The Legal and Institutional Framework for Taxation in Nigeria: Some Aspects of Law, Policy and Practice

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Abstract:-The tax system in Nigeria is a tripartite foundation that comprises of the tax policy, tax legislation and tax administration. Tax policy forms the basis for tax laws while tax administration is the implementation of the tax laws. A major challenge in Nigeria has been the scope and usage of tax which ought to be clear to the government and citizens at all times. In this study, we begin by explaining the concept and benefit of taxation. Furthermore we discussed the role of government and the obligation of citizens towards taxation. Consequently, we developed a conceptual model and discussed the practical implication for Nigeria.

I. INTRODUCTION

Annecdotally speaking, scholars within the social sciences and even the Humanities have had course to discuss taxation at one point in time. Although the word taxation is sometimes misconstrued as it is used interchangeably with levy or charge¹. Charges are directly related to the services given or rendered while taxation could be a function of capacity for determinable or indeterminable government usage, for the benefit of all citizens². Taxation could then be referred to as a compulsory contribution to the support of government, levied on persons or income commodities mostly at a fixed rate³. Taxation is perhaps the oldest and most priceless tool employed by the government in generating revenue⁴. In Nigeria, Taxation ranks next to petroleum in terms of revenue generation.

Tax imposition dates back to the pre-colonization era, but was visibly utilized for essential services like building of railway, roads and schools by the British colonialist⁵. Government imposes taxes on the citizens in order to finance its activities and to further create a calm business environment for its citizens. Under normal circumstance, as practiced by countries like Britain and Canada, government is supposed to be run on taxes⁶. In light of this, responsibilities are assigned to various stakeholders, which include but not limited to tax payers, tax authorities and the government. Arguably, another major stakeholder are consultants. Although the business of taxation by policy is restricted to seasoned tax administrators⁷ but the importance of consultants cannot be underemphasized. Nonetheless, their involvement should be restricted to providing information and not for collection of taxes⁸.

We shall now briefly highlight the relevant tax authorities and administrative machinery currently operational in Nigeria. They include;

i.) The Joint Tax Board (JTB): Established to advise the federal government with respect to double taxation, arrangements, rates and to promote uniformity in the application of Personal Income Tax deduction, also to advice on matters of procedures and interpretation of the personal income tax deductions and other functions as provided for by the established laws.

ii.). The Federal Board of Inland Revenue (FBIR) has power to legislate on taxation of incomes, transactions, capital gains and stamp duty and power to collect taxes on incomes, transactions capital gains and stamp duty of companies and individuals within its jurisdiction and as provided in the Constitution and enabling laws in that respect.

iii.). The State Board of Internal Revenue (SBIR) has the power to collect taxes on incomes or profits, capital gains and stamp duty from individuals resident within the State as provided in the Constitution and other laws in that respect. Power to legislate on the collection of taxes, fees, levies and charges collectible by Local Government.

iv.). The Local Government Revenue Committee is authorized to collect taxes, fees, charges and levies as provided under the Constitution and other enabling laws in that respect⁹.

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² See generally, Taylor. M.,(2012) Is it a levy , or is it a tax , or both? Revenue Law Journal vol 22 Issue 1 (Bond University).
⁵ Josephine (Ibid) p1

⁷ National Tax Policy draft document updated as at 7th June, 2007 p.12
⁸ Josephine (op cit) p.361.

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v.) Joint State Revenue Committee: This committee is saddled with the responsibility to implement the decisions of JTB, advice the JTB and the state and Local Government on revenue matters; harmonize tax administration in the state and also to enlighten the public on the local and state government revenue matters whilst also carrying out functions as may be assigned by the JTB.

II. MEANING AND FUNCTION OF TAXATION

Generally, the objective of taxation is to raise revenue and redistribute wealth, manage the economy and to further form behavioral patterns of citizens. In developed and developing countries there are wide ranges of taxes and levies that affect different categories of individuals. In Nigeria taxes range from petroleum profits taxation to tenement rate imposition and taxes are imposed at different levels to enable the government provide certain essential services and facilities to the population.

We begin by examining road taxes and levies applicable in all State and local government being harmonized taxes and the legal instruments governing them. Regarding taxation, the government is always at the driver’s seat. It is believed that government’s intervention in an economy takes many forms. The degree of intervention differs from country to country, depending on the form of political model adopted in the governance of the country. The intervention referred to is tax, which in a well planned economy affects every aspect of human endeavor.

On the subject of intervention which differs from one government to the other, so also the nature of intervention differs. Anyanwu opines that a common intervention is the fiscal administration which involves the controlling, organizing, directing, monitoring, planning and management of government revenues and expenditure. Furthermore, the long term role of fiscal administration is to collect all approved taxes at minimum cost, as well as execute government programs as efficiently as possible by avoiding waste.

Taxation is a major gizmo in every economy of the world and necessary to the existence and prosperity of a nation. Tax therefore, could be defined as “a monetary charge made obligatory by the government on persons, entities, transactions, or property to yield public revenue.” Another definition is that “taxes are the enforced proportional contributions from persons and property, levied by the state by virtue of its sovereignty for the support of government and for all public needs.” It could also be viewed as a contribution to revenue exacted by the state from individuals or business; a burden, drain or strain.

III. ROAD TAXES AND TAX CULTURE IN NIGERIA

Currently in Nigeria, the responsibility of tax administration lies with the federal, state and local governments. Each of the three tiers of government has its own tax laws and authority. The Nigerian tax system is designed as a means of income generation and it is based on the 1948 tax laws. Since then the Nigerian tax system has not been left without reforms. The tax system in Nigeria has undergone several significant reforms. The reforms are aimed at making the tax laws simple and implementable. However, there are still noticeable challenges.

The road tax system may also be a veritable opportunity for state government to collect additional revenue needed in discharging its pressing obligations. A road tax system offers itself as one of the most effective means of mobilizing a state’s internal resources and it lends itself to creating an environment conducive to the promotion of economic growth within the state. Road taxes are taxes levied on an individual or corporate for the use of a mechanically propelled vehicle on public roads located within the city, state or even the municipality.

Taxes represent an instrument of fiscal policy used by government to manage the economic development of the nation. It constitutes a major aspect of the macro economy. Payment of taxes is considered a civic duty of a bonafide citizen. As the saying goes, among the Americans, “The only sure things in life are death and taxes.” The state’s share of the income and earnings of the people and organizations thereof is in the form of taxes.

Taxation is a veritable and sustainable source of revenue for government and a tool for fiscal policy and macro-economic management. This fact was reinforced by Okezie when he explained that tax are financial burdens which every citizen must bear in order to sustain his or her government thus enabling that government perform certain basic functions for the benefit of those it governs. Therefore, it follows that for any public payment to qualify as tax, it must have element of compulsory imposition, it must have an imposing authority and there must be an enabling law. Many areas of the...

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11. It is sometimes used to discourage specific lifestyles like taking alcohol and cigarettes
Nigerian tax system require urgent attention, one of which is multiplicity of taxes often blamed on the country’s system of government.

However, it is instructive to note that the 1999 Constitution of the Federal Republic of Nigeria places the responsibility for legislating on income tax, capital gains and stamp duty on the federal government.\textsuperscript{24} Also, tax issues in the concurrent legislative list are within the powers of the federal and state government especially regarding capital gains, incomes or profits of persons other than companies; and stamp duties on documents or transactions. At the same time, the fourth schedule of the 1999 Constitution highlighted the nature of revenue and rates to be collected by local government.

Other than taxes specifically stated in the exclusive legislative list, activities that would ordinarily attract taxes, fees and levies are placed as part of the responsibilities of the local government council. In controlling the incidence of multiple taxes, the Constitution gives the legislative responsibility to the Federal Government in the case of State Governments, and to the State Government in the case of Local Governments\textsuperscript{25}. While the fourth schedule of the 1999 Constitution is explicit enough on the rates and taxes collectible by local government.

Nigeria as a country is yet to develop a tax culture neither do we have a data base for road users that can be relied on despite the fact that taxation has always been with us as a people\textsuperscript{26}. It is arguable that most private individuals generally do not pay tax or when they pay it is not the tax due\textsuperscript{27}. A basic problem, perhaps, is that the enforcement machinery of our road tax laws is so innocuous that anybody can go against it without consequences. Those charged with its administration are more often than not very ill-equipped, ill-trained and majorly neglected that they become disillusioned, frustrated and not in a position to offer their very best. Tax administration and especially road taxes in Nigeria is generally poor\textsuperscript{28}. Various tiers of government, tax administrators, tax practitioners and institutions have tried to improve tax administration machinery in the country. In spite of these efforts, there are still a myriad of problems militating against effective road tax system in Nigeria.

It is significant to note that in finding solution to the legal issues affecting road taxes in Nigeria and its attendant problems, stakeholders must wake to their responsibility in terms of creating an enabling environment that will give room for transparency in tax administration cum management. The way forward lies in the effectiveness of tax administration and collection, implementation of proactive tax policies in line with the current millennium goals, assurance of fair tax administration amongst others.

IV. OTHER CHALLENGES FACING ROAD TAX ADMINISTRATION IN NIGERIA

Road tax is undoubtedly one of the veritable instruments for national development. Apart from being a part of the sources of revenue for government to provide goods and services needed by the people, road tax policies, can and do stimulate economic growth and job creation through its impact on investment and capital formation in the economy. Other challenges highlighted include but not limited to the following:

**Lack of Professionals in Tax Administration**

There are few professionals handling tax administration in Nigeria. A lot of people avoid the area of tax law, and the few within the field of taxation do not employ their training in the right direction. Sometimes they assist tax payers in what is called tax engineering\textsuperscript{29} which leads to tax avoidance and evasion. Not only that, in some states, the Board of Internal Revenue is poorly staffed and the image of “tax collector” is that of a corrupt individual.\textsuperscript{30}

**Lack of Good Record Keeping**

A common problem with both public and private individual in Nigeria could be described as lack of good record keeping. A lot of businesses do not keep tax records and they sometimes do this to escape the payment of tax. Most Nigerian tax payers have a very bad attitude to tax payment. In fact most people do not know it is part of their civic duties or responsibilities to pay tax and except a few enlightened individuals, corporate organizations and salaried employees whose income are automatically subjected to tax.\textsuperscript{31}

**Lack of Capacity and Poor Working Incentives**

Another gap is in the number of tax personnel, coupled with poor remuneration and orientation. Inadequate and corrupt practices also result in unpaid or underpaid taxes which most times end up in private pockets and ultimately resulting in a variance between actual amount paid and amount receipted. Therefore, there is the need for training of staff.

\[24\] See generally section 162 of the 1999 constitution.

\[25\] See generally section 163 of the 1999 constitution of the federal republic of Nigeria.


\[29\] A systematic process of wrongly calculating tax due.


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computerization of tax offices, introduction of on-line payment, creation of feed-back forum, sustained and increased level of public enlightenment and better welfare system for staff.32

Cumbersome Process of Payment and Inadequate Penalties for tax Defaulters

The procedures of tax payment in Nigeria are many times too burdensome. Due to this many Nigerian who are not patient enough especially where there are no pressing need for tax clearance certificate, often end up not paying the tax half way or bribe the tax officials to get cleared33. In spite of this, the continued un-implementation of tax penalties is making gobbledygook of the whole exercise.

Ambiguity in the language of tax statutes

An examination of the language of some of the Nigerian tax statutes reveals that some of the provisions are confusing, even to the professionals.34 Identifying tax liability and valuation is not an easy task. Many of the supposed tax payers understand nothing about the rules under which they are to pay or the range of deductible expenses and allowances accrued to them. As such, they have difficulty ascertaining and disclosing their taxable income. This difficulty is even worsened by the unpopular nature of tax payment and the reluctant attitude of some people to reading. Provisions of tax statutes should be made simpler and clearer for better understanding and tax law reforms must focus on simplifying tax statute provisions.35 The belief many tax payers have is that the taxes are used by the government to pay salaries and the excess are embezzled36.

Complexity of Tax Laws

Tax laws in Nigeria are complex and difficult for the common tax payer to understand, and some cases are problematic even for literate officials. In addition to lack of understanding, many tax payers are unaware of the existence of certain taxes. This coupled with the lack of information, laziness of the tax officials, uncooperative tax payers and the habit of quick fix; this may be an expression of poor tax education and weak accomplishment by tax authorities of their responsibilities with regard to public awareness.

V. CONCLUSION

Even though taxation is an integral and major source of revenue for the government, the continued perception of misappropriation on the part of the citizen will pose a great challenge for the collection of taxes. Also, incidences of double taxation need to be avoided and until citizens begin to get real value for taxes paid, the exercise may remain largely unsuccessful and unappreciated. As a matter of recommendation, the FBIR should be granted autonomy and function directly through from the presidency. Also, the lack of clarity regarding the collection of taxes in Nigeria and continued overlap in the law if unchecked will continually create atmosphere for mistrust and corruption.

The need for a solid and reliable national database cannot also be overemphasized as this will in no small measure tackle and harmonize taxies and levies. From a legal perspective, we suggest a mobile court framework that deals with road tax offenders and fake collectors or tax touts. Generally, we encourage further research on the achievement of the Tax identification Number. Also, research regarding illegal taxes and institutional void in road taxes will prove useful.

BIBLIOGRAPHY


Journals & Research Papers

[32] National Tax Policy draft document
[40] Taylor, M.,(2012) Is it a levy , or is it a tax, or both? Revenue Law Journal. vol 22 Issue 1 Bond University.

Books