated are at variance with the subject matter on this study. Neither did the authors aver their minds to the effect tax laws and policies on revenue generation in Nigeria. This research work shall capture these important aspects within its ambit.

Avi-Yonah<sup>7</sup>, article: “*International Tax as International law: An analysis of the International Tax Regime*” the learned author in this article argues that a coherent international tax regime exists, embodied in both the tax treaty network and in domestic laws and that it forms a significant part of international law (both treaty-based and customary). The author suggests that the practical implication is that countries are not free to adopt any international tax rules they please, but rather operate in the context of the regime which changes in the same ways international law changes over time. Thus, unilateral action is possible, but is also restricted, and countries are generally reluctant to take unilateral actions that violate the basic norms that underlie the regime. He said nothing on Nigerian national tax policy. The learned author did not even discuss revenue generation at all and the approaches to resolving disputes arising from tax laws and policy were not discussed. This research work shall incorporate these topics left out by the learned author in the article.

Another article by Osadare,<sup>8</sup> in his article titled: “*Transfer Pricing and Conflict Resolution: Issues for the Extractive Industry*.” The learned author submits that the problem of transfer pricing is so sophisticated that many government of developing nations are far from finding a solution and their developed counterparts have been placed on edge by constantly

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<sup>7</sup> Avi-Yonah, R.A. (2007) *International Tax as International law: An analysis of the International Tax Regime*, Cambridge University Press, N.Y, USA. p.19

<sup>8</sup> Osadare, B. (2011) *Transfer Pricing and Conflict Resolution: Issues for the Extractive Industry*, <http://www.google.com>. Accessed 16/05/2016 @. 2.30 pm

reviewing their laws and regulations on transfer pricing. He writes that disputes relating to transfer pricing are now increasing and examines how the resultant disputes between MNEs in the extractive industries and host governments are resolved. The paper concludes that existing regulations are not enough in most cases and as a result of the serious tax implication, more attention should be given to it. But, the learned author restricts his discuss to the extractive industries and fails to discuss the nature of Nigerian national tax policy as it affects international tax law. This study shall also focus on these areas.

Abdulrazaq,<sup>9</sup> “*Tax laws and foreign investment in Nigeria*”. He postulates that Nigerian tax statutes requires serious amendments to suit changing times. But he did not analyse the Nigerian national tax policy and transfer pricing at all.<sup>10</sup> Hence, this work is meant to cover such lacuna.

There is another book written by Umenweke,<sup>11</sup> in his work titled: *'Impact of tax statutes on investment in Nigeria'*. In this book, the writer presented a clear picture on Nigerian tax laws and its implication on foreign investment in Nigeria but said little or nothing on national tax policy.<sup>12</sup> Thus, due to the few literatures on this subject, it becomes necessary to pick a research topic from this area.

As a matter of fact, the Income Tax Management Act of 1961 had undergone several amendments and modifications before and after same was transformed into 1990 Act.<sup>13</sup> Similarly, the Federal Inland Revenue Service which is the official body responsible for the administration of corporation tax laws in Nigeria had been restructured and reorganized to catch up with some

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<sup>9</sup> Abdulrazaq, M.T., (2005) *Tax Laws and Foreign Investment in Nigeria*. Malthouse Publications LTD Lagos.pp12-16

<sup>10</sup> Ibid p 26

<sup>11</sup> Umenweke, M.N. (2008) *Impact of Tax Statutes on Investment in Nigeria*, Nolix Educational Publication LTD Enugu. pp40-56

<sup>12</sup> Ibid p 60

<sup>13</sup> Cap. P.8 LFN, 2004

modern trends in our tax system.<sup>14</sup> All these deliberations are not considered in the treatment of the topic by the learned author; and this research work shall appraise these emerging trends in line with Nigerian national tax policy.

Besides, no matter how progressive a tax system is, its objectives cannot be realized if it is not properly enforced. One conspicuous gap in most these literatures mentioned above is that they failed to treat enforcement procedures on national tax policy, transfer pricing on international tax system.

Ayua<sup>15</sup> in his book: stated that the final problem in connection with tax administration is that of enforcing payment of tax which resulted into the provision of offences and penalties in the personal income tax decree 1993 and the Companies Income Tax Act 1990.<sup>16</sup> Whereas, Ola C.O specified several areas in the Nigerian tax laws where the tax offences and penalties (civil and criminal sanctions) were provided but they tend to be ineffective like a toothless Bulldog under the current tax administration in Nigeria.<sup>17</sup>

Again, Josephhis another ardent prolific writer on the subject matter. He made several references on modern trends in relation to the general principles and international dimensions in the Nigerian income tax.<sup>18</sup> He cited specific areas in Nigerian tax administration relating to income tax default at international level and how the Nigerian tax laws could be made to address the issues squarely.<sup>19</sup>

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<sup>14</sup>Federal Inland Revenue Service(Establishment) Act, 2007

<sup>15</sup>Ayua, I.A., (1999)*The Nigerian Tax Law*,Spectrum Law Publishing Co. Ibadan, p.40

<sup>16</sup> Ibid p. 296

<sup>17</sup> Ibid

<sup>18</sup> Joseph, A.A. (2005) *Nigerian Income Tax Law and its International Dimension*, Spectrum Books Ltd. Ibadan, p77

<sup>19</sup> Ibid p90

Some additional materials on Nigerian income tax polices both at the federal, state and local government were collated and presented in a coherent whole, are provided in a special edition by the Nigerian Institute of Advanced Legal Studies Lagos under the authorship of Ajomo and Oluwole<sup>20</sup>. In this book several articles on Nigerian income tax were presented as part of the conference series of the institute. Under this, we find interesting topics such as: “the government, the constitution and the tax payers;” “An analyses of federal and state taxing powers”, “*Interpreting and understanding Nigerian tax legislation*” *Tax administration; the problems of assessment and collection,*” “*A new framework for tax administration in Nigeria*”, “State taxation; the problems of interstate commerce and trade and federal government instrumentalities” and “Nigeria; tax treatment of business concerns with international connection”; to mention but few.<sup>21</sup> One key topic of interest to this research is; ‘The socio-economic and legal foundations of tax evasion and tax avoidance’.<sup>22</sup>

Finally, the literatures substantially contains obsolete opinions which can hardly be free from faults today considering modern trends on tax laws and policies. The implication is that the books are now history which can only be seen and read for its historical utility. Therefore, there is the need for an intensely fresh research on the topic. Thus, this study considered the 2007 Nigerian tax laws and national tax policy as it affects Nigerian revenue generation under the tax system and dispute resolution on same issues. In the final analysis, useful suggestions and recommendations be provided that will contribute significant knowledge and understanding of Nigerian tax laws and National Tax Policy as it relates to revenue generation.

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<sup>20</sup> Akanle, O. (1991) *Tax Law and Tax Administration in Nigeria*, Nigerian Institute of Advanced Legal Studies, p.58

<sup>21</sup> Ibid

<sup>22</sup> Ibid



## **1.8 Organizational Layout**

The research is divided into five chapters. The first chapter introduces the research generally, stating the problems, scope, aim and objectives, and methodology. It also reviews some of the existing literature on the subject and spells out the organizational layout.

Chapter two appraises the conceptual clarification of basic terms, objectives of taxation, raising of revenue, redistribution of income and wealth, economic and price stability, economic growth and development and characteristics of good tax system.

Chapter three examines national tax policy in Nigeria. After the introduction, the objectives of Nigerian tax policies, principles of the national tax policies, categories and roles of stakeholders under the national tax policy, key economic thrusts of the national tax policy, implementation of the national tax policy, tax appeal tribunal and jurisdictional conflict between the Federal High Court and Tax Appeal Tribunal are discussed.

Chapter four discusses the administration of tax laws, policies and revenue generation in Nigeria. This research concludes with the findings and recommendations discussed in chapter five.

## **CHAPTER TWO**

### **CONCEPTUAL DISCOURSE OF KEY TERMS**

#### **2.1 Introduction**

This chapter highlights and define some basic terms relevant to this research, tax, revenue, and taxation are defined, it also contained a discussion on objectives of taxation, raising of revenue, redistribution of income and wealth, economic and price stability, economic growth and development and also the characteristics of good tax system are incorporated in this chapter.

#### **2.2 Conceptual Discourse**

There are some basic terms used in this work that demand understanding on the subject matter which is deemed necessary to be explained in clear and plain language for easy comprehension as discussed below.

##### **(a) Definition of Tax**

Tax is one of those concepts that lack precise definition due to the difficulty encountered in an attempt to define it. This is particularly so because none of the Nigerian tax legislation defined what is tax. The more scholars try to define it the more confusion they create in the minds of their readers. Perhaps, it was in appreciation of this difficulty that Sir Daves stated that: “The question, what is tax is surprisingly difficult to answer. *Even the well-known reply of the man who was asked to define Elephant does not work very well here the man said I cannot define Elephant but I know one when I see one*”<sup>1</sup>.

The learned author argued that the distinction between tax properly so called and other levies similar to it in form of levies imposed by legislation in fulfillment of certain legal

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<sup>1</sup>Davies, F.R.(1988)*Introduction to Revenue Law*, Bluestone Press Limited, London, p.6

obligations such as National Insurance Contribution, Utility Bill etc is very thin and often difficult to differentiate. He therefore avoided giving any definition but tried to distinguish tax from other levies by stating a characteristic of tax as follows, he said:

Tax has three characteristics:

- i. It is a compulsory levy. This means that tax is a mandatory levy exacted on any taxpayer as provided by the tax statute.<sup>2</sup>
- ii. Imposed by an organ of government. That is, for the tax to be imposed, it must have been legislated upon by an Act of the National Assembly in order to give it the force of law.<sup>3</sup>
- iii. For public purpose. Meaning that, the imposed tax is to generate revenue for the upkeep of government and its citizenry.<sup>4</sup>

Tiley<sup>5</sup> defined tax as “a compulsory levy/contribution to the support of government levied on persons, property, income, commodity and transaction at a fix rate mostly proportionate to the amount on which the contribution is levied”.

The above definition when critically analyzed will reveal that it tell us very little and contained so many short comings and only succeed in adding more confusion to its readers, for instance.

- i. It contained a limited view of purpose of tax. That is, it provides only for “support of government”.

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<sup>2</sup> Mathew vs. Chicory Marketing Board (1989) 60 C.L.R 263 AT 276

<sup>3</sup> Supra at p.13

<sup>4</sup> Supra at p.13

<sup>5</sup> John, T. (1978) *Revenue Law*, Butterworth's, London, p. 3

- ii. It contained unnecessary description of tax base i.e. persons, income, commodities, properties and transaction; and
- iii. It concentrates more on proportionate as opposed to progressive tax.

The above short-comings when considered revealed that the definition tell us very little and succeeded in adding to the confusion in our mind. Court also in the course of its judicial functions has attempted to bridge the gap created by legislation in giving a working definition of tax.

An Australian Court <sup>6</sup> defined tax as a “compulsory exaction of money by a public authority for public purpose”. Also in the American case of **United State vs. Butler**,<sup>7</sup> Robert J. had this to say “A tax, in the general understanding of the terms and as used in the Constitution signifies an exaction for support of the government”.

In Nigeria, tax is defined as a compulsory monetary charge imposed by government on persons, entities, transactions, or properties to yield public revenue, embracing all governmental impositions on the persons, property, privileges, occupations, and enjoyment of the people, and includes duties, levies and imposts, but excluding penalties, administrative fees and direct user charges.<sup>8</sup>

It is seen from the preceding discussions that tax as a concept is devoid of any precise definition due to its similarities with other levies like, water levy and fine which also takes the form of revenue to the government. It is therefore submitted that the best approach to

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<sup>6</sup>Mathew vs. Chicory Marketing Board (v) (1989) 60 C.L.R. 263 at 276

<sup>7</sup>Quoted in Re-Myhinger, D.C. Tax 31 Supp. 977, 978, 979.6

<sup>8</sup> Ade Ipaye, (2010) Multiple Taxation: Lagos Government Assessment and Response, Being an address to European Union (EU) Business Meeting in Lagos.

understanding whether a levy is a tax or not is to consider the wordings of the legislation concern with reference to the:

- i. Basis of its imposition,
- ii. Its purpose,
- iii. To whom it is imposed,
- iv. Who collect the levy,
- v. And what is the consequence of nonpayment?<sup>9</sup>

**(b) Revenue**

Revenue refers to the general income accruing to the government through various sources of which tax is only one. Things like royalty from mining license, fine, and payment for services rendered by government to the public are all referred to as government revenue. While tax is a source of government revenue, revenue on the other hand encompasses all sources of government's income. The use of the two terms interchangeable is therefore erroneous<sup>10</sup>.

**(c) Taxation**

Taxation refers to the process of collecting taxes within a particular location. It involves assessment and collection and in the event of failure to pay, taking the appropriate step to enforce payment is referred to as taxation.<sup>11</sup>

**(d) Tax Base**

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<sup>9</sup>Where it revealed that the levy is imposed by a legislation meant to raise money for public purpose, payable by person earning within the jurisdiction and to be collected by an office meant for revenue collection and there is penalty in the event of nonpayment then that levy is said to be a tax

<sup>10</sup>AlhajiKabir Muhammad Mashi (2014). *Tax Administration in Nigeria*, Thisday, News, pp.43 19<sup>th</sup> August 2014

<sup>11</sup> Ibid p.34

To tax experts, tax base refers to the basis on which tax is levied or imposed. In Nigeria income is the main tax base i.e. under Nigeria tax system a tax payer's income is used as the basis of their tax liability<sup>12</sup>.

Capital is another base upon which tax can be levied but mostly in developed countries. However, some scholars had argued that the imposition of tax on capital gain<sup>13</sup> in Nigeria amounts to adding capital as the country's tax base. This argument is however misleading as what is taxed in Capital Gains Tax Act is the gain accruing to the taxpayer as a profit upon disposal and not on the capital itself. Levying tax on capital as against income is regarded as absurd and anti-social to most experts in developing countries<sup>14</sup>. It is important to point that, the development seen recently in Nigeria with an increase in spending on luxuries in most urban cities, expenditure has become another viable base of levying tax which the country can explore to boost its revenue base.

#### **(e) National Tax Policy**

The Nigerian Tax Policy is documented general framework that provides guidelines for the operation of tax system. It came about as a result of the need to bridge the negative variance between the potential tax collection level and the actual revenue generation which were attributed to the non-existence of an articulated National Tax Policy. To reverse this trend, a presidential committee was inaugurated in July 2005 to drive the recommendations of the study and working groups on the development of the National Tax Policy (NTP) the committee appointed a technical subcommittee on the National Tax Policy headed by the executive chairman of the Federal Inland Revenue Service and charge it with the responsibility of developing the background policy

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<sup>12</sup> Ayua, I.A. (1996) *Nigeria Tax Law*, Spectrum, Ibadan, p.13

<sup>13</sup> Capital Gain Tax Act Cap 42 LFN, 2004

<sup>14</sup> Ayua. I.A. op. cit. p.14

document. In 2010, the final draft of the National Tax Policy was submitted to the Federal Executive Council. While the draft incorporated contributions from various stakeholders, the fundamentals of the draft were based on the harmonized report of the Study Group and Working Groups. The Federal Executive Council adopted the National Tax Policy on 20<sup>th</sup> January 2010. The key economic thrust of the National Tax Policy as a tool for national and economic development includes:

- a) Stimulating the growth of Nigeria by using tax revenue to develop base infrastructure such as power, road and transportation.
- b) Direct stimulation of certain sectors of the economy which are identified to be important for the creation of employment opportunities for Nigeria.
- c) Regulation and strengthening financial and economic structures and correct market imbalances and economic distortion.
- d) Income redistribution such that tax earned from high income earners is used for the provision of infrastructures' for the lowest income earners.
- e) Stimulating domestic and foreign investment.

Talking about reforms of Nigerian tax system therefore is incomplete without mentioning the National Tax Policy this is because, even the creation of Federal Inland Revenue Service as an autonomous body was a product of the recommendation of a Study Group<sup>15</sup> inaugurated to review the Nigeria tax system which recommendation were partly codified and adopted as National Tax

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<sup>15</sup>The Study Group (SG) on the Review of the Nigerian tax System was a committee setup by Federal Government in 1991 headed by Prof. Emmanuel Edozien to review the Nigerian tax system in Federal and State taxes and another one constituted in 2002 headed by Prof. Dotun Philips with 20 members and a term of reference wider than the 1991 group. It was the recommendations of these two groups and the report of the Working Group constituted in 2004 headed by Mr. SeyiBickersmith that form the basis of Nigerian Tax Policy

Policy (NTP). The National Tax Policy was drafted in 7 chapters; it was intended to be used by tax policy makers to revamp the country's level of tax generation through the following.

- a. Encouragement of voluntary compliance through improved service delivery and enforcement.
- b. Focus on policy implementation to make compliance and enforcement easy.
- c. Propose and ensure amendment of tax laws to remove an obsolete provision.
- d. Create and restrict tax incentive to industries where they will be most beneficial to the economy.
- e. Create an organizational structures and administrative machineries that is tax payers focused and that regards taxation as a business where the customer is a king.

## **2.3 Objectives of Taxation**

Traditionally, the basic objective of taxation is simply to raise sufficient revenue to satisfy the need of government i.e. to meet its recurrent expenditure. Today however, we have travelled a long way from that as taxation now has multifarious dimension. Today, taxation has an important role to play especially in many governments economic and social policies. The following objectives will be considered.

### **2.3.1 Raising of Revenue**

The most classical function of taxation is to raise revenue to cater for government expenditures in this sense; tax is to government what income is to business and individual. Income from taxation is required by government to meet its expenditures. Usually government raises fund from tax for two reasons:



- a. Provision of goods and services to public which free market cannot provide such as defense, law and order, security.
- b. Provision of goods and services which the government feels are better provided by itself such as health and education.

In the face of the present economic crisis in Nigeria as manifested by high level degree of unemployment and dearth of social amenities this objective is of tremendous importance in overcoming these challenges. The government must focus its attention at raising sufficient amount of revenue through improved administrative machineries to full resources sufficient to create job and provide social amenities to the populace.

### **2.3.2 Redistribution of Income and Wealth**

A progressive tax will adjust the size of payment to an individual tax payer's capacity to pay. What this means is that, a tax system should exact a greater proportion of tax from those who are well off. In modern time, great emphasis has come to be placed on the objective of redistribution of wealth. The reason for the emphasis is that, taxation should be based on the ability of individual to pay. Secondly, it reduces the inequality between rich and the poor by taxing the rich higher to support the poor. The aim of this is to provide an egalitarian society and raise the standard of living of the poor.

### **2.3.3 Economic and Price Stability**

One of the most fundamental reasons why government taxes its citizens is to provide reasonable price stability within the nation by checking the amount of liquidity in circulation. Excess amount of money in circulation increases the purchasing power of individuals and the

more people purchase products or services the higher the price of that goods or services, hence inflation occurs. The basic function of taxation here is to reduce private expenditure by collecting part of individual income as tax thereby allows government to spend without causing inflation. It could therefore be safely stated that taxation is basically a deflationary measure<sup>16</sup>.

### **2.3.4 Economic Growth and Development**

It is the aim of every government to ensure a satisfactory rate of economic growth within the economy. Government should always be determined to achieve an optimum utilization of all resources of the country through proper utilization. Economic growth and development are geared toward raising the standard of living of the masses of the country through improvement of their economic and social condition. Taxation should be tailored at ensuring reduction in consumption and encourage saving for private investment which will on the long-run brings about general growth and development. For example, if a tax payer who has saved his money wishes to invest the money saved in building house, he will certainly need an architect, mason and carpenter thereby creating employment and help in growing the economy.

## **2.4 Characteristic of Good Tax System**

Some of the characteristics of a good tax system can be examined thus;

### **2.4.1 Adam Smith Cannon perspective**

Some five hundred and fifty years ago, Adam Smith in his known publication “Wealth of Nation” set out certain cannon of taxation which though it has been elaborated but are still

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<sup>16</sup>Ibid

recognized and used as a criteria by economist and tax experts in judging the efficiency of tax system<sup>17</sup>. These cannon are:

- i. **Equity** – Equity is traditionally divided into two. Horizontal and Vertical equity.

By horizontal equity, it means those with same income should pay an equal amount as a tax and vertical equity means that those with different income should pay different amount of tax. The introduction of equity into the tax system helps to evoke cooperation from taxpayers.

It is important to state here that the provision in the Sixth Schedule to the Personal Income Tax Act, (PITA) was drafted to satisfy this principle. Under this Schedule, the percentage charged as a Personal Income Tax progresses according to the amount of the taxpayer's income.

- ii. **Neutrality** - A tax is said to be neutral if it avoids distortion of the market forces, in other words, tax shall not be selective on a particular product or discriminate between different activities in the economy as that will raise the price of the product concerned and encourage taxpayers to spend money on different product, in Nigerian context however, this principle is examined or viewed with caution. This is because, experience has shown that, selective as against neutral taxation policy has been successfully used in Nigeria to restore a lost glory by way of increasing tax on some selected imported products to discourage its consumption or to reduce or completely remove tax on some locally produced products to encourage its consumption and production thereby generating internal employment.

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<sup>17</sup>John, T.(1978) *Revenue Law*, Butterworth's, London, p. 54

- iii. **Certainty** – This simply means a tax which every taxable person is bound to pay ought to be certain and not arbitrary. The scope of the tax should be clear and must also be certain the tax should be imposed with a clear picture of how much revenue will be raised. This served two important purposes; firstly, it eliminates incidences of overcharge or undercharges which results in disputes and encourages tax evasion and avoidance, and secondly it allows a taxpayer to make a proper plan knowing his level of tax liability.
- iv. **Administrative Efficiency.** Where tax administration cost exceeds the tax yield it is economically a waste to embark on it. Administrative efficiency presupposes that the cost of collecting taxes by trained tax personnel shall be far below the tax collected. The most perfect practical example of what this principle stands for is the England tax of 1975 – 76 where the cost of collecting Inland Tax was just about 1.95% of the entire tax collected<sup>18</sup>.

#### **2.4.2 Meade Committee Perspective**

Adam Smith canon of taxation has been elaborated on by the Meade Committee on the structure and reform of direct taxation in the United Kingdom. The report set out what it considered to be the characteristics of good tax system as follows:

##### **a. Incentive and Economic Efficient**

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<sup>18</sup> - Re-Myhnger D.C. Tax 31 Sup 977, 978, 979

This means a good tax system should give incentive to the peoples and gives opportunities to populace to work, save and invest in capital development. This can be achieved through a tax policy that discourages expenditure and encourages savings.

**b. Distributional Effect**

This answer the question “who should bear the burden of what tax”? That is, who will pay the revenue needed to finance public need? It involves a wise choice between two equities Horizontal and Vertical equities<sup>19</sup>. Horizontal equity means that those with equal lower income are classified and tax the same equally and those with higher income are taxed the same amount going by the dictate of which among them is more appropriate in the situation.<sup>20</sup>

**c. Simplicity**

A good tax system should be coherent, simple and straight forward. But a caveat has to be entered here because simplicity *per se* is not all that is needed for a good tax system, because a tax system or policy designed to deal with complicated issues must itself be complex but never ambiguous or incoherent. In a Federal System like Nigeria, the importance of having coherent and simple tax laws need to be stressed it is indeed desirable that the taxing powers of different tiers of government should be consistent with each other for easy administration<sup>21</sup>. This principle is in part what the FIRS Act seeks to achieve.

**d. Flexibility and Stability**

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<sup>19</sup> Ayua I.A Op.cit. 50

<sup>20</sup> Ibid p.57

<sup>21</sup> Ibid p. 53

Every tax system and taxation policy should be flexible. This is more needed especially in a federal and democratic country like Nigeria where there are always changes of government and policy. A good tax system should therefore possess the following features:

- i. It must provide room for the operation of effective incentive for private enterprises to flourish.
- ii. It must give chance for effective modification of methods of distribution of income.

Thus, from the above chapter, it is seen that the basis of understanding Nigerian tax policies is to know the basic key terms on the issues of tax nomenclature. This lays the foundation for the discussion on the Nigerian tax policies in the succeeding chapter.

## **CHAPTER THREE**

### **ANALYSIS OF THE NIGERIAN NATIONAL TAX POLICY**

#### **3.1 Introduction**

The Nigerian tax system is centered on three major pivots which are tax policy; tax administration; and tax legislation. A tax policy is a general framework that provides guidelines for the operations of the tax system.<sup>1</sup> The negative variances or shortfalls between the potential tax collection levels and the actual tax revenue generation in the Nigerian tax system were attributed in large part to the non-existence of a "formal, well-articulated and documented National Tax Policy which provides a set of fundamental principles which all taxes in Nigeria should comply with at all times".<sup>2</sup> Instead of a properly documented tax the fiscal objectives of successive administrations have, at various times, dictated the operations of the Nigerian tax system.

#### **3.2 Objectives of Nigerian Tax Policy**

Largely, the objectives of the Nigerian tax policy hinges on the institution of a low tax regime aimed at reducing the tax burdens of individuals in order to encourage savings and investment. It is also based on the encouragement and inculcation of voluntary compliance among the citizenry, as opposed to coercive methods of ensuring compliance. It stimulates tax incentives to encourage the development of certain sectors of the economy such as manufacturing, solid minerals, agriculture, oil and gas as well as to make deliberate move from income tax to consumption tax. The introduction of a self-assessment regime is meant to encourage taxpayer participation and the use of statutory mechanisms is to curb tax evasion and

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<sup>1</sup>Dike, M. A. C, (2010) *Tax Policy and Legislation: Tax Policies and Laws Governing FIRS Operations*. Presentation on May 3<sup>rd</sup>, 2010; Induction Programme for New FIRS Staff.

<sup>2</sup>Ibid. p.10

avoidance.

The 2002 Study Group on the Nigerian tax system identified the need for a National Tax Policy to redress the imbalances and shortcomings in the Nigerian tax system; a National Tax Policy hinged principally on the foundation of fostering national development. Such a policy was envisaged to:

- a. Serve as a means of attracting foreign direct investment;
- b. Consolidate several documents into a single document for easy reference;
- c. Blend various opinions on taxes of different kinds, as well as the issues surrounding those opinions; and
- d. Provide direction and focus on general tax practice.<sup>3</sup>

This work analyse theStudy Group recommendations on the National Tax Policy proposals for Nigeria and came out with the following proposition that:

- a. Tax should be regarded as a citizen's obligation to the Nigerian state for which he expects in return good governance, the provision of security, clean water and other social amenities. Tax revenue should be treated as the citizen's compulsory contribution for funding Government business. In return, it is expected that the Government shall employ funds so generated wholly and exclusively for the benefit of the citizens.
- b. Tax should be collected only by career tax administrators, who are civil servants, not ad hoc consultants or agents. Only self-assessments by tax administrators shall be allowed in Nigeria.

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<sup>3</sup>Ibid p.15



- c. Tax efforts and focus should be shifted from direct taxation to indirect taxation. This will maximize the benefits of expenditure tax, benefits such as anonymity, invisibility, voluntary compliance, lower administration costs and more guaranteed generated revenue.
- d. The number of taxes should be small in number, broad-based and yield high revenues.
- e. The machinery of tax administration should be configured to be efficient and cost effective.

All the three tiers of Government should be free to set up administrative machinery for any tax under their jurisdiction, subject to the national minimum standards.

- f. The various tiers of Government must avoid the hitherto common internal double taxation by the Federal, State and Local Governments. Double taxes on items such as property, imports, production and turnover must be done away with to reduce the tax burdens on Nigerians.
- g. In furtherance to the desire to reduce the tax burden on individual Nigerians, the National Tax policy should be geared towards a low tax regime.
- h. The National Tax Policy should minimize to the barest minimum tax exemptions, waivers, tax holidays, and tax free status, while emphasizing the need that the aforementioned are granted only after due process has been followed. This is to prevent leakages in tax revenue for the Government. As at 2003, Nigeria had about a hundred different types of incentives to both individual taxpayers and corporate taxpayers in the manufacturing, export, agricultural, petroleum and gas and solid minerals sectors.
- i. The tax policy must take into cognizance the federal nature of Nigeria, and must be based on the principles of federalism. Each federating unit of Nigeria is expected to be as autonomous as the Nigerian Constitution allows. The tax policy must recognise

that it is only fair and just that each federating unit has first and major right to revenue generated within its territory, especially for the purpose of intergovernmental redistribution of such revenue.

- j. The percentage of national income contributed by tax revenue must be determined annually and should not exceed a determined percentage of Nigeria's GDP, subject to the approval of the National Assembly.
- k. The Nigerian tax system should be fair and non-discriminatory, such that similar cases are treated similarly.
- l. The National Tax Policy should be comprehensively reviewed every ten years, with the National Assembly as the guardian of the policy.

The Presidential Technical Committee appointed a Technical Sub-Committee on the National Tax Policy headed by the Executive Chairman of the Federal Inland Revenue Service and charged it with the responsibility of developing the background policy document. The Subcommittee made sensitization visits to the six geopolitical zones of the country to seek input and opinions from various stakeholders, as well as to receive feedback, and secure trust and understanding. In 2010, the final draft of the National Tax Policy was submitted to the Federal Executive Council. While the draft incorporated input from various stakeholders, the fundamentals of the draft were based on the harmonized report of the Study Group and Working Groups which the Federal Executive Council adopted.

### **3.3 Principle of the National Tax Policy**

The National Tax Policy defines tax as "a financial charge or levy imposed upon an individual or legal entity by a State or a legal entity of the State; it is a burden laid upon

individuals or property to support government expenditure."<sup>4</sup> It goes on to state that "tax is not a voluntary payment or donation, but an enforced/compulsory contribution, exacted pursuant to legislative authority and is any contribution imposed by the government, whether under the name of duty, custom, excise, levy or other name."<sup>5</sup> The Policy further differentiates between revenue and tax. Revenue is defined as the entire amount received by the Government from sources within and outside the Government, while tax is defined as one of the several components of government revenue. Taxation is also differentiated from other sources of government revenue such as charges, fees, fines, penalty and rates. The Policy also identifies the four "R's" associated with taxation thus:<sup>6</sup>

- a. Revenue: as explained above, tax is as a source of government revenue;
- b. Redistribution: taxes are used for wealth redistribution;
- c. Re-pricing: tax is used, under the umbrella of fiscal policy, to adjust price levels of goods and services; and
- d. Representation: taxpayers are entitled to hold leaders in government accountable for taxes paid to the government.

The underlying philosophy of the National Tax Policy and the new tax system envisioned to arise from the implementation of the policy is the promotion of sustainable development, as well as healthy competition among tax and revenue authorities in Nigeria. The National Tax Policy will uphold the principles of fiscal federalism in revenue generation and expenditure at all levels of government, within the ambits of the Nigerian Constitution. In simple terms, it will resolve issues surrounding "who gets what, how it is collected, who controls what is collected and who is ultimately responsible for and accountable

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<sup>4</sup> The National Tax Policy Guidelines, (NTPG) 2019

<sup>5</sup> Ibid para. 6.1

<sup>6</sup> Ibid para. 6.2

to the taxpayers for the revenue collected and its expenditure." <sup>7</sup> The three tiers of Government have different powers spelt out in the Fourth Schedule of the 1999 Constitution of Nigeria. State Governments of the Federation, through the Houses of Assembly, can exercise the power of imposing fees, levies and rates collectable by them and the Local Governments in the respective States; this is in addition to the personal income tax they are constitutionally charged with collecting. <sup>8</sup>

The National Tax Policy also spells out the desired features which any form of tax must adhere to before it becomes an acceptable component of the Nigerian tax system.

The features are:

- a. **Simplicity, Certainty and Clarity:** The underachievement of the Nigerian tax system has been largely blamed on the seeming complexity of tax laws and the inability of the average taxpayer to understand them. Taxes must be understood by all; the relevant laws must be consistent and clear such that stakeholders must understand the basis of imposition.
- b. **Low Compliance Cost:** This places the taxpayers' interest at a high position of prominence in that taxpayers shall be accorded the entitlement of enjoying the minimum cost of compliance possible.
- c. **Low Cost of Administration:** This is in line with ensuring the efficiency of the Nigerian tax system. The National Tax Policy advocates for thorough cost-benefit analysis before taxes are imposed on Nigerians.
- d. **Fairness:** The Nigerian tax system shall seek to objectively apply horizontal and vertical equity to taxpayers. In as much as tax concessions are offered to certain

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<sup>7</sup> Ibid, para. 6.3

<sup>8</sup> Ibid, para. 6.4

sectors of the economy, the tax system will, as much as is practicable, make them general and across board.

- e. Flexibility: The Nigerian tax system will be run in a way and manner that will make it responsive to changes in the local and international environment; the introduction of new taxes and the review of existing taxes will ensure such flexibility. The process of adjustments will be designed such that there will be no difficulty in the process.
- f. Economic Efficiency: This will ensure that tax rates are not a disincentive to taxpayers to save and invest.

The National Tax Policy identifies the objectives of the Nigerian tax system as follows:

- a. The promotion of fiscal responsibility and accountability;
- b. The facilitation of economic growth and development;
- c. The provision of stable resources to the Government (which in turn uses it for the provision of public goods to the citizenry);
- d. The adjustment of income distribution inequalities;
- e. The stabilization of the Nigerian economy; and
- f. The correction of market failures and imperfections

### **3.4 Categories and Roles of Stakeholders under the National Tax Policy**

The constituents of the categories and roles of stakeholders are:

#### **i. *The Executive Arm***

The National Tax Policy states that the requisite leadership and direction required to push Nigeria's tax system and the revenue agencies (such as the FIRS) in the desired direction will be provided by the Presidency. The Presidency is also responsible for signing and implementing all regional and international tax treaties entered into by Nigeria.

At the State level, State Governors play roles akin to those played by the Presidency at the Federal level. They are expected to develop State tax policies which will be complimentary to the National Tax Policy. In addition, State Governors are expected to perform the following functions as spelt out by the National Tax Policy:<sup>9</sup>

- a. enforce Federal and State tax laws in their states;
- b. carry out general oversight functions on tax and revenue authorities at State and Local Government levels;
- c. provide guidance and direction to the State Ministries of Finance, the States' Boards of Internal Revenue and other agencies involved in tax administration in the States;
- d. ensure cooperation among the States' Boards of Internal Revenue, the Federal Inland Revenue Service, the Nigerian Customs Service and other revenue
- e. the adoption of a nationwide Taxpayer Identification Number (TIN) system, as well as information sharing and elimination of multiple taxes;
- f. Provide advice to the Federal agencies and bodies responsible for tax policy legislation and administration in Nigeria.

At the Local Government level, Local Government Chairmen as Chief Executives shoulder the responsibility of implementing and enforcing tax laws, as well as ensuring the availability of adequate and appropriate manpower for tax revenue authorities at their level of government.<sup>10</sup>

## **ii. *The National Council of States and the National Economic Council***

The National Council of States is comprised of former Presidents, Chief Justices of the Federation, serving State Governors, the President of the Senate and the Speaker of the

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<sup>9</sup> The National Tax Policy Guidelines, (NTPG) 2019

<sup>10</sup> Ibid para. 6.5

House of Representatives. Constitutionally, the National Council of States is not specifically mandated to advise the President on tax matters; however, the Constitution provides that the Council may advise the President on matters which he may so direct and tax may well be one of those matters. The National Economic Council is a creation of the Nigerian Constitution which is charged with the responsibility of offering advice to the President on issues regarding economic matters. Taxation is a component part of the economy and purview includes making input to the President on tax affairs in Nigeria.<sup>11</sup>

***iii. The Federal Executive Council, Federal Ministries of Finance, Education and Information***

As the highest decision-making body at the federal tier of government, the Federal Executive Council is charged with responsibility of approving all matters which will ensure the effective oversight of tax policy and administration in Nigeria. The National Tax Policy envisages that one of the measures by which voluntary compliance by taxpayers can be guaranteed is the full disclosure of all sources of income by the members of the Federal Executive Council; the determination of the correct taxes payable by them on those incomes; and the subsequent publication of the tax clearance certificates of members by the 30<sup>th</sup> of June of every year. The Federal Executive Council shall also ensure transparency and accountability in the utilization of tax generated and keep taxpayers informed on expenditure patterns of tax revenue on a regular basis. Furthermore, the President as Chairman of the Federal Executive Council is charged with the task of assenting to tax legislations passed by the Legislature and should be at the forefront of maintaining a cordial, respectful relationship with the judicial arm of government that does not impugn in any way the

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<sup>11</sup> Ibid para 6.7

independence, objectivity and integrity of the Judiciary.<sup>12</sup>

The Federal Ministries, Departments and Agencies of the Federation are expected to do all they can within their purview to assist in the development of the Nigerian tax system, such as cooperating with the Federal Executive Council and sharing information necessary for improved tax assessment and collection. Technology has a place of pride in the National Tax Policy in that Ministries, Departments and Agencies are required to maintain a database which makes allowance for the inclusion of the Taxpayer Identification Number of every individual, company or enterprise with which they have dealings. The National Tax Policy also advocates the use of electronic payment systems by Ministries, Departments and Agencies to directly remit taxes to the relevant accounts of Federal and States' tax authorities. Transactions entered into by the Ministries, Departments and Agencies which require Tax Clearance Certificates and requisite tax documents should be ratified only after the aforementioned tax documents have been authenticated by the relevant tax authorities. The Policy states that "tax should be a major consideration in the evaluation process of individuals and organizations such that the lack of payment of taxes is seen as an affront on government and a crime."<sup>13</sup>

The Federal Ministry of Finance is particularly important in the tax administration system in Nigeria. It is responsible for proposals for amendments of Nigerian tax laws by the National Assembly. The permission of the Federal Ministry of Finance is also necessary and must be sought by other Federal Ministries or Agencies before executing agreements, letters or any document touching on issues of fiscal policy. The Federal Inland Revenue Service supports the Federal Ministry of Finance on tax policy issues, and vice versa.

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<sup>12</sup> Ibid para. 6.8

<sup>13</sup> Ibid para. 6.9



The Federal Ministries of Education and Information are expected to also provide support to the Federal Ministry of Finance, especially in the areas of taxpayer education and public enlightenment. The Federal Ministry of Education is expected to incorporate tax education in the curricula of institutions in the Nigerian educational system, using the "cradle to grave" concept of taxpayer education, thus entrenching a tax culture in the psyche of every Nigerian at an early age. On its part, the Federal Ministry of Information is charged by the National Tax Policy to regularly implement public enlightenment campaigns on issues revolving around tax and government revenue and expenditure.<sup>14</sup>

***iv. The State Executive Councils and the State Ministries of Education and Information***

The State Executive Councils are the equivalents of the Federal Executive Councils at the State level, playing very similar roles at the State tier of government in Nigeria. The development of tax policies, implementation and enforcement of taxes at the State and Local Government level is the responsibility of the State Executive Council. The State Ministry of Finance is responsible for issues of tax policy at the State level. It initiates amendments to tax laws through applications to the National Assembly and the State's House of Assembly, depending on the purview of the proposed amendments. States' Ministries of Finance are enjoined by the National Tax Policy to cooperate with the Federal Inland Revenue Service, States' Boards of Internal Revenue and other tax revenue authorities to ensure there is transparency in the collection and utilization of tax. States Ministries of Information and Education are enjoined to replicate at the State level the role envisaged for their federal counterparts.<sup>15</sup>

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<sup>14</sup> Ibid para. 6.9

<sup>15</sup> Ibid para. 6.10

**v. *Local Government Councils***

The Fourth Schedule of the 1999 Constitution<sup>16</sup> states that the Local Government is the body in charge of collecting taxes and other revenue at the Local Government Level. The Local Government Councils may also perform other functions assigned to them by the 'States' Houses of Assembly. The Local Government Councils are expected to carry out the following functions as well:<sup>17</sup>

- a. The strict implementation of tax laws and the incorporation of tax in the everyday business of Government;
- b. Ensure proper assessment, collection and prompt remittance of taxes to designated government accounts;
- c. Ensure the maintenance of a database of taxpayers and incorporate into the said database the Taxpayer Identification Number for every individual, company and registered body under their jurisdiction;
- d. The authentication of Tax Clearance Certificates and relevant tax documents used in the daily conduct of Government business by referral back to the relevant tax authority;
- e. The use of the electronic payment system to ensure direct remittance of tax revenue to the appropriate accounts of the tax authorities.

**vi. *The Legislature***

The legislative arm of government is charged with the responsibility of enacting and amending the laws. The National Assembly and State Houses of Assembly are therefore assigned

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<sup>16</sup> Federal Republic of Nigeria, Cap C23, LFN 2004 (as amended)

<sup>17</sup> Ibid para. 6.11

prominent and important roles in tax legislation. Section 4<sup>18</sup> of the Nigerian Constitution empowers the National Assembly to enact and amend laws relating to taxation of income or profits, after duly considering the input and recommendations of other stakeholders such as the Federal Ministry of Finance, other Ministries, Departments and Agencies and citizens of the country. One of the key functions of the National Assembly is to work in tandem with the Federal Executive Council for the effective translation of tax policy recommendations to tax laws. The National Tax Policy recommends that the National Assembly should be responsible for requesting for input from members of the general public with regard to issues of tax policy recommendations and tax legislations, in furtherance of the Assembly's duty as the collection of elected representatives of all Nigerians.<sup>19</sup>

The States' Houses of Assembly are responsible for translating tax policies to legislation that will enhance the ability of Local Governments to effectively collect taxes, rates, fees and levies and other collectible charges. States' legislatures are also responsible for tax laws that are within the legislative competence of the States as contained in the Constitution.<sup>20</sup>

#### ***vii. The Judiciary***

The Judiciary interprets tax laws and also adjudicates on tax matters. In order to ensure its effective contribution to the Nigerian tax system, the National Tax Policy recommends that the personnel of that arm of government are regularly kept informed of current developments in tax affairs in Nigeria so that they can adjudicate appropriately and fairly on matters brought before them for adjudication.<sup>21</sup>

#### ***viii. Tax Authority***

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<sup>18</sup> Op.cit, p. 35

<sup>19</sup> Ibid para. 6.11

<sup>20</sup> Ibid para. 6.12

<sup>21</sup> Ibid para. 6.13

Tax authorities include the Federal Inland Revenue Service and the States' Boards of Internal Revenue. In addition to their primary statutory function of administering taxes, they also proffer advice to the Government on tax related matters. Tax authorities are expected to maintain good relationships with the other stakeholders in the tax system such as the legislature, furnishing that arm of government with the requisite information it needs to carry out its oversight functions on the Nigerian tax system. Tax authorities are also expected to educate the public on tax matters.<sup>22</sup>

The National Tax Policy advocates that tax authorities should carry out their core functions efficiently and effectively; functions such as tax assessment and collection must be performed by career tax administrators instead of contracting consultants to exercise these functions. The National Tax Policy encourages fairness in the relationship between the tax authorities and the taxpayers; the former should accord the latter respect and allow them sufficient time and space to review, challenge and appeal every tax assessment or demand made by the tax authorities.

It is pertinent to point out that Nigeria operates a federal system consisting of three tiers of governments (federal, state and local governments) each of these three tiers of government has separate constitutional authority to impose and enforce certain taxes and levies. Thus, the constitution has set up the Exclusive, Concurrent and Residual Lists dividing legislative powers between federal and states authorities. The federal government can exclude the state and local governments from legislating on matters listed under the Exclusive List. As for the Concurrent Legislative List, both the National and State Assemblies can competently legislate on such matters concurrently subject to the doctrine of "Covering of the Field".<sup>23</sup>

**ix.     *The Joint Tax Board***

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<sup>22</sup> Ibid para. 6.14

<sup>23</sup> See *A.G. Federation v. A.G. Lagos State* (2013) 12 TLRN 55 at 155-156

The Joint Tax Board JTB, a creation of the Personal Income Tax Act, provides a platform for federal revenue authorities and States' tax authorities on the administration of personal income tax. In the National Tax Policy, the JTB, is also charged with the following functions:<sup>24</sup>

- a. The harmonization of tax processes and administration in Nigeria;
- b. The provision of technical assistance and support to tax authorities;
- c. The co-ordination of the nationwide introduction of the Taxpayer Identification Number and other initiatives which may be introduced with time; and
- d. The formation of standard processes and procedures for the activities of tax authorities.

**x. *Taxpayers***

Taxpayers are recognised by the National Tax Policy as the most important group of stakeholders in the Nigerian tax system. Voluntary compliance on the part of taxpayers is one of the key focuses of the Policy with respect to taxpayers. Taxpayers are also expected to act in an informal supervisory role by ensuring that there is transparency and accountability in the collection, allocation, disbursement and expenditure of tax revenue. Taxpayers are also expected to perform the following functions:<sup>25</sup>

- a. Assist tax authorities by furnishing them with all necessary information needed to improve the Nigerian tax system, or any such assistance that will enhance the performance of tax authorities;
- b. Make input in tax policy formulation and tax legislation;

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<sup>24</sup> Ibid para. 6.15

<sup>25</sup> Ibid para. 6.16

- c. Submit disputes with tax authorities to the Judiciary for adjudication thereby contributing to the development of Nigerian tax jurisprudence; and
- d. Cooperate with the other stakeholders in the tax system

The National Tax Policy also encourages the regular organization of various forums whereby taxpayers, tax authorities and other stakeholders in the Nigerian tax system regularly interact and exchange ideas and suggestions about how to promote the development of tax administration and practice in the country.

***xi. Professional Bodies, Tax Practitioners and Consultants***

The roles of professional bodies in the Nigerian tax system are statutorily enshrined in the various enactments setting them up. The Chartered Institute of Taxation of Nigeria (CITN) is empowered to determine the standards, knowledge and skill a tax practitioner must attain before entering into public practice; the CITN also maintains a register of qualified members in furtherance with its responsibility of regulating and controlling tax practice. Tax practitioners and consultants are expected to do all<sup>26</sup> within their abilities to ensure there is simplification of the tax process so that the level of compliance will increase; they are expected not to be parties to non-compliance with tax laws.

### **3.5 Key Economic Thrusts of the National Tax Policy**

The National Tax Policy places great premium on the importance of tax as a tool for national economic development. Against this background, the Policy projects that tax shall be used for the following:<sup>27</sup>

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<sup>26</sup> Ibid para. 6.17

<sup>27</sup> Ibid para. 6.18

- a. Stimulating the growth of the Nigerian economy by using tax revenues to develop basic infrastructure such as power, roads, transportation and other such infrastructure which will stimulate economic growth;
- b. Direct stimulation of certain sectors of the economy which are identified to be important for the creation of employment opportunities for Nigerians;
- c. Regulating and strengthening financial and economic structures and for correcting market imbalances and economic distortions;
- d. Income redistribution such that tax earned from high income earners is used for the provision of infrastructure for the lowest income earners. Taxes shall act as a means to create a social security net for "short and long term relief to indigent members of society and other classes of persons who may require such intervention by the Government;<sup>28</sup> and
- e. Stimulating domestic and foreign investment.

In order for the aforementioned objectives of the National Tax Policy to be achieved variations in tax rates may be inevitable with the passage of time. In recognition of this point, the Policy recognises that the National Assembly is the arm of government statutorily empowered by the Constitution to vary tax rates. For instance, the Policy recognises that in order for the cost of business in Nigeria to be reduced, income tax rates should be reduced to increase the cash flow of individuals and corporate citizens. The Policy however recommends that tax reliefs and allowances relating to income taxes should be delegated to the Minister of Finance for easy administration.<sup>29</sup>

In order to make up for the shortfall in revenue envisaged by the reduction of income

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<sup>28</sup> Ibid para. 19

<sup>29</sup> Ibid para. 20

tax rates, the National Tax Policy envisages occasional upward reviews of indirect tax rates. The Policy further specifies certain special arrangements which may deviate from established structures of the Nigerian tax system as currently constituted in order to attract and retain investments in the country. Examples of such arrangements are as follows:<sup>30</sup>

- a. The creation of Tax Free Zones in order to foster increased investment, growth and development in certain aspects of the economy or certain economic activities. The Policy specifies that the Tax Free Zones must be set up and administered by strictly following guiding legislations on such matters. The status and benefits of Tax Free Zones are to be subject to constant periodic review and the Government has the prerogative of discontinuing such arrangements if and when they are no more of any obvious advantage to the Nigerian economy.
- b. The provision of tax incentives to specific sectors or activities in the Nigerian tax system to encourage their growth and development. The granting of waivers must be transparently done and applied across board in the sectors where they are granted. The Ministry of Finance and the Ministry of Justice at the Federal and State levels are charged by the National Tax Policy to ensure that there is issuance and gazetting of the applicable Orders which specify the incentives, waivers or concessions granted. The incentives will be aimed at encouraging investment, especially in the non-oil and gas sector. Tax incentives are also to be subject to regular review to determine their usefulness.
- c. The expansion of Nigeria's international treaty network so as to encourage foreign direct investment. These treaties address issues such as double taxation, residency and information sharing which is necessary to forestall tax evasion by companies and

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<sup>30</sup> Ibid para.6.21



individuals. The Federal Ministry of Finance and the Federal Ministry of Foreign Affairs are empowered to negotiate such treaties while the JTB is to play an advisory role in such negotiations. Ratification by the relevant arm of the Nigerian Government, as well as cancellation if and when such treaties are no longer beneficial to the economy shall be done within the ambit of Nigerian laws.

- d. Entering into Production Sharing Contracts or similar arrangements which provide a more favourable tax burden for companies operating in the oil and gas sector, thus leading to greater cash flows for oil and gas companies and overall, a much more favourable environment in which oil and gas companies may operate and invest even more to further develop the sector.

Having discussed the objectives and principles in the administration of Nigerian tax policy, the next thing to examine the actual administration and implementation of the tax laws and policy as they affect revenue generation in Nigeria in the following chapter.

### **3.6 Implementation of the National Tax Policy**

Appendix 2 of the National Tax Policy highlights the strategies to be adopted to ensure the success of the policy and the creation of a tax system in Nigeria which will lead to the economic development and advancement of the country. The tax strategy has been devised to suit Nigeria's economic situation. Some of the strategies include:<sup>31</sup>

#### *1. Lowering the Tax Rates:*

One of Nigeria's economic objectives is to attain an annual economic growth rate of at least 10 per cent per annum. One of the ways by which this can be attained is by allowing domestic and foreign investors greater after tax profits. Investors in the non-oil sectors of the economy will be the target of several of the tax relief initiatives

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<sup>31</sup> Cap. 6 paragraph 6.7 NTPG, Ibid

designed to encourage foreign and local investors to invest in the Nigerian economy. The reduction in income tax rates in Nigeria will attract foreign direct investment into the country by creating competitive advantage in Nigeria's favour.<sup>32</sup>

2. *Deliberate Policy Shift towards Indirect Taxation:*

Following the recommendations of the Study Group and the Working Group, the National Tax Policy endorses the policy shift of changing focus from direct taxation to indirect taxation. However, the Tax Policy specifies that indirect taxes such as value added tax should not be levied on essential goods and services. This will necessitate the expansion of VAT exempt or zero rated goods and services.

3. *Simplification of Tax Laws:*

As explained previously, simplified tax laws will reduce administrative costs incurred by (especially corporate) taxpayers in complying with tax laws as well as status to granting tax holidays or pioneer taxpayers. The National Tax Policy encourages the granting of tax incentives to taxpayers only when such incentives will be beneficial to the Nigerian economy. They may be granted to sectors of the economy which the Government wishes to give priority and should be granted when there is an outstanding reason to implement such tax reliefs. Such key economic sectors identified by the Government are energy, mining, railways/roads, education, health, aviation, exports and agriculture.

4. *Creation of Export Processing Zones (EPZs):*<sup>33</sup>

One of Nigeria's economic goals is to transform the national economy to an export-oriented economy, especially to reduce Nigeria's international trade deficit and trade

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<sup>32</sup> Cap. 6 paragraph 6.8 NTPG, Ibid

<sup>33</sup> Cap 6 paragraph 6.8 NTPG, Ibid

imbalance. The National Tax Policy recommends that:

- a. Companies which operate in EPZs should continue to be exempted from income taxes, provided that 100% of the goods produced in the zones are meant for export. Exports from the EPZs into Nigeria which is Customs Territory shall attract the appropriate duty on imported raw materials.
- b. Value added tax on goods produced in EPZs should be zero-rated.
- c. All companies located within EPZs should continue to file returns to EPZ authorities even though no tax is payable.
- d. Exemptions from import and export levies and taxes should continue to apply within the EPZs, except where the entities transact business outside the EPZ.
- e. The various provisions of relevant legislation pertaining to percentages of EPZ production allowed into the country should be retained. However, any entity located in an EPZ which sells to the domestic market should be made to pay tax on the profit realised from sales outside the EPZ.

The main aim of the above submissions is to ensure that only companies with the intention to produce goods for export are located within the EPZs. This will make away with the practice where some companies seek to be located at EPZs only to take full advantage of the liberal tax regime.

5. *Reduction of Import and Excise Duties:*

The National Tax Policy explains that reducing import and excise duties to zero percent will present to Nigerian manufacturers a great opportunity to produce intermediate and finished goods. Reductions in the import and excise duties must be done such that they do not contravene the conditions of international trade agreements entered into or ratified by the

Government of Nigeria.

6. *Strengthening Nigeria's Oil and Tax Regime:*

The National Tax Policy recommends regular information sharing between tax collection agencies and agencies charged with the administration of the Nigerian oil and gas sector; agencies such as the Nigerian National Petroleum Corporation, the FIRS, the National Petroleum Investment Management Services (NAPIMS) and the Directorate of Petroleum Resources (DPR) are enjoined to share formation regularly to optimise oil and gas revenues and tax compliance in the industry. Steps are also expected to be taken to codify all regulations and orders applicable in the oil and gas sector.

7. *Use of Presumptive Income Tax Assessment Procedure:*

This is intended to tackle the non-compliance of taxable persons who have failed to comply with tax laws as a result of their lack of fixed business addresses or size. The Presumptive Income Tax Assessment procedure is a simplified and quick method of assessing taxpayers.

8. *Elimination of Multiple Taxes.*

Intensive taxpayer education is expected to reduce the incidence of multiple taxes, coupled with the implementation of the TIN system.

9. *Improving the Existing Relationship between the FIRS and Large Taxpayers.*

The LTOs are mainly specialised in tax collection matters related to taxpayers with an annual turnover of at least one billion Naira. These relationships can be boosted to ensure maximum compliance by the large taxpayers.

10. *Implementation of a Value-Added Tax (VAT) Threshold:*

In order to determine and improve the administration of VAT in Nigeria, the National

Tax Policy proposes the determination of a given threshold for the annual turnover of companies such that companies with a turnover, over and above the threshold are obligated to charge and/or remit VAT. Conversely, companies with a turnover below the threshold are not obligated to charge and/or remit VAT. Such threshold should be fixed by the FIRS.<sup>34</sup>

The average Nigerian citizen needs to be made tax conscious so that they cooperate fully with the Government. Nigerians have to be enlightened constantly about the benefits of complying with tax Laws. Tax authorities and educational institutions are expected to play key roles in taxpayer education. Educational institutions are expected to encourage the development of taxation as a course of study at all levels of the Nigerian educational system; scholarships and incentives such as employment opportunities should be granted to students who specialize in the area of taxation. Professional taxation bodies which exist in the Nigeria should be strengthened and more created to ensure improvements in the Nigerian tax system.

#### *11. Granting Autonomy to Tax Authorities:*

In order to perform at optimal level, tax authorities must be free from political and other influences which threaten their independence and objectivity.

The National Tax Policy enjoins governments at all levels to implement the strategies discussed above to ensure the successful implementation of the policy. The strategies can be better implemented by the passage of the necessary tax legislations which will give constitutional and statutory backing to the implementation of the National Tax Policy.<sup>35</sup>

### **3.7 Tax Appeal Tribunal**

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<sup>34</sup> Cap. 6 paragraph, 6.9 NTPG, Ibid

<sup>35</sup> Cap. 6, paragraph 6.10, NTPG, Ibid

Tax Appeal Tribunal is established in accordance with Section 59(1) of the Act<sup>36</sup>, tax appeal tribunal formally took off pursuant to the Tax Appeal Tribunal establishment order 2009 issued by the minister of finance, Federal Republic of Nigeria as published in the Federal Government Official Gazette No.299 Vol. 96 of 2<sup>nd</sup> December, 2009.<sup>37</sup> By this enactment, Tax Appeal Tribunal replaces the formal body of appeal commission and Value Added Tax Tribunal.<sup>38</sup>

As part of the ongoing reforms of the tax system in Nigeria, Tax Appeal Tribunal is set up by the federal government to adjudicate on all tax dispute arising from operation of various tax laws as spelt out in the Fifth Schedule of the Act<sup>39</sup>. Specifically, the Fifth Schedule states that; Tax Appeal Tribunal has jurisdiction over disputes arising from the under listed laws:

- i. Companies Income Tax Act (CITA)
- ii. Petroleum Profit Tax Act (PPTA)
- iii. Personal Income Tax Act (PITA)
- iv. Capital Gains Tax Act
- v. Stamp Duties Act
- vi. Value Added Tax Act
- vii. Taxes and Levies (Approved list for collection) Act, as well as other laws, regulations, proclamations, government notices or rules related to these Acts.

Pursuant to the Tax Appeal Tribunals Establishment Order 2009, Tax Appeal Tribunal is established in eight cities to cover the six geo-political zones namely: Abuja, Lagos, Ibadan, Benin, Enugu, Kaduna, Jos and Bauchi and a Coordinating Secretariat located in Abuja.

It is the expectation of all stakeholders that the establishment of the Tax Appeal Tribunal

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<sup>36</sup> Federal Inland Revenue Establishment Act, 2007

<sup>37</sup> Tax Appeal Tribunal-Nigeria, [www.tat.gov.ng](http://www.tat.gov.ng) accessed on 27<sup>th</sup> November, 2019 @ 8:26am

<sup>38</sup> Ibid

<sup>39</sup> Federal Inland Revenue Establishment Act, Op.cit

would reduce the incidence of tax evasion, ensure fairness and transparency of the tax system, minimize the delays and bottlenecks in adjudication of tax matters traditional court system, improve the tax payers' confidence in our tax system, provide opportunity for expertise in tax dispute resolution, provide avenue for effective involvement of parties, focus on facts rather than legal technicalities and promote early and speedy determination of matters without compromising the principle of fairness and equity.<sup>40</sup>

### **3.7.1 Jurisdictional Conflict between Tax Appeal Tribunal and Federal High Court**

Under section 251 of the Constitution<sup>41</sup>, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters;

- a. Relating to the revenue of the Government of the Federation in which the said Government or any organ thereof or a person suing or being sued on behalf of the said Government is a party;
- b. Connected with or pertaining to the taxation of companies and other bodies established or carrying on business in Nigeria and all other persons subject to Federal taxation;
- c. Connected with or pertaining to customs and excise duties and export duties, including any claim by or against the Nigeria Customs Service or any member or officer thereof, arising from the performance of any duty imposed under any regulation relating to customs and excise duties and export duties;
- d. Connected with or pertaining to banking, banks, other financial institutions, including any action between one bank and another, any action by or against the Central Bank of Nigeria arising from banking, foreign exchange, coinage, legal tender, bills of exchange, letters of credit, promissory notes and other fiscal measures.

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<sup>40</sup> Tax Appeal Tribunal-Nigeria, [www.tat.gov.ng](http://www.tat.gov.ng), Op.cit

<sup>41</sup> Constitution, Federal Republic of Nigeria, op.cit

In spite of the above provision, the Fifth Schedule to the Federal Inland Revenue Service Establishment Act<sup>42</sup> particularly sections 17 and 20 thereof, the impasse relating to the jurisdiction of tax appeal tribunal vis-à-vis that of the Federal High Court continued as there where conflicting decision from the Federal High Court on this issue, these decisions were however put to test in two sisters case of *CNOOC Exploration and Production Nigeria Limited & South Atlantic Petroleum Limited v. Nigerian National Petroleum Corporation & Federal Inland Revenue Service (CNOOC & Sapetro v. NNPC & FIRS)*<sup>43</sup>.

In this cases, it was argued that tax disputes are within the exclusive jurisdiction of the Federal High Court, that Tax Appeal Tribunal is mere a busy body but however, the Court of Appeal held that the Tax Appeal Tribunal has all jurisdiction over tax disputes, and therefore the Court of Appeal upheld the decision of Tax Appeal Tribunal and overrule the decision of the Federal High Court that the Tax Appeal Tribunal lack jurisdiction over taxation matters. It was further held that, an appeal from the decision of Tax Appeal Tribunal goes to the Court of Appeal. But where Tax Appeal Tribunal gives a judgment it is expected that the judgment creditor to register the judgment in the Federal High Court in order to prevent the abuse of illegal process.

The above chapter highlighted the basic thrust into the Nigerian national tax policies by examining the tax policies in the three tiers of government from the federal, state and local government levels. It also analysed the role played by the revenue authorities such as the FIRS, SBIRS and the Joint tax Board in the application of tax policies. The next chapter examines the administration and application of tax policies and tax laws in Nigeria.

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<sup>42</sup> Federal Inland Revenue Act, Op.cit

<sup>43</sup> (2015) CA/L/1144 and (2015) CA/L/1145



## **CHAPTER FOUR**

### **ADMINISTRATION OF TAX LAWS AND POLICIES FOR REVENUE GENERATION IN NIGERIA**

#### **4.1 Introduction**

A tax policy can only be described as successful when it leads to effective tax administration. The National Tax Policy recognises that sufficient and accurate information is the major requirement needed for effective and efficient tax administration which is not always voluntarily provided by taxpayers, a situation not in any way peculiar to Nigeria. The Policy enjoins the tax authorities in the country to develop internal competencies for information intelligence gathering, as well as active collaborations with law enforcement agencies, data gathering agencies, or any such agencies which may be in the position to furnish them with the relevant information needed to enable the tax authorities adequately perform their statutory functions. Although the TIN system is expected to facilitate easier identification and monitoring of taxpayers, the Policy recommends that taxpayers be educated on intelligence and information gathering methods used by tax authorities, methods which are expected to protect the privacy of the taxpayers and to be in conformity with constitutional requirements. Specifically, the National Tax Policy makes provisions on the aspects of tax administration discussed below.

#### **4.2 Tax Administration**

Tax administration in Nigeria cuts across the three-tiers of Government. A core success factor for any system is its position on administrative issues. An effective tax policy document should therefore be one that establishes clear guidelines on crucial tax administration issues.<sup>1</sup>

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<sup>1</sup> National Tax Policy for Nigeria, Final Draft submitted to the Federal Executive Council, <http://www.mondaq.com> accessed on July 21, 2019, at 7:00pm

In the context of the Nigerian Tax Policy, the salient issues in tax administration include the following:

#### **4.2.1 Intelligence and Information Gathering**

As a first step in the tax administration process, tax authorities require adequate and correct information to carry out their duties of assessment and collection of taxes. Ideally, such information should be provided voluntarily by taxpayers. However, this is not always the case and in a large number of instances, tax authorities have to source for and obtain information other than voluntarily from the tax payer. In addition, even in instances, where taxpayers voluntarily provide information, such information, may either not be complete or accurate.<sup>2</sup>

It is in this respect, that authorities would be required to develop workable and secure structures for intelligence and information gathering. Such structures shall compliment the normal administrative structures in place for obtaining information from taxpayers. The tax authorities would therefore be required to develop internal competencies for such purposes and also partner with relevant government organs, such as the various law enforcement agencies, data gathering agencies and other agencies which have custody or access to information relevant to the activities of tax authorities.

In addition to the above there shall be close collaboration with these agencies to facilitate information gathering and in this regard, tax authorities shall consider short and long term measures, such as secondment of personnel, human capacity development programs (training and provision of tools), proper use of information technology and creation of permanent inter-agency structures, towards realising these objectives. Reliance shall also be placed on the introduction and use of the unique taxpayer identification number to facilitate easier identification and monitoring of tax payers. Taxpayers shall be properly educated on the intelligence and information gathering

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<sup>2</sup> Ibid

methods of the tax authorities and all actions carried out by the tax authorities in this regard shall be done in line with statutory and Constitutional provisions, which safeguard the right to privacy of taxpayers. This is without prejudice to the rights of tax authorities (in appropriate cases), to use the instrumentality of the law to ensure full and complete access to information and data required for the effective and efficient administration of taxes in Nigeria.<sup>3</sup>

#### **4.2.2 Registration of Taxable Persons**

In order to have an effective tax system in which all tax payers are covered, every taxable person (which includes companies, enterprises, partnerships and other business entities) must be registered for tax purposes. Registration is a fundamental step in the tax administration process and tax authorities at Federal and State level shall be required to register all tax payers and issue a Unique Tax Identification Number (U-TIN) along prescribed and standard formats, upon registration by the taxpayers. No taxpayer should have more than one U-TIN irrespective of place of registration. In addition every U-TIN shall be unique to a taxpayer.<sup>4</sup>

The U-TIN will provide a uniform mode of identification for all taxpayers in Nigeria. Government at all levels are therefore enjoined to support the introduction of a uniform system of registration and allocation of U-TIN and the creation of a data-base accessible to all tax authorities (and other Federal, State and Local government agencies) in the Country. This will provide easy and complete access to taxpayer information nationwide, which can be achieved by the efficient use of information communication technology and ultimately reduce the cost of administration and supervision while enhancing higher compliance. The relevant tax authorities and the Joint Tax Board should ensure the successful administration/operation of the U-TIN programme.

#### **4.2.3 Filing and Returns Processing**

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<sup>3</sup> Ibid

<sup>4</sup> Ibid

Filing and returns processing is a core process in the tax administration system. It encompasses all the processes commencing from preparation of returns and filing of self-assessment by the taxpayer, to the issuance of assessments by the tax authority and the acceptance of returns filed by the taxpayers. It also includes the review and amendment of tax returns by taxpayers and tax authorities, examination of accounts and the determination of the tax liability of the taxpayer. The process terminates where a final liability has been agreed between the tax authority and the taxpayer and only payment is outstanding.<sup>5</sup>

Given that payment of tax is based on either self-assessment or assessments issued by the tax authority, it is necessary that tax authorities accord, this particular function priority. In this regard, tax payers shall be encouraged to file returns on a self-assessment basis in compliance with tax laws, as it saves significant time and resources required by tax authorities in ensuring compliance by taxpayers. This can be done, by developing structures that will enhance and simplify compliance, such as the creation of a reliable taxpayer data base, electronic compliance system, automation and standardisation of the filing and returns process and regular publication of tax compliance manuals. Tax authorities shall also carry out widespread and regular taxpayer enlightenment on the filing and returns process. Tax officials shall also be trained on all aspects of the filing and returns process and it shall be the responsibility of tax authorities to ensure that a transparent and simplified process is introduced which would have a multiplier effect on the rate and level of compliance and ultimately enhance tax collection and the overall effectiveness of the tax system<sup>6</sup>.

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<sup>5</sup> Ibid

<sup>6</sup> Ibid

#### **4.2.4 Payment Processing and Collection**

Payment processing and collection is closely linked to the filing and returns process discussed above. This is the culmination of the core tax functions carried out by tax officials and usually signifies the successful conclusion of a filing and return circle. In order to ensure an effective payment processing and collection system, tax authorities shall embrace the use of electronic payment (e-payment) systems in all transactions to drive automatic and improved remittances and collections. In addition, there shall be the use of technology and related systems in tax administration particularly in the payment and collection process. A rigorous and transparent, book keeping, financial regulation and reporting framework should be adopted by tax authorities at all levels of Government to minimise and avoid leakages of tax revenue.<sup>7</sup>

Tax authorities shall partner with financial institutions and other relevant government agencies to support a framework for automated payment systems. Avenues for leakages shall be identified with the assistance of these partner institutions and promptly addressed. Tax officials and taxpayers alike shall be encouraged and educated on the use of electronic payment systems, to safeguard the integrity of the tax payment and collection system. Where an effective and efficient system of payment and collection processing is adopted, tax revenue can be properly collected and maximised, thereby increasing overall tax take and providing sustainable revenue for Government.

#### **4.2.5 Record Keeping**

Record keeping is another core and integral function in tax administration. Significant time, effort and resources are usually channelled towards intelligence and information gathering by tax authorities. The process does not however end once information or other relevant data are

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<sup>7</sup> Ibid

obtained by tax authorities, rather there must be a sustainable system for the retention and retrieval of such information. This process is known as record keeping<sup>8</sup>.

Information gathering usually entails interface with and requires the assistance of third parties, however record keeping is entirely within the control of tax authorities. In this regard, all tax authorities are required to establish specialised record keeping units as core functions within the tax administration structure. Such specialised units should be properly staffed and provided the necessary tools to discharge their duties. Manual record keeping systems should be de-emphasised in favour of electronic systems. It is expected that where processes such as registration of taxpayers, filing and processing of returns and payment are already automated, it would aid the deployment of an automated record keeping system.

The benefits derivable from electronic and automated systems of record keeping in tax administration include ease of retrieval and movement of records, integrity and durability of the record keeping system and increased tax payer confidence in the system. Tax authorities should partner with the relevant agencies to set up automated systems and also train tax officials in the use and maintenance of such systems.

An electronically enabled system of record keeping would not only be in line with global best practices but greatly enhance the tax administration process and assist tax officials efficiently discharge their duties.<sup>9</sup>

#### **4.2.6 Audit and Investigation**

As part of the tax administration process, tax authorities usually carry out routine verification of returns filed by taxpayers to confirm completeness and accuracy. In addition, tax authorities may when deemed necessary carry out specific review of a taxpayers records in order

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<sup>8</sup> Ibid

<sup>9</sup> Ibid

to ascertain the tax status of the taxpayer, whether the records have been previously provided to the tax authorities or not. These processes encompass the audit and investigation functions in the tax administration structure.<sup>10</sup>

Audits of taxpayer's returns are routine and carried out periodically, while investigations are done for a specific purpose or in respect of the specific activities of a taxpayer. Audits should be carried out frequently and within a reasonable period after the submission of return by the taxpayers to minimise difficulties which may be occasioned by the passage of time. The tax audit function shall be a highly specialised function and tax audit processes shall be simplified and made as taxpayer friendly as possible. Tax authorities shall promote the use of electronic and other technology related systems in the audit process to reduce time and cost and protect the integrity of the audit process. Tax authorities shall carry out routine enlightenment campaigns on tax audits and there should be frequent forums where tax authorities and taxpayers interact and discuss issues related to the audit process.

Tax investigations shall be carried out in the same manner as audits, however, it is expected that the investigation process shall be more rigorous than a routine audit. In addition tax authorities shall ensure that taxpayers understand the difference between tax audits and investigations given that the outcome of an investigation may lead to legal action against taxpayers. Taxpayers on their part shall be encouraged to remain in compliance with all tax requirements as this will significantly impact the outcome of tax audits and investigations.

Overall tax authorities shall ensure that audits and investigations are carried out in an open, fair and independent manner and taxpayers shall be afforded the opportunity to make necessary representations and provide relevant information to assist tax authorities carry out a fair and objective analysis of the taxpayer's records before arriving at a decision on the taxpayer's

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<sup>10</sup> Ibid

status. In addition any decisions reached by tax authorities on the basis of audits and investigations shall be subject to review and appeal by taxpayers following the normal appeal process provided in the various tax legislation.

#### **4.2.7 Operation and Funding for Tax Refunds**

The tax refund process is also an important and integral part of tax administration. Tax authorities are required to refund excess taxes paid over by taxpayers in order to obtain the confidence and trust of taxpayers. It is therefore important that tax payers understand that they can recover excess taxes paid to tax authorities in a timely and complete manner. In this regard, the provisions of our tax laws on tax refund shall be strictly complied with and tax payers should be encouraged to take benefit of these provisions.<sup>11</sup>

##### **4.2.7.1 Source of Funding for Tax Refund**

It is expected that all tax/revenue authorities that have refund obligations will meet them diligently and efficiently. To facilitate these refunds, a specified percentage of total revenue collected by these authorities in any financial year, shall be set aside to meet these obligations in the following year. The amount set aside for refunds should be duly appropriated by the National Assembly or State House of Assembly (as the case maybe) in their budgetary allocation to enable tax authorities meet these obligations. Any unspent portion of the appropriated fund at the end of the financial year should be returned to the relevant tier of government in line with existing financial regulations.<sup>12</sup>

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<sup>11</sup> Ibid

<sup>12</sup> Ibid



#### **4.2.8 Automation of Processes**

A recurring theme throughout the discussion of various components of the tax administration process has been the use and deployment of technology related systems in various aspects of tax administration. In this regard, it is recognised that certain areas of the tax administration are more amenable to the use of electronic and technology systems than others. Notwithstanding, it shall be the duty of tax authorities to work towards the automation of all processes involved in tax administration to avoid uneven development of certain aspects of tax administration to the detriment of others.<sup>13</sup>

Tax authorities shall therefore ensure uniform deployment of technology in the aid of all aspects of tax administration. It shall be the responsibility of Government to provide the required funding and platform for the automation of tax administration processes, as this would aid effective and efficient administration of taxes in Nigeria. Automated processes would minimise or eliminate leakages in the system, which may be due to error or misconduct on the part of tax officials or taxpayers, safeguard the integrity of the system and lead to greater professionalism on the part of tax officials and greater confidence on the part of taxpayers. In addition automated systems would lead to greater specialisation and reduce the costs and time required in the tax administration process thereby leading to higher compliance by taxpayers due to the ease with which processes can be commenced and completed.

It is expected that all processes starting from registration of taxpayers, filing of returns, audits and investigations, payment of taxes and including correspondence with taxpayers would be automated. Where there are gaps in current tax laws or where the laws do not support the use of such systems, necessary amendments shall be made to ensure that the use of the systems are in

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<sup>13</sup> Ibid

line with the law. Where electronic systems are already in use, they shall be standardised to ensure that there can be seamless interaction between all tax administrative processes.<sup>14</sup>

Tax officials shall be trained in the use and maintenance of automated systems and the general public and taxpayers encouraged to embrace the use of these systems so that Nigeria can have a tax system that is in line with global best practices.

#### **4.2.9 Accounting for Tax Revenue Collected**

At the completion of the tax administration process, it is expected that tax revenue would have been paid by the taxpayers and collected by the tax authority. This is usually viewed as the end of the compliance process in relation to interaction between taxpayers and the tax authorities. The end of this process is the commencement of another process, whereby tax authorities are required to account for tax revenue collected. This process is not usually open to the taxpayer or the general public and may therefore not be treated with deserving attention.<sup>15</sup>

It shall therefore be the responsibility of all tax authorities to ensure that proper, timely and complete account is given of all tax revenue collected within specified periods. This is necessary to assure taxpayers that revenue being collected is accounted for and to ensure that there are no leakages on the part of tax authorities or their collecting agents (such as banks, Government Ministries, Departments and Agencies). Tax authorities shall ensure that records of revenue collected are published in a manner in which it would be available to the general public and other stakeholders in the tax system. Tax authorities shall also provide these records formally to the Ministry of Finance and the Accountant General's Office at various levels of Government. This process would act as a check on the collection and accounting systems of tax authorities. In this way, leakages can be promptly identified and necessary action taken to safeguard tax revenue. In

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<sup>14</sup> Ibid

<sup>15</sup> Ibid

addition, this would enable tax authorities properly monitor tax collection, so that tax revenue which is not being collected can be easily and promptly identified and collected.

In addition, accounting for tax revenue assists tax authorities and the Government in fiscal planning, since collection trends can be used to project revenue which would be available to the Government. Like all other aspects of the tax administration process, tax authorities shall also utilise electronic and technology based systems for the purpose of accounting for tax revenue. Adequate training and resources shall be provided to tax officials to ensure that tax revenue is properly accounted for. Where certain persons/institutions are identified as being responsible for leakage of tax revenue, such person/institutions shall be treated in line with existing provisions of the law.<sup>16</sup>

#### **4.3 Policy Issues on Tax Administration**

The major policy issues surrounding tax administration in Nigeria include the following:

##### **i. *Filing Returns, Payment and Collection***

Tax collection completes a chain of processes which is set in motion by the filing of self-assessment returns by the taxpayer. In order to ensure the efficiency of tax administration, tax authorities are required to educate and enlighten taxpayers on the filing and returns process. This will avail tax authorities time and resources to enforce compliance on recalcitrant taxpayers. The Policy further enjoins tax administrators to:<sup>17</sup>

- a. ensure simplicity and transparency in the filing of self-assessment returns; and
- b. introduce and sustain the use of technology in for its key processes

##### **ii. *Tax Audit, Investigation, and Enforcement Mechanisms***

The audit and investigation aspect of tax administration seeks to verify the tax

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<sup>16</sup> Ibid

<sup>17</sup> The National Tax Policy Guidelines, (NTPG) 2019

status of the taxpayers and to ascertain the completeness and accuracy of tax returns a filed by taxpayers. In order to get a proper perspective on the taxpayer's status, it is imperative that audits are carried out regularly and within a reasonable period. The National Tax Policy recommends the use of electronic/technological and related means in the audit process. Tax audit and *tax investigations involve similar processes, but they differ in the sense that the latter process is a lot more rigorous and could culminate in the prosecution of taxpayers found to be in default.* The tax authorities are expected to carry out both processes openly and fairly so as to allow taxpayers ample opportunity to supply necessary and relevant information which will facilitate efficient audit and investigation of the taxpayers' records.<sup>18</sup>

Leakages occasioned by tax evasion and avoidance may be plugged by:

- a. strengthening the criminal prosecution process
- b. collaboration among tax authorities at all levels of government;
- c. taxpayer education and enlightenment;
- d. capacity building of tax officers to increase skills and competencies
- e. automation of key processes in order to eliminate or reduce human errors and fraud
- f. identification of existing and potential loopholes in tax laws to reduce tax avoidance
- g. devising appropriate sanctions to dissuade defaulters or offenders from evading tax

The National Tax Policy recommends reward for taxpayers who duly comply with tax laws, especially publicized rewards which encourage other taxpayers to do likewise.

### ***iii. Tax Refund Operation and Funding***

The tax refund part of tax administration helps to ensure that taxpayers who pay excess taxes have the excess refunded. The National Tax Policy recommends that the first

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<sup>18</sup>Cap 5 of the NTPG, Ibid

step in the refund process is that taxpayers must first establish genuine cases of overpayment. After the relevant tax authority has rigorously, fairly and objectively verified the claims, genuine refunds should be done within ninety days from the day the claim is established. Information on any reasons for delay should be readily made available to the taxpayer. The National Tax Policy recommends that tax authorities set aside a certain percentage of their total annual collection for tax refund purposes. The amounts set aside for meeting those obligations must be appropriated in the annual estimates by the National Assembly or State Assembly. Unspent funds from such appropriated funds are expected to be returned to the relevant tier of government.<sup>19</sup>

**iv. *Revenue Accounting***

The National Tax Policy recognises that for taxpayers to be inspired to place a high level of confidence in the tax administration system of the country, tax authorities are responsible for giving proper, timely and complete account of tax revenue collected within given accounting periods. Not only is this expected to inspire confidence in the taxpayers regarding the tax administration process, it will also help the prevention of tax leakages. Leakages are more easily identified within the context of a transparent system. Tax authorities are expected to publish collection figures such that they are available to the general public and all stakeholders in the tax system, in addition to being made available to the Ministry of Finance and the Accountant General's Office.

**v. *Dispute Resolution Mechanisms***

The National Tax Policy prescribes a number of ways by which such disputes can be resolved, taking into cognisance the role and status of the various stakeholders in the whole system.

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<sup>19</sup> Cap.6. paragraph 6.0 of NTPG, Ibid

Disputes between the Federal and State Governments<sup>20</sup>: while recognizing the extant constitutional provision which requires disputes between Federal and State Governments to be resolved by the adjudication of the Supreme Court, the Policy advocates alternative dispute resolution methods before the parties resort to litigation at the Supreme Court. The policy recommends deliberations between the parties under the auspices of different platforms including the Nigeria Governors' Forum, the National Economic Council, the Federal Executive Council, and the Council of States meetings. Where deliberations at any or all of these set for a fail, the Policy recommends mediation by the other State Governments or Federal Government Agencies or by other arms of Government such as the Judiciary. Mediation by the Judiciary must be done in a manner that does not impugn on the independence and the impartiality of the judiciary, especially if it appears likely that such dispute may finally be resolved through judicial adjudication.

Disputes between State Governments<sup>21</sup>: The Supreme Court is also saddled with the responsibility of adjudicating on disputes between State Governments. The Policy recommends the same methods of alternative dispute resolution above in the event of disagreement between States. In addition to methods above, deliberations could also be held by the Attorneys General of Finance Commissioners or other relevant officials of the States involved.

Disputes between State and Local Governments: The States and Local Governments have closely interlinked functions such that the National Tax Policy advocates more of informal dispute resolution methods, instead of quick resort to litigation which may lead to "dislocation and distraction to governance which such disputes may trigger."<sup>22</sup> Such arbitrators as traditional rulers, State and Local Government organs and other stakeholders may intervene to

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<sup>20</sup> Cap 6, paragraph 6.1. of NTPG, Ibid

<sup>21</sup> Chapter 6, paragraph 6.2. of NTPG, Ibid

<sup>22</sup> Chapter 6 paragraph 6.3. of NTPG, Ibid

resolve the disputes. The failure of these informal procedures may then give way to judicial adjudication.

Disputes between the Executive and the Legislature: The National Tax Policy also advocates the initial use of arbitration channels such as traditional rulers, relevant officials, and relevant institutions of State such as the Federal and State Executive Councils, the Council of State, the National Economic Council before resorting to litigation<sup>23</sup>. The Executive and the Legislature may also explore the options of using liaison officers and organs of the Judiciary such as the National Judicial Council. Judicial adjudication should be the last resort.

Disputes amongst and between the Executive, Legislature and the judiciary: The National Tax Policy recommends that such disputes be resolved discreetly and amicably through informal channels to prevent undermining the integrity, impartiality and independence of the Judiciary which is likely to be required to resolve the disputes between and amongst the other arms of Government.<sup>24</sup>

Disputes with Taxpayers: Taxpayers are constitutionally empowered to seek judicial remedy to disputes in which they have a stake. Taxpayers are therefore entitled to explore the Tax Appeal process if and when they are dissatisfied with the decisions of any tax authority relating to the taxpayers status. They may also explore the same option with regard to the interpretation/application of tax laws and other matters which may affect their rights and status of the taxpayer. Tax authorities are expected to enlighten taxpayers on the tax appeal process and are responsible for informing taxpayers, individual or corporate, of their right to tax appeal. Tax authorities may also engage taxpayers so as to collaborate with them on

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<sup>23</sup> Chapter 6, paragraph 6.4. of NTPG, Ibid

<sup>24</sup> Chapter 6, paragraph 6.5. of NTPG, Ibid

alternative dispute resolution of such contentious issues.<sup>25</sup>

#### **4.4 Tax Policy Department in the Federal Inland Revenue Service (FIRS)**

The Tax Policy Department of the FIRS which is an arm of the Compliance and Enforcement Group of the Service has the vital role of ensuring that there is effective collaboration between the FIRS and stakeholders in the Nigerian tax system on matters pertaining to taxation through the issuance of guidelines and the exchange of feedback on the provisions of tax laws to promote voluntary compliance with those laws.<sup>26</sup> The precursor to the department is the Tax Policy Research and Development Department, TPRD, which was established in November 2004. The TPRD was created at the beginning of the restructuring process of the Service to provide an organ within the Service that would be responsible for tax policy analysis, formulations and evaluation. The functions of the TPRD included:<sup>27</sup>

- a. Tax treaty negotiation and tax legislation
- b. Tax advisory and inquiries matters
- c. Tax administration and policy matters
- d. Research and statistical analysis involving monitoring, forecasting and evaluation, collection and setting policy standards as may affect the administration of taxes.

In 2007, the Tax Policy Department was created. While the functions of statistical analysis, evaluation and setting of performance standards were vested in the new Planning, Research and Statistics Department, the other functions of the erstwhile TPRD continued to be vested in the new Tax Policy Department. Currently, the responsibilities of the Tax Policy

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<sup>25</sup> Chapter 6 paragraph 6.6 of NTPG, Ibid

<sup>26</sup> Appendix 2.1 of the NTPG, Ibid

<sup>27</sup> The National Tax Policy Guidelines, Ibid



Department of the Service include:<sup>28</sup>

- a. To advise the Government on all tax related matters;
- b. To ensure that tax administration at all levels of Government is carried out transparently and in conformity with statutory provisions such that the integrity of Nigeria's tax system is protected;
- c. To obtain requisite approvals from the Federal Ministry of Finance with regard to policy and relevant operational matters such that the independence and autonomy of the Service is not prejudiced;
- d. To render assistance and provide necessary insight to the Legislature in regard to new tax legislation or the review of existing legislations;
- e. To provide the Legislature technical input and know-how to enable it discharge its functions appropriately;
- f. To publicise proposed changes to tax laws and new legislation to taxpayers;
- g. To provide guidance to the general public on all aspects of tax compliance and other issues related to the Nigerian tax system through various forms such as information circulars, bulletins, handbills, media adverts and newsletters;
- h. To create and sustain a tax environment which will boost taxpayer confidence at all levels of tax administration by the creation of a workable and sustainable tax system which will be beneficial to all stakeholders in the Nigerian tax system.<sup>29</sup>

#### **4.5 Supporting Tax Policy Unit at the Federal Ministry of Finance**

The functions of the Federal Ministry of Finance include the preparation of annual estimates of revenue and expenditure; formulating policies on fiscal and monetary

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<sup>28</sup>Dike, M.A.C., op. cit. p.78

<sup>29</sup> Dike, M.A.C, OP.CIT p.79

matters; identification and estimation of revenue; and managing revenue allocation matters. Most tax policy issues and legislations originate from the Tax Policy Department of the Service but must be channeled through the Ministry for onward deliberation at the Federal Executive Council. The mandate of the Service makes it necessary for close level interaction with the Ministry. In order to facilitate smooth interaction between the Ministry and the Service, a deputy director was deployed from the Service to the Ministry in 2010 to coordinate the interface between the two offices and also assist in kick-starting the establishment of a Tax Policy Unit at the Federal Ministry of Finance. The Unit is expected to provide and articulate policy direction by recommending changes to existing laws. It is also expected to help in the development of new laws which will improve tax legislation and administration, all aimed at improving living standards through the expenditure of tax revenue. The Unit is also expected to serve as a coordinator of policy proposals made by other stakeholders in the Nigerian tax system. Specifically, the Unit will have the following responsibilities:<sup>30</sup>

- a. To use taxation to foster sustainable economic development that meets the needs of the present generation without compromising the ability of future generations to meet their own needs;
- b. To create awareness on the importance of the role which taxation can play in securing a stable flow of revenue for the Government;
- c. To promote and encourage healthy competition amongst tax authorities in Nigeria at the Federal, State and Local Government levels to facilitate rapid development of the tax sector in Nigeria;
- d. To uphold the application of fiscal federalism in the generation and expenditure of revenue by governments at all levels in accordance with the Nigerian Constitution; i.e., who

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<sup>30</sup>Dike M.A.C op.cit. p80

collects what, how it is collected, who controls what is collected, how what is collected is shared and who is ultimately responsible and accountable to the taxpayer for the revenue collected and its expenditure;

- e. To play an interventionist role in the provision of tax incentives (including tax regimes, reliefs, allowances and others) and shift reliance to indirect domestic taxes in consultation and collaboration with the FIRS.
- f. To provide policy direction in the taxing of non-residents and foreigners resident in Nigeria. This includes negotiations of Double Taxation Agreements, exchange of information and prevention of tax evasion.
- g. To provide a platform for resolving disputes between two competent authorities with respect to a complaint of a taxpayer on the grounds that the actions of one or both authorities may result in double taxation. This can be done by using Mutual Agreement Procedures (MAP);
- h. To provide collaborative assistance in respect of new legislation and/or the review of existing legislation being considered by the Legislature;
- i. To provide a platform for revenue analysis including the estimation of revenue in collaboration and consultation with the FIRS; and
- j. To also evaluate and coordinate policy proposals made by other sectors, either from within government or by private agents, business and social associations or even individuals writing to a Minister to express concerns about some aspects of the tax law.<sup>31</sup>

The diagram below shows the suggested structure of the proposed Tax Policy Unit at the Federal Ministry of Finance.<sup>32</sup>

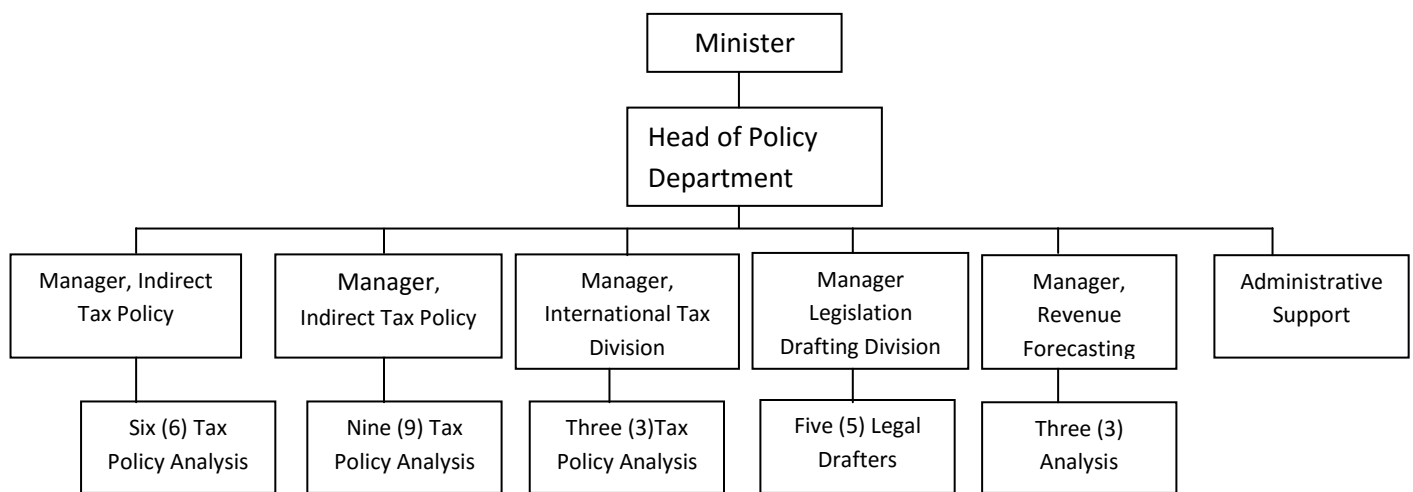
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<sup>31</sup> Dike M.A.C, op.cit. p.81

<sup>32</sup> Akeye, G. A.,(2003) *Establishment of Tax Policy Department in Federal Ministry of Finance*, being a memo

The members of staff of the Tax Policy Unit at the Federal Ministry of Finance are expected to be qualified in disciplines such as law, accounting, and economics. Preferably, they are expected to possess a mixture of these skills. The staff will be broken into structures which will perform the following tasks:<sup>33</sup>

Tax policy analysts who will be concerned with policies connected to direct and indirect taxes as illustrated in the diagram below:<sup>34</sup>



- a. Tax policy analysts who will be concerned with policies connected to direct and indirect taxes;
- b. A group with expertise in the field of international tax which will be engaged in the development of Double Taxation Agreements with other nations;
- c. A group concerned with revenue analysis; and
- d. a group assigned the task of drafting legislation, staffed by legal drafting experts. It will be capable of translating policy designs into law.

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submitted to the Reforms Documentation Project Team.

<sup>33</sup> Ibid.

<sup>34</sup> See Appendix iii, Cap 7 of NTPG, Ibid

## 4.6 Tax Legislations

The point has been made in the preceding chapter that a tax system is built on a tripartite foundation: a tax policy, tax laws and tax administration. The policy sets out the guidelines, principles and objectives to be achieved through the instrument of taxation. The laws create tax types, impose rates, prescribe penalties for default and generally provide the enabling legal and regulatory framework for the system.<sup>35</sup> Tax administration involves the implementation of the tax laws through the activities of the authorities vested with the responsibility of assessing, collecting and accounting for tax revenue. The focus in this chapter is on the various tax legislations that have been amended, repealed or enacted as part of a concerted, deliberate and holistic approach towards reforming the Nigerian tax system and how these laws have impacted on the overall reform process.<sup>36</sup>

Prior to 2004 the Nigerian tax system comprised of at least 39 taxes, levies and fees that were statutorily recognised<sup>37</sup>. In addition to these however, there was a plethora of other taxes and levies like customs and excise duties, mining royalties and premiums on petroleum, etc are which provided for under different laws as well as a myriad of levies collected by local government authorities outside the ambit of the law.

Another feature of the tax system prior to 2004 was the erroneous perception that the issues of taxation are the same as the issues of finance. As a result of this, issues pertaining to the tax system were resolved by the promulgation of omnibus decrees which were given the rather ambivalent title of 'Finance (Miscellaneous Taxation Provisions) Decrees'.<sup>38</sup> Yet another

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<sup>35</sup> Ayua I.A (1993) *The Nigerian Tax Law*, Spectrum Books Ltd, Ibadan, p.89

<sup>36</sup> Ayua I.A op.cit. p.90

<sup>37</sup> These are listed in the Taxes and Levies (Approved List for Collection) Act Cap T LFN 2004. The Act originally passed as a Military Decree No. 21 of 1998, is now deemed to be an Act of the National Assembly by virtue of the provision of section 315 of the 1999 Constitution.

<sup>38</sup> Example of such decrees are Finance (Miscellaneous Taxation Provisions) Decrees Nos. 21 and 63 of 1991;

feature of the pre 2004 tax regime was the tendency to enunciate new tax laws through the instrumentality of budget speeches. For example, every budget speech between 1975 and 1980 amended or repealed one major tax law or the other. One major consequence of this untidy proliferation of tax codes was that it became almost impossible to accurately enumerate the body of laws that comprised the Nigerian tax system. Not counting the finance (miscellaneous provisions) decree, the major pre-2004 tax laws, nearly all of which were vestiges of military rule include:<sup>39</sup>

- a. Petroleum Profits Tax Act<sup>40</sup>
- b. Companies Income Tax Act<sup>41</sup>
- c. Capital Gains Tax Act<sup>42</sup>
- d. Education Tax Act<sup>43</sup>
- e. Personal Income Tax Act<sup>44</sup>
- f. Stamp Duties Act<sup>45</sup>
- g. Value Added Tax Act<sup>46</sup>
- h. Customs and Excise Management Act<sup>47</sup>
- i. Minerals and Mining Act
- j. Petroleum Act<sup>48</sup>
- k. Taxes and Levies (Approved List for Collection) Act

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30, 31 and 32 of 1996; 18, 19, 21 and 40 of 1998.

<sup>39</sup> Ayua I.A op.cit. pp100-113

<sup>40</sup>Cap. P13 LFN 2004.

<sup>41</sup>Cap. C.4 LFN 2004.

<sup>42</sup>Cap. C.4 LFN 2004.

<sup>43</sup>Cap. E4 LFN 2004.

<sup>44</sup>Cap. P8 LFN 2004.

<sup>45</sup>Cap. S.2 LFN 2004.

<sup>46</sup>Cap. V1 LFN 2004.

<sup>47</sup>Cap. C.5 LFN 2004.

<sup>48</sup>Cap. P10 LFN 2004.

The existence of a large body of legislation as highlighted above as well as the imposition of taxes and levies outside the ambit of the law gave birth to multiplicity of taxes; a development that is universally acknowledged as antithetical to voluntary compliance and good taxation practice.<sup>49</sup>

The Study and Working Groups amongst other things recommended that the existing tax laws should be revised and updated to conform to current realities and contemporary trends comparable in other jurisdictions.<sup>50</sup> The FIRS also made recommendations to the Federal Executive Council (FEC) on the proposed comprehensive reform of the Nigerian tax sector. Some of the recommendations were that the Personal Income Tax Act, the Companies Income Tax Act, the Petroleum Profits Tax Act, the Value Added Tax Act be amended; while the Education Tax Act should be repealed.<sup>51</sup> Sequel to the Extraordinary Meeting of the FEC on 18 October 2004, and the constitution of the Presidential Technical Committee to draft a bill on tax reforms, the Committee identified the issues to be addressed by the legal reforms as follows:

- a. Clearer definitions of ambiguous words in tax legislations;
- b. Autonomy and secure funding for the FIRS;
- c. Clearer definition of the functions of the FIRS;
- d. New governance structure for the FIRS in view of the proposed autonomy;
- e. Mechanism for refund of over-paid taxes;

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<sup>49</sup> Nigerian Tax Reform in 2003 and Beyond being the Main Report of the Study Group on the Nigerian Tax System, July 2003.

<sup>50</sup> See the amendments proposed by the SG and the WG's comment in relation to the former in FIRS, Presentation of Views of Tax Reform for Consideration by the Federal Executive Council: Appendices 1— 10 (October 18, 2004)

<sup>51</sup> Other recommendations focused on the need for a well-documented national tax policy, taxation and federalism, etc. See generally, FIRS, Tax Reform Recommendations for Consideration by the Federal Executive Council (October 15, 2004)

- f. New personal income tax rates and clearer and enhanced relief structure;
- g. Abolition of special purpose taxes and streamlining of tax types;
- h. Increase in VAT rate from 5% to 10%;
- i. Streamlining the numerous incentives in the tax laws;
- j. Abolition of education tax and creation of Education Trust Fund;
- k. Upward review of sanctions and penalties in the tax laws in line with contemporary realities;
- l. Taxation of goods produced in, but sold outside Free Zones.

The initial concept at the time of constituting the Committee was for the Committee to produce a draft bill on tax reforms. However, the Committee came out with different bills focusing on the issues encompassed in the reform of the tax system on the advice of its Legal Sub-Committee. Thus, issues that pertained to the FIRS operation and management were addressed in a bill establishing the FIRS as a body corporate, while other issues that bothered on revising existing laws were addressed as bills to amend the existing legislations.<sup>52</sup> Nine bills were recommended. They were:

- a. A Bill for an Act to establish the FIRS as an autonomous Service;
- b. A Bill for an Act to amend the Companies Income Tax Act,
- c. A Bill for an Act to amend the Petroleum Profit Tax Act
- d. A Bill for an Act to amend the Personal Income Tax Act;
- e. A Bill for an Act to amend the Value Added Tax Act;
- f. A Bill for an Act to establish the Education Trust Fund and repeal the Education Tax Act;
- g. A Bill for an Act to amend the Customs, Excise Tariffs, etc. (Consolidation) Act;
- h. A Bill for an Act to amend the National Automotive Council Act;
- i. A Bill for an Act to amend the National Sugar Development Council Act.

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<sup>52</sup>Partnering for Sustainable Development (Nigeria: FIRS, 2010) p.30



In each bill, the Presidential Technical Committee identified critical areas of amendment and provided justification for the amendment proposed. The government forwarded the bills to the National Assembly in November 2005 as Executive Bills. Between 2005 and 2011, six of these bills were passed by the National Assembly while three are stillpending. The next and final chapter will deal with the general summary of the work, the findings and recommendations.

#### **4.7 Enforcement of Tax Laws (Evasion and Avoidance)**

It is acknowledged that in every system there are bound to leakages. It is therefore the duty of tax authorities to identify all such avenues for leakages in the Nigerian tax system and minimise or eradicate these leakages. In this regard, two of the major means by which leakages occur in the tax system are tax evasion and avoidance.<sup>53</sup>

Tax evasion can be defined as a deliberate refusal to pay taxes or make tax returns with the intention of fraudulently retaining tax revenue or concealing the actual tax status of a taxpayer. Avoidance on the other hand is the means by which tax liability is minimised or avoided by exploiting the loopholes in the law. While evasion is illegal and is a criminal offence, avoidance is not illegal, but it is not encouraged. One tax evasion mechanism prevalent in the Nigerian system, amongst others is touting, which is the employment of middlemen or fraudulent tax “consultants” to assist in the filing of fraudulent returns and in the procurement of fraudulent tax clearance certificates. One of the reasons why touting thrives is the ignorance of tax payers who are regularly fleeced of their monies that they would otherwise have paid to the government as tax. This ignorance is exploited by criminals in collaboration with fraudulent tax officials (existing, retired, or dismissed) of the relevant tax authorities. Another reason is time constraint, as many taxpayers are too busy and cannot afford the time it takes to process tax related matters.

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<sup>53</sup> National Tax Policy for Nigeria, Final Draft submitted to the Federal Executive Council, Ibid

Another reason is that it does not require a lot of investment to achieve high profits, accordingly it is a “very profitable” business venture. Risks to date are low as very few incidences of criminal prosecution and conviction of tax offenders are initiated and completed by tax authorities and law enforcement agencies.<sup>54</sup>

Accordingly, a critical first step to address these leakages is the undoubted need to fully modernise and automate the tax system, improve taxpayer convenience in the assessment and payment process whilst at the same time entrenching effective and modern human resource management practices in the tax authorities. Second is the need to build the performance oriented culture with persons with the relevant skills that are updated regularly overtime. Third, tax authorities should carry out continuous tax payer enlightenment and education on the unlawful nature and consequence of tax evasion and collaborate with relevant agencies including law enforcement agencies to identify and bring tax evaders into the tax net. Fourth, Government and all tax authorities must work in a collaborative manner to tackle the leakages in the system. There is need to see the tax system as belonging to all Nigerians and work together to get the best of the system, as any gaps are readily exploited by tax evaders. Fifth, the process of criminal prosecution cannot be relegated to the background in the quest to collect revenue. Criminal prosecution of tax evaders is necessary to send the right signals to defaulters, that evasion is a criminal offence and would be viewed with all seriousness by tax authorities and law enforcement agencies. This process shall be carried out in line with the provisions of tax and other relevant legislation.

With respect to avoidance, tax authorities and legislators should identify and address the loopholes in the laws to minimise the incidence of tax avoidance. Where a particular provision of the law is subject to various interpretations which create avenue for avoidance, necessary clarification shall be provided in the form of information circulars or rulings to resolve any such

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<sup>54</sup> Ibid

ambiguity. Overall, however, it shall be duty of tax-payers and their authorised agents to ensure that they fulfill their legal and patriotic duty to compute, declare and pay full and correct taxes to the Nigerian government. In this regard, Government shall ensure that tax payers who comply are rewarded and those who do not comply are sanctioned as follows:

**(a) Reward for compliance**

Tax authorities should be encouraged to provide incentives and other rewards to tax payers who comply with tax laws. Tax authorities may also hold fora where such tax payers are publicly recognised and honoured. It is hoped that such gestures would elicit favourable response from tax payers and result in higher compliance rate.<sup>55</sup>

**(b) Sanctions for non-compliance**

In the same manner that rewards and incentive are provided to compliant tax-payers, sanctions and punitive measures may be taken against recalcitrant offenders and noncompliant tax payers. In this regard tax authorities shall explore all avenues in the laws and ensure that the full weight of the law is brought to bear on such tax-payers.

Measures, which may be taken by tax authorities include legal prosecution before the Courts, freezing of the bank accounts of offenders with lien over monies lodged in such accounts, sealing off and distraining of the premises of such tax-payers, public notices showing the tax status of such tax-payers (name and shame) and application to the Court for the winding up of tax debtors and recovery of unpaid taxes, where necessary. It should be emphasised that tax authorities are at liberty to employ any legal measures to recover taxes and ensure compliance by tax offenders.<sup>56</sup>

#### **4.8 General Review of Federal Inland Revenue Service Act**

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<sup>55</sup> Ibid

<sup>56</sup> Ibid

The FIRS Act provides for the establishment of the Federal Inland Revenue Service charged with the power of assessment, collection and accounting for revenue accruing to the government of the Federation<sup>57</sup>. There was a similar body responsible for the work of the present FIRS i.e. the hitherto existing Federal Board of Inland Revenue which the present FIRS replaced. The rationale behind the promulgation of the present Act is however difficult to ascertain but it can safely be deduced from the Act as it sought to bring under the control of the Service virtually all taxation laws applicable in the country which was not the case under the defunct FBIR. In as much as the authors of the Act have not indicated the rationale or philosophy behind it, it could be said to be an attempt to unify tax administration in Nigeria and to centralize the tax system to ensure more compliance with the extant laws. Below is a review of the entire Act.

Part I of the Act established a Federal Inland Revenue Service<sup>58</sup> as a body corporate with perpetual succession and common seal<sup>59</sup> the Service has as its objective to control and administer the different tax laws specified in the First Schedule to the Act or other laws made or to be made from time to time by the National Assembly or other regulations made thereunder<sup>60</sup> equally established for the Service is a Management Board known as Federal Inland Revenue Service Board<sup>61</sup> which shall have overall supervision of the Service. The Board consists of executive chairman of the Service who shall be an experienced person in taxation as the Chairman of the Board<sup>62</sup>, six members with relevant experience and expertise to represent the six Geopolitical Zones of the country<sup>63</sup>, representative of the Attorney General of the Federation<sup>64</sup>, Governor of

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<sup>57</sup>Federal Inland Revenue Establishment Act, 2007

<sup>58</sup>Section 1(1), Ibid

<sup>59</sup>Section 1(2), Ibid

<sup>60</sup>Section 2 Ibid

<sup>61</sup>Section 3(1), Ibid

<sup>62</sup>Section 3(2)(a), Ibid

<sup>63</sup>Section 2 (2) (b), Ibid

<sup>64</sup>Section 3 (2) (c), Ibid

Central Bank or his representative<sup>65</sup>, representative of Minister of Finance not below the rank of director<sup>66</sup>, the Chairman of Revenue Mobilization, Allocation and Fiscal Commission or his representative<sup>67</sup> the Group Managing Director of Nigeria National Petroleum Corporation or his representative<sup>68</sup>, Comptroller General of Nigeria Custom or his representative<sup>69</sup>, Registrar General of Corporate Affairs Commission or his representative<sup>70</sup> and Chief Executive Officer of the National Planning Commission or his representative<sup>71</sup>. Part II of the Act listed six functions of the Board<sup>72</sup> and about twenty functions of the Service<sup>73</sup> and established a Technical Committee of the Board<sup>74</sup> with power to consider matters that require professional expertise for appropriate recommendation to the Board<sup>75</sup>. Part III established the office of the Executive Chairman of the Service<sup>76</sup> who is to be the chief accounting officer of the Service<sup>77</sup> and also established the office of the Secretary of the Board and his duties<sup>78</sup>.

Matters relating to the financial affairs of the Service as it concern the fund of the Service, expenses, emolument of the management staff are provided under part four of the Act. These include funds of the Service<sup>79</sup>, expenditure of the service<sup>80</sup>, estimate<sup>81</sup>, account and audit<sup>82</sup>, annual

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<sup>65</sup>Section 3 (2) (d), Ibid

<sup>66</sup>Section 3 (2) (e), Ibid

<sup>67</sup>Section 3 (2) (f), Ibid

<sup>68</sup>Section 3 (2) (g), Ibid

<sup>69</sup>Section 3 (2) (h), Ibid

<sup>70</sup>Section 3 (2) (i), Ibid

<sup>71</sup>Section 3 (2) (j), Ibid

<sup>72</sup>Section 7 (1) a-e, Ibid

<sup>73</sup>Section 8 (1) a-t, Ibid

<sup>74</sup>Section 9, Ibid

<sup>75</sup>Section 10, Ibid

<sup>76</sup>Section 11, Ibid

<sup>77</sup>Section 11 (b), Ibid

<sup>78</sup>Section 12, Ibid

<sup>79</sup>Section 15, Ibid

<sup>80</sup>Section 16, Ibid

<sup>81</sup>Section 17, Ibid

<sup>82</sup>Section 18, Ibid

report<sup>83</sup>, power to receive gift<sup>84</sup>, power to borrow<sup>85</sup>, accountability<sup>86</sup>, refund to tax payer<sup>87</sup> and power of Accountant General of the Federation to deduct from the Service<sup>88</sup>.

The powers of the Service as it concern administration of tax laws are contained in part five of the Act. It consist of matters relating to power of the Service to administer all enactments listed in the First Schedule to the Act<sup>89</sup>, call for return and information<sup>90</sup> power to require information from bankers<sup>91</sup> power to access lands, buildings, books and documents and to remove books and documents<sup>92</sup> power of substitution<sup>93</sup>, addition for nonpayment<sup>94</sup>, distrain<sup>95</sup> recovery by civil action<sup>96</sup> tax investigation<sup>97</sup> power to co-opt the assistance of other law enforcement agencies<sup>98</sup> power to pay reward<sup>99</sup> immunity from action<sup>100</sup> and confidentiality of information<sup>101</sup>.

The Act under part vi created 7 different offences that can be committed under the Act<sup>68</sup> These includes offence of failure to deduct or remit tax punished with penalty of 10% of the sum withhold plus interest at Central bank rate per annum<sup>102</sup>, offence of obstructing an official of the Service from carrying out his duty punishable with fine not exceeding N200,000.00 or

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<sup>83</sup>Section 19, Ibid

<sup>84</sup>Section 20, Ibid

<sup>85</sup>Section 21, Ibid

<sup>86</sup>Section 22, Ibid

<sup>87</sup>Section 23, Ibid

<sup>88</sup>Section 24, Ibid

<sup>89</sup>Section25, Ibid

<sup>90</sup>Section 26 and 27, Ibid

<sup>91</sup>Section 28, Ibid

<sup>92</sup>Section 29, Ibid

<sup>93</sup>Section 31, Ibid

<sup>94</sup>Section 32, Ibid

<sup>95</sup>Section 34, Ibid

<sup>96</sup>Section 35, Ibid

<sup>97</sup>Section 36, Ibid

<sup>98</sup>Section 37, Ibid

<sup>99</sup>Section 38, Ibid

<sup>100</sup>Section 39, Ibid

<sup>101</sup>Section 40- 46, Ibid

<sup>102</sup>Section 40, Ibid

imprisonment not exceeding three year or both<sup>103</sup>, offence of false declaration punishable with fine not exceeding N200,000.00 or imprisonment of three year or both<sup>104</sup>, offence of counterfeiting or falsification of document punishable with a fine not exceeding N200,000.00 or imprisonment not exceeding 3 years or both<sup>105</sup> offence of conversion by authorized officer is punishable with fine of 20% of the amount or an imprisonment not exceeding 3 years or both<sup>106</sup>, offence committed while armed is punishable with imprisonment not exceeding 10 years<sup>107</sup>, offence of impersonating an officer of the Service is punishable with fine not exceeding N200,000.00 or imprisonment not exceeding 3 years<sup>108</sup>. Where a person commit any offence in relation to the Act for which punishment is not prescribed above is upon conviction liable to a fine not exceeding N450,000.00 or imprisonment not exceeding 6 months or both<sup>109</sup> Lastly, it makes provisions that empower the FIRS to employ its legal practitioners for the purpose of prosecuting offenders under the Act<sup>110</sup> and equally has power to compound any of the offences under the Act<sup>111</sup>.

This part seven, consist of (10) Sections in relation to official secrecy<sup>112</sup>, provision subjecting the Board to the directives of the Minister<sup>113</sup>, delegation of the powers of the Board<sup>114</sup>, signature authorizing the action of the Service<sup>115</sup>, imposition of surcharge<sup>116</sup>, limitation of suit

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<sup>103</sup>Section 41, Ibid

<sup>104</sup>Section 42, Ibid

<sup>105</sup>Section 43, Ibid

<sup>106</sup>Section 44, Ibid

<sup>107</sup>Section 45, Ibid

<sup>108</sup>Section 46, Ibid

<sup>109</sup>Section 49, Ibid

<sup>110</sup>Section 47, Ibid

<sup>111</sup>Section 48, Ibid

<sup>112</sup>Section 50, Ibid

<sup>113</sup>Section 51, Ibid

<sup>114</sup>Section 52, Ibid

<sup>115</sup>Section 53, Ibid

<sup>116</sup>Section 54, Ibid

against the Service<sup>117</sup>, service of documents<sup>118</sup>, restriction on execution against the property of the Service<sup>119</sup>, provision relating to indemnity<sup>120</sup>, and establishment of Tax Appeal Tribunal<sup>121</sup>.

This is contain in part eight consisting of 11 sections and provides for directives of the minister<sup>122</sup>, power of the Board to make regulation<sup>123</sup>, repeal of part one of Companies Income Tax Act<sup>124</sup>, saving and transitional provision relating to the staff of the dissolved Board<sup>125</sup>, saving and transition relating to the asset and liability of the dissolved Board-<sup>93</sup>, continuation of the chairman of the dissolved Board<sup>126</sup>, continuation and completion of disciplinary proceedings started against a staff<sup>127</sup>, transfer of right and obligation of the dissolved Board to the Service<sup>128</sup>, relevancy of other laws in interpreting the Act<sup>129</sup>, interpretation<sup>130</sup> and end with short title<sup>131</sup>.

Thus, the above chapter gave a clear conceptual analysis of the Nigeria tax administrative system as well as the application of the tax laws. It shows some salient points that are ineffective in the application of tax laws and policies in Nigeria with reference to some important aspects of the subject matter relating to the tax laws, tax policies and tax administration in Nigeria. The next chapter deals with the summary and conclusion of this study.

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<sup>117</sup> section 55, Ibid

<sup>118</sup> section 56, Ibid

<sup>119</sup> section 57, Ibid

<sup>120</sup> section 58, Ibid

<sup>121</sup> section 59, Ibid

<sup>122</sup> section 60, Ibid

<sup>123</sup> Section 61, Ibid

<sup>124</sup> Section 62, Ibid

<sup>125</sup> Section 63, Ibid

<sup>126</sup> Section 64, Ibid

<sup>127</sup> section 65, Ibid

<sup>128</sup> section 66, Ibid

<sup>129</sup> section 67, Ibid

<sup>130</sup> section 68, Ibid

<sup>131</sup> section 69, Ibid



## **CHAPTER FIVE**

### **SUMMARY AND CONCLUSION**

#### **5.1 Summary**

This research has attempted to describe the contours of the Nigerian and international tax regime. We have tried to show that such a regime exists and that it is based on the single tax and benefits principles. The regime, both through treaties and through actual practice, can be regarded as part of customary international law. Yet it would help if Nigeria explicitly articulated that they are trying to adhere to the tenets of the international tax regime and take its principles into account in drafting their tax laws. Nigeria should take these principles more explicitly into consideration in revising its model treaty, and revise the model so that it functions better to prevent both double taxation and double non-taxation.

We have also shown that the Nigerian tax regime would be better off if it were tilted toward global cooperation and coordination of tax matters. In which case, the issues of harmful tax competition, tax havens and harmful preferential tax regimes should not be tolerated. The practical question is which solution will maximize the benefits to Nigeria if not harmonization of the international tax regime? Though the regime is in place, persons especially Multinational Corporations (MNCs) can easily escape from payment of tax, because of the existence of tax havens and weaknesses in the transfer pricing rules. The objective of avoiding double taxation to a certain extent is solved but the problem of under taxation or erosion of tax base still persists in Nigeria today.

## 5.2 Findings

The following findings can be drawn generally from this research:

- i. The revenue derived from taxation in Nigeria is below expectation because the tax administrative system as well as the tax laws and policies are weak and not effective to meet the standard required for revenue generation. The reason being that the application of the tax laws and policies in respect to tax assessment and enforcement are not pro-active enough to generate the expected revenue
- ii. The structure of the Nigerian administration of tax laws and policies do not properly encourage the development and growth of revenue in Nigeria. The single tax principle stipulates that income from cross-border transactions should be subject to tax once (i.e., neither more nor less than once) while the benefits principle assigns the primary right to tax active business income to source jurisdictions and the primary right to tax passive income to residence jurisdictions.
- iii. Nigeria has robust tax policies; however, some of the laws to implement these tax policies have not been enacted. Examples are the Stamp Duties Act, 2004 and the Value Added tax Act 2004 which needed to be amended to increase the tax rates and their enforcement mechanism. Infact, after the conclusion of this work, the VAT Act was amended to increase the tax rate from 5% to 7.5%.
- iv. 'Nigeria's fiscal policy measures have been largely driven by the need to promote such macroeconomic objectives as promoting rapid growth of the

economy, generating employment and maintaining price levels. Unfortunately, the policy measures change frequently; these objectives have remained relatively constant and ineffective. This made it to look as if the fiscal policy is not viable enough to sustain revenue growth and development.

- v. Nigerian tax cases do not generally go to conventional courts. However, Tax cases are determined by Tax Appeal Tribunal which are largely unreported.

### **5.3 Recommendations**

The following suggestions and recommendations are proffered to the above listed findings-

- i. The Nigerian tax administrative system, the tax laws and policies needed to be overhauled in a pro-active manner so as to not only attract foreign investment but, to also improve revenue growth and development in the country. This is notwithstanding the fact that there has been a remarkable degree of convergence even in the purely domestic tax laws in Nigeria. A good example is the Stamp Duties Act, 2004, VAT Act, 2004 and the FIRS 2007. Some of their provisions dealing with tax rate assessment and enforcement need to be amended to suit the changing times. The recent increase of tax rate on VAT Act from 5% to 7.5% is a step to the right direction.
- ii. Closely related to the above is that the Nigerian tax laws and administrative policies should adopt the Single Tax Principle because, double taxation leads to tax rates that can be extremely high and tend to stifle investment. Zero taxation, on the other hand, offers an opportunity to avoid domestic taxation by investing abroad, and therefore threatens to erode the national tax base.

Therefore, the rate of tax for purposes of the single tax principle is generally the source rate for active business income and the residence rate for passive (investment) income. When the primary jurisdiction refrains from taxation, however, residual taxation by other (residence or source) jurisdictions is necessary to prevent under taxation. For instance, Nigeria need to enter into more bilateral tax treaties with most of its trading partners such as ECOWAS,, U.K, U.S.A and China etc.

- iii. There should be strong synergy between the Nigerian revenue authorities, the government and taxpayers in terms of the implementation of tax policies, tax laws and its administration. The tax laws and policy administration should be geared towards an acceptable best practice of the global tax regime. This can be in the form of public awareness campaigns by the tax authorities and the taxpayers. Also the tax authorities should always organize national and international conferences, seminars and workshops for its officers on the current global trends on tax issues.

## BIBLIOGRAPHY

### A. Textbooks

- Arogundade, J. A. (2005) “*Nigerian Income Tax and its International Dimension.*” Spectrum Books Ltd., Ibadan. 1<sup>st</sup> Ed.
- Avi-Yonah, R.S. (2007) “*International Tax as International law: An analysis of the International Tax Regime*” Cambridge University Press, N.Y, USA.
- Brierly, J. L. (1963) “*The Law of Nations: An Introduction to the International Law of Peace*” 6<sup>th</sup> ed. Oxford; New York: Oxford University Press.
- Graetz, M. (2003) “*Foundation of International Income Taxation*” Foundation Press, U.K.
- Janis, M. W. (2003) “*An Introduction to International Law*” 4<sup>th</sup>ed. New York, Aspen Publishers.
- Krasner, S.D (1983) “*International Regimes*” Cornell University Press, London.
- McLure, C.E., (1996) “*Tax Policies for the XXIst Century; In: Visions of theTax Systems of the XXIst Century*” Int’l Fisc. Ass’n 44 UFLR.
- Oleksandr, P. (2002) “*InternationalTaxation of Income Derived From Electronic Commerce: Current Problems and Possible Solutions*” 12 B.U. J. Sci. & Tech. L. 310.

### B. Journals.

- Ackerman, R. et al (2009) “*Modern Financial Theory and Transfer Pricing*”, 10 Geo. Mason L. Rev. 637.
- Ackerman, R.E., (2001) “*Will U.S. Standardization Erode Key Flexibility in APAs?*” 12 J. INT’L TAX’N 12.
- American Law Institute. (1987) “*Restatement of the Law,*” Third, the Foreign Relations Law of the United States. St. Paul, Minn.: American Law Institute Publishers.
- Anton, F.S. (2002), “*Settlement of Disputes in Spanish Tax Treaty Law*”In: Lang, M. et al, (eds.) “*Settlement of Disputes in Tax Treaty Law*”, 427 MarioZüger TNT,
- Arnold, B.J et al. (2002) “*International Tax Primer*”, 2nd ed., Kluwer Law International, The Hague, the Netherlands.

- Ault, J.H. (1992) “*Corporate Integration, Tax Treaties and the Division of the International Tax Base: Principles and Practices*”. Tax Law Review, Vol.47.
- Ault,H.J. (2002) “*Tax Competition: What (If Anything) To Do About It?*”, International and Comparative Taxation, Essays in Honour of KlassVogul, Kluwer Law International, U.K.,
- Avi-Yonah, R. S. (1995), “*The Rise and Fall of Arm’s Length: A Study in the Evolution of U.S. International Taxation*”, 15 VA. TAX REV. 89.
- Avi-Yonah, R.S. (2001) “*The Structure of International Taxation: A Proposal for Simplification*”, 74 Tex. L. Rev. 1301.
- Brauner, Y. (2003) “*An International Tax Regime in Crystallization*” 56 Tax L. Rev. 259.
- Chorvat, E. (2009) “*Forcing Multinationals To Play Fair: Proposals For A Rigorous Transfer Pricing Theory*” 54 Ala. L. Rev. 1251.
- David, R. (1998) “*International Tax Arbitrage and International Tax system*” New York University School of Law Tax Review, vol.53.
- De Waegenare, A., et al., (2005)“*Using Bilateral Advance Pricing Agreements to Resolve Tax Transfer Pricing Disputes*”, 3, Tuck School of Business Working PaperNo. 2005-24, Social Science Research Network Electronic Paper Database.
- Diane, M. (2000) “*On the Frontier of Procedural Innovation: Advance Pricing Agreements and the Struggle to Allocate Income for Cross-Border Taxation*”, 21 MICH. J. INT’L L. 143.
- Eden, L. et al. (2005) “*Tax Havens: Renegade States in the International Tax Regime?*” Law and Social Policy, vol.27, No.1.
- Fowokan, T. (2010) “*International Taxation*”. A paper presented at the Pre-Induction Training programme (CITN).
- Hatsidimitris, A. et al (2010) “*Introduction to Transfer Pricing*” IBFD International Tax Academy.
- Hudson, D.M. et al (2003) “*International and Interstate Approaches to Taxing Business Income*”, 6 Nw. J. Int’l Law & Bus. 562.
- Jennings, R. et al (1992) *Oppenheim’s International Law*. Vol. 1, 9<sup>th</sup> Ed.
- Leppard, B. (1999). “*Is the United States Obligated to Drive on the Right*” 10 Duke J. Comp. & Int’l L. 43.
- Littlewood, M. (2002). “*Tax Competition: Harmful To Whom?*” 26 Mich. J. International L. 411.

- Martin, M.R (2004) “*International Transfer Pricing*” 44-AUG Hous. Law. 24,
- Merrills, J.G. (1998) “*International Dispute Settlement*”, 3rd Ed. TNT.
- Owens, J. (2006) “*The OECD’s Work on Dispute Settlements in Tax Matters: A Progress Report*”, 41 Tax Notes Int’l 1057.
- O’Hear, M.M. et al (1997) “*The Original Intent of U.S International Taxation*” 46 Duke L.J. 1021.
- Rooney, P.C. et al. (1996) “*Competent Authority*” 49 TAX LAWYER 675.
- Züger, M.(2001) “*Arbitration Under Tax Treaties: Improving Legal Protection In International Law*” 13-14 TNT.

### **C. Internet Sources.**

- European Union, Commission Staff Working Paper: Company Taxation in the Internal Market, COM (2001)582 final, available at [http://europa.eu.int/comm/taxation\\_customs/resources/documents/company\\_tax\\_study\\_en.pdf](http://europa.eu.int/comm/taxation_customs/resources/documents/company_tax_study_en.pdf).
- Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries. ST/ESA/PAD/SER.E/37.
- OECD (1979) ‘*Report of the OECD Committee on Fiscal Affairs on Transfer Pricing and Multinational Enterprises*’ [www.oecd.org](http://www.oecd.org).
- OECD (1992) “*Model Tax Convention on Income and Capital*” 1 Tax Treaties (CCH) P 191.
- OECD (2006) “Centre for Tax Policy and Administration, Proposals for Improving Mechanisms for the Resolution of Tax Treaty Disputes” (Public Discussion Draft), [http://www.oecd.org/document/31/0,2340,en\\_2649\\_34897\\_29601431\\_1\\_1\\_1,00.html](http://www.oecd.org/document/31/0,2340,en_2649_34897_29601431_1_1_1,00.html)
- OECD (2009) “*Transfer Pricing Guideline for Multinational Enterprises and Tax Administrations.*” [www.oecd.org/publishing/corrigenda](http://www.oecd.org/publishing/corrigenda)
- OECD “*Revised Transfer Pricing Guidelines*” <http://www.oecd.org>.
- OECD, (1998), “*Harmful Tax Competition: An Emerging Global Issue*” @ <http://www.oecd.org/dataoecd/33/0/1904176.pdf>.
- OECD, (1999) ‘*Guidelines for Conducting Advance Pricing Arrangements under the Mutual Agreement Procedure.*’ Available at <http://www.oecd.org/dataoecd/10/10/38008392.pdf>.

OECD, (2004) “*Centre for Tax Policy and Administration, Improving the Process for Resolving International Tax Disputes*” [www.oecd.org/dataoecd/44/6/33629447.pdf](http://www.oecd.org/dataoecd/44/6/33629447.pdf).

Osadare, B.(2011) “*Transfer Pricing And Conflict Resolution: Issues For The Extractive Industry.*” [http/www.google.com](http://www.google.com).

Shah, M.A. (2003) “*An introduction to International Taxation*” [www.goole.com](http://www.goole.com).