The NLI White Papers
Volume 2

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About NLI

The Nigeria Leadership Initiative (NLI) is an international non-profit and non-partisan organization that provides a platform for highly accomplished Nigerian leaders to enhance or develop their values-based skills and to assume a transformative role in Nigeria.

NLI accomplishes its mission by mobilizing the energies, talents, and resources of credible Nigerian leaders (in Nigeria, Europe, the Americas, and Asia) to tackle the challenges of Nigeria; encouraging these leaders to move from thought to action by undertaking leaders hip projects that reflect their values; creating impact by encouraging the leaders to move from success to significance by taking more responsibility for the future of Nigeria; and raising values-based leaders, through a fellowship program, with community spirit.

A member of the Aspen Global Leadership Network and affiliated with the Aspen Institute, NLI programs target those who can actually make a difference: highly accomplished and credible leaders in positions of influence. Through our actions, we aspire for preparing the future that we dream to live in.

Introduction to NLI White Papers Volume 2

NLI's White Papers are conceived as thought papers capable of contributing to leadership, values, and knowledge in Nigeria. They demonstrate the urgent need for action and proffer practical suggestions on steps to be taken.

The publication of this Volume is NLI's contribution to a long-term improvement to the Nigerian tax system. Over the last several decades, recommendations were proffered and great strides have been made at reforming Nigerian tax legislation and administration. Considerable improvements, however, still subsist in areas ranging from fair taxation to usage of taxes to transform the economy. Additionally, the social dimensions and transformative effects of taxes are yet to be undertaken.

Given the foregoing, technical articles are contained herein, from accomplished tax experts and practitioners, on the various issues for tax reforms. NLI's approach is built on two main pillars: learning and taking responsibility. It is our expectation that the articles, in this Volume, enrich the learning of all interested in the development of Nigeria. Concomitantly, we hope that policy makers, legislators, tax practitioners and administrators, as well as public interest groups find enough material to take responsibility in the quest for reform. Therefore, in addition to contributing to knowledge, we urge all interested and concerned Nigerians to move from "thought to action" in the development of Nigeria.

Yinka Oyinlola
CEO, Nigeria Leadership Initiative

Foreword

Some fifty-four years ago I agreed to be included in a team of four set up by the then Federal Minister of Finance, the late Chief Festus Okotie-Eboh, to go to London and arrange for the closing down of the Tax Office in London dealing with Nigerian tax matters as they affected corporate bodies, partnerships and individuals mainly based in the United Kingdom, Europe and the United States of America in view of Nigeria's impending independence from Britain. Much earlier, to be precise between October 1950 and March 1952, I worked in the Federal Board of Inland Revenue as an Assessment Officer. Thereafter for ten years or so I served as the Chairman of the Income Tax Appeal Commissioners.

I welcomed therefore the opportunity offered me to write this Foreword on a most authoritative book, being Volume 2 of The Nigeria Leadership Initiative White Papers.

By and large all the papers are adequately comprehensive, informative and should be of considerable help to tax practitioners, accountancy students and to our legislators. The emphasis laid on the need for a good tax system and which set the tone for the series of articles which follow is indeed most appropriately placed whilst the 20-page contribution on the Reform of the Nigerian Tax System shows an authority on Nigerian Taxation.

It is consoling to know that democratic government is enhanced by the need to raise tax and whenever necessary to increase the level of taxation. Other changes in tax law are similarly facilitated by the existence of representative and accountable governments. Transparency on the part of persons in whose hands public funds are held is an absolute necessity.

The expectations of a good tax system are well spelt out as involving simplicity, certainty and clarity. Making the system easy to understand by all, its laws and administration must be consistent whilst the taxpayers must understand the basis of the imposition of the law. Cost of compliance should be kept as low as possible and taxpayers should be regarded as clients and treated respectfully.

Other expectations of a good tax system include low cost of administration; fair and flexible enough to respond to changing circumstances.

Reforms in the Nigerian Tax System have been necessitated by (i) demand to grow internally generated revenue (IGR); (ii) taxpayers who suffer multiple taxation; (iii) insufficient information available to taxpayers on tax compliance requirements; (iv) multiple taxation by Government at all levels; (v) non-refund of excess taxes to taxpayers within the statutory provision of 90 days.

It is a matter for regret that the National Tax Policy approved as far back as January 2010 to provide guidelines and rules to regulate Nigeria's tax system and provide a basis for tax legislation as well as tax administration is yet to be implemented. The structure for the implementation of the Policy has also not been established in spite of the problems of the existing tax system. The obligations placed by the Policy on all political office holders regarding their tax obligations "before, during and after holding a political office" are indeed worth noting.

The Nigerian Government's responsibility must aim at encouraging the growth of the country's business by low and simple taxes facilitated by fast and efficient administration. Approved list of taxes should be streamlined and adhered to by all tiers of government whilst caution should be exercised in introducing new taxes. Errors and ambiguities in tax laws should be avoided. Technological applications should be encouraged to speed up processing, improve tax collection and reduce errors.

Multiplicity of taxes, bureaucratic bottlenecks and draconian tax laws – all of which discourage investments and increase the risk of business failures should be avoided. The failure of some tax authorities to follow due process as laid down in the Tax Law should be frowned upon. Similarly provision regarding Tax Appeal tribunals should not be overlooked whilst a standard code of ethics regulating the conduct of all tax practitioners should be in place. Tax evasion is being encouraged by structures which are expected to work together but are not being properly coordinated.

The inclusion of a paper on the growing importance of e-commerce throughout the world including Nigeria is timely as the tax implications of profits derivable therefrom are likely to be significant as business develops. As mentioned in the paper, "new rules of taxation specific to e-commerce should be developed" and tax revenue staff will certainly need appropriate training.

Mention should be made of Value Added Tax, which is a consumption tax, because of the views put forward by the writers of the paper that it is their contention that "a more decentralized VAT system would occasion significant improvement in the relative fiscal and developmental conditions of many States in Nigeria." Their paper therefore "seeks to recommend a decentralized VAT and to highlight possible benefits of a more decentralized approach to consumption taxes" in preference to a UNITARY VAT SYSTEM.

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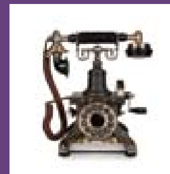

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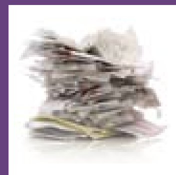

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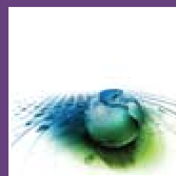

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The hallmarks of a good tax system

Why the road to a sustainable economic growth must be paved with sensible tax reforms

All countries must raise taxes to meet social needs, develop infrastructure, influence economic decisions, and so on without discouraging investments and stifling growth. The task of governments in meeting these requirements is not an easy one, particularly in the current economic circumstances. What is important is how the tax system fulfills these objectives but regardless of the approach or strategy adopted, the tax system should encourage, not discourage, business growth.

Businesses must be encouraged and supported to grow and in the long run higher taxes will be collected. Higher revenue coming as a result of growth should contribute to improving the quality of life for citizens.
The key question is - what makes a good tax system? Here are some hallmarks based on suggestions that have evolved from discussions by PwC with businesses, governments, and other stakeholders from around the world.

A good tax system has a clear purpose

For instance the purpose of the tax system would range from raising revenue to fund public expenditure (roads, electricity, internal and external security, education and so on) to balancing the budget (over a period of time) to avoiding a precarious situation of sovereign debt crisis as is currently the case in many countries especially in Europe. To achieve this, it may be necessary to raise

taxes in order to generate more revenue or cut taxes to stimulate economic growth with a view to increasing the tax base and consequently generate more revenue in the medium to long term. Also the purpose of a good tax system should include meeting social objectives to improve human development (such as a welfare system, poverty eradication, health care, education and so on).

A good tax system is strategic

Being strategic means that the tax system must be stable and consistent; enabling long-term business investment. Businesses do not like uncertainties so government must avoid policy inconsistency and erratic regulations which are often driven by political considerations rather than sound economic objectives and public interest. To be strategic, a good tax system must ensure a fair value for natural resources to ensure that government take is just about right without excessive incentives or outrageous tax burdens on investors in the sector. The tax system must encourage international trade whilst promoting local investment without necessarily compromising one for the other. Finally, a strategic tax system encourages change in behaviour which society is agreed upon. This is usually in form of heavy taxes, levies and duties rather than an outright prohibition of certain behaviours such as smoking and excessive executive compensation among others.

A good tax system is coherent and efficient

It minimizes the administrative burden on businesses and individuals especially those who are willing to comply voluntarily. It also requires efficiency on the part of the various tax authorities to ensure that the cost of tax collection, cash and otherwise, does not exceed the likely benefits. To achieve this tax rules must be clear and understandable, and consistent with wider (non-tax) law and international principles. This in turn requires consultation on policy and administration which must be kept under review regularly to adapt them to the constantly changing business environment.

A good tax system is fair and transparent

First, the legislation must be fair but also the interpretation and application of the rules must be based on the letter and spirit of the law rather than the whims of tax authorities. Consistency of enforcement is critical to ensure a level playing field and to avoid any undue competitive advantage by non-complying entities. In the likely event of a dispute between a taxpayer and the tax authorities, there must be an independent and effective route for resolving disputes with the tax authority.

Concluding thoughts and action points

Action #1 – The Legislative arm of government needs to make clear laws

Perhaps the most important aspect in achieving a good tax system is having the right legal framework in place. To this end, the legislative arm at all levels must consciously make laws which are

clear and easy to understand and which possess all the key attributes of a good tax system. To ensure adequate focus on tax matters – there should be a specific committee of the National and State Assemblies on Tax Matters. The Joint Tax Board should be legally empowered to enforce compliance with the tax laws and provide input to the various arms of government on tax matters especially the legislative arm in respect of tax bills. This will ensure that the Joint Tax Board does not act only in an advisory capacity but can also bite which will go a long way in reducing multiplicity of taxes.

Action #2 – The Executive arm of government to ensure efficient tax administration

The tax authority must treat the taxpayers as customers, trust them but verify the information provided within appropriate benchmarks. Similarly as a matter of legal obligation and civic responsibility the taxpayers must disclose full and reliable information about their tax affairs. To be efficient the tax authorities must adopt a risk-based approach to tax audit and investigation rather than placing undue focus on large corporations who are visible while losing sight of businesses operating under the radar.

The tax law must be administered in a fair, transparent and consistent manner from one taxpayer to another under similar circumstances. Relevant information, guidelines and tax practice notes should be freely available and readily accessible to taxpayers. Technology should be used to enable online filing and tax payment to ease the burden of tax compliance. Office of Tax Simplification should be established to continuously seek ways of improving the tax system. Professionalism rather than political considerations should be the basis of employing and appointing tax officers.

Action #3 – The Judiciary to ensure fairness and transparency

There is bound to be tax controversies and disputes between the tax authorities and taxpayers. The tax system relies on the Judiciary as the last resort in this case whether arising from ambiguities in the law, misapplication by the tax authorities or other irreconcilable differences. To be able to play this role, the Judiciary must develop the requisite tax knowledge and skills, and promptly dispense with tax cases as a key stakeholder with an important role in the tax system.

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Insights on the Reform of the Nigerian Tax System (2002 – 2012)

The Nigerian tax system has evolved over time. Changes have been made right from when "taxes" were collected by traditional communities, pre-dating colonialism, to when taxes were imposed by the British colonial authorities as part of the West African Tax system, to the creation of the Joint Tax Board (JTB) in 1961, to the imposition of Value Added Tax in 1991. Tax systems remain under constant change to make them more responsive to the needs of government and the public in general.

The reasons for embarking on tax reforms in the period under consideration, could be traced back to some of the issues being faced at the national and sub-national levels by the incoming newly democratic government in the period 1999 to 2002:

- Government's heavy reliance on revenues derived from oil, as a result of which little or no attention had been given to revenue from other sources, such as taxation;
- Lack of clarity or agreement on the taxation powers of each level of Government / encroachment on the powers of one level / State by another;
- Lack of a specific policy direction for tax matters in Nigeria and the absence of laid down procedural guidelines for the operation of the various tax authorities;
- The non-review of tax legislation, which had led to obsolete laws, that do not reflect Nigeria's current realities;
- Increased demand to grow internally generated revenue, which led to the exercise of the powers of taxation by unauthorized persons and use of aggressive and unorthodox methods for tax collection to the detriment of the taxpayers who suffer multiple taxation and bear a higher tax burden than anticipated;
- Lack of skilled manpower and inadequate funding, which led to the delegation of powers of revenue officials to third parties, thereby creating uncertainty in the tax system and increasing the cost of tax compliance;
- Insufficient information available to taxpayers on tax compliance requirements, which created uncertainty and room for leakages in the tax system;
- Multiple taxation by Government at all levels, which impacted negatively on the investment climate in Nigeria;
- Lack of accountability for tax revenue and its expenditure; and
- The non refund of excess taxes to tax payers, due to the lack of an efficient system and funds to allow such to happen.

In 2002, renewed commitment by the Federal Government to diversify the economy by growing the non-oil tax revenue in order to develop a stable and sustainable revenue source to finance developmental projects [1] led to the commencement of a comprehensive change process that remains relevant today.

The Study Group on the Nigerian Tax System under the chairmanship of Professor Dotun Phillips was inaugurated by the then Finance Minister Mallam Adamu Ciroma on 6 August 2002 with an eleven-item terms of reference that were all tailored at repositioning the tax system for better efficiency. The Study Group submitted its report in July 2003.

A Working Group chaired by KPMG's Seyi Bickersteth was inaugurated on 12 January 2004 by the then Finance Minister Dr. Ngozi Okonjo-Iweala. The terms of reference of the Working Group were to evaluate the recommendations of the Study Group; prioritise the set of strategies required to be implemented into the short term (six months); medium term (two years); and long term (five years). The Working Group submitted its report to the Federal Government in March 2004. While there were some areas of divergence between the report of the Working Group and that of the Study Group, both reports agreed on the objective of the reform which was, and is, to diversify the revenue base of the government beyond oil and oil related sources. Furthermore, both reports agreed on most of the fundamentals required to achieve that objective.

[1] National Tax Policy for Nigeria: http://www.citn.org/others/Nationaltax.pdf

From May 2004 to September 2004, the reports of the two Groups were exposed to a wide range of stakeholders including but not limited to the Management and staff of the Federal Inland Revenue Service, members of the Joint Tax Board, various Ministries Departments and Agencies of Government including: office of the Secretary to the Government of the Federation, the Federal Ministry of Finance, the Office of the Head of Service, the Federal Civil Service Commission; members of the Economic Management Team, the leadership as well as members of the relevant finance committees of the National Assembly, leadership of the Association of Local Governments Organisation of Nigeria, members of the organised Private Sector, tax consultant, the IMF Mission on Tax Administration and other stakeholders. Stakeholder inputs were incorporated where appropriate, into the harmonised tax reform document and by the end of September 2004, the Federal Inland Revenue Service had distilled a harmonised roadmap for the implementation of the tax reforms.

At the Extraordinary Session of the Federal Executive Council Meeting held on 18 October 2004, the then Executive Chairman of the Federal Inland Revenue Service outlined the reform agenda to the Federal Executive Council. The Council identified three broad, critical strategies required to implement the harmonised tax reform agenda – 1) Autonomy for the Federal Inland Revenue Service, 2) increased funding for the Service through a cost of collection mechanism, and 3) amendments to the various tax laws.

The Council therefore, a) approved that the Service should be granted administrative autonomy that would give the Service the powers to recruit, reward, and discipline staff amongst others; b) approved that the Service should be funded on the basis of 4% of the cost of collection of non-oil taxes – this was subsequently provided for in the 2005 Appropriation Bill and all other like bills to the National Assembly as well as included in the bill which resulted in the FIRS Establishment Act 2007 to ensure this was entrenched within the law; and c) constituted a Presidential Technical Committee under the Chairmanship of the Attorney General of the Federation to draft bills that would give effect to the legislative changes required to actualise the reform objectives. Without this landmark achievement, and support of all stakeholders, all other activities and work under the leadership of the Executive Chairman would have proved futile. These decisions provided the necessary momentum and teeth to jumpstart the reforms.

Proceeding with the Tax Reform agenda necessitated a three pronged approach - addressing the issues from a policy, legislative and administrative standpoint.

Policy - Tax Policy was needed to have for the first time, in one document (rather than have policy thoughts dispersed in numerous budget and other speeches), the national tax policy that would unite the tax system and provide clarity and certainty on the thoughts of government.

Legislative and Judicial Reform - The study and working group reports identified pieces of legislation to change based on agreed policy thrusts such as simplification of the tax system. Also identified were ways to make the judicial process in the adjudication of cases faster. Our role was therefore to harmonize, get agreements and push tax bills that would simplify the tax system – make it easier and friendlier – and also to have legislation that would establish for the very first time, the FIRS as an autonomous institution.

Administration - Administrative improvements required to transform the FIRS and the Joint Tax Board into institutions that had the capacity to execute the clear expectations of government.

Chart 1: Tax Reform Areas

In all these, the administrative improvements to even make the tax policy and legislative aspects of the reform happen were key. The FIRS needed to have structures to drive the change process and the tax reform agenda.

Accordingly, proceeding with the reforms required going beyond the agenda to articulating a clear administrative plan of action – the FIRS three year strategic plan was borne. Through the period covered in this write up, the FIRS had a 2004 to 2007, 2008 to 2011 and 2012 to 2015 plans. These plans moved beyond the highlights of the agenda to identify milestones that could then be used to monitor and evaluate the plans on a regular basis. All plans were set within the context of the Country's Vision 2020 from which a tax vision 2020 was developed providing the ultimate end desired by the plans.

Monitoring and evaluation of the plans were also done through a multi-tier structure involving amongst others:

- Having a function – the Planning, Reporting and Statistics function setup to drive the corporate planning process not just at the corporate management level but at the departmental level and tax office levels.
- Multi-tier meetings – Weekly, Monthly, Quarterly and Annual Management meetings. At several occasions the need for these meetings were questioned, composition changed but the essence remained to have a forum to review and reflect on work done and to determine what next to focus on.
- Creating independent ways to get feedback direct to and from the Executive Chairman in a low-trust environment such that one's intention was clear. In this regard, town hall meetings across the various regions of the country was initiated as well as opening up direct channels of communication by email or small messaging services (SMS).
- Setting up and equipping the Office of the Executive Chairman, headed by a Director, with clear responsibility as secretariat for management meetings such that minutes were captured, issues arising followed up on and used in subsequent meetings; Also providing the Office of the Executive Chairman clear responsibilities for record and document management to ensure effective communication of decisions taken as well as maintenance of proper archives of past decisions and actions.

Beyond organising the FIRS to plan and execute on those actions required in the tax reform agenda, was also the need to organise the JTB, chaired by the Executive Chairman of the FIRS, and the only platform allowing for discussion on national tax issues as its membership included the Chairman of the State Internal Revenue Boards. Similar steps were also taken to set performance goals and have plans for the JTB all towards ensuring an inclusive approach to ensuring all tax authorities were on board and in making the tax reform agenda happen.

The first FIRS plan had an ambitious goal to triple tax collections within the three year planning period (2004 – 2007). This was later changed to ensuring that year on year we achieved a 20% improvement on prior year's revenue. Interestingly when one reads the book by Jim Collins on "How great companies work", it seemed pretty close to the concept of the 20 Mile March. The focus was not on making huge leaps but on ensuring steady sustainable progress over time. To achieve this goal, we started off with a seven-strategy focus. It ended up with seven strategies and three foundational blocks. At the heart of the strategy, was the need to achieve autonomy and proper funding of the institution. Autonomy was not regarded as complete independence but importantly, autonomy from the civil service, and administrative autonomy. The other areas critical to achieving the goals set were:

1) Restructuring the organisation as necessary to build the required capacity to execute;
2) Automation of tax administration processes starting with collections and then encompassing and ensuring an integrated tax administration system;
3) Re-engineering of "mission critical areas" like human resources, finance, accounts and procurement;
4) Taxpayer education – to educate the taxpayers as a first recourse before triggering enforcement activities. The role of the tax authority in sensitising and educating the tax payer was placed as a clear priority;
5) Auditing of the large taxpayers – to ensure that as the reforms went on, the revenues from large taxpayers needed to be in focus to help the Service achieve its targets;

6) Strengthening investigation and enforcement – this recognised that regardless of the level of sensitisation, there would always be taxpayers that would not want to pay their taxes. The Services needed to be ready to enforce collection of taxes from such taxpayers.

There were three foundational blocks were:

1) Ethics: We put in place a code of conduct, whistle blowers, and at least a phone line where you could complain if you felt that a tax officer was being unethical. It still remains a problem but at least it is not as bad as it was then.
2) Performance Management: We needed to build a performance management culture so that even as we restructured, people knew what was going to be rewarded and recognized as performance.
3) And the last foundational block was building a database and making sure that in everything we were doing, we were building a taxpayer database that would support automation and the ability to make all of the changes we had set out to implement.

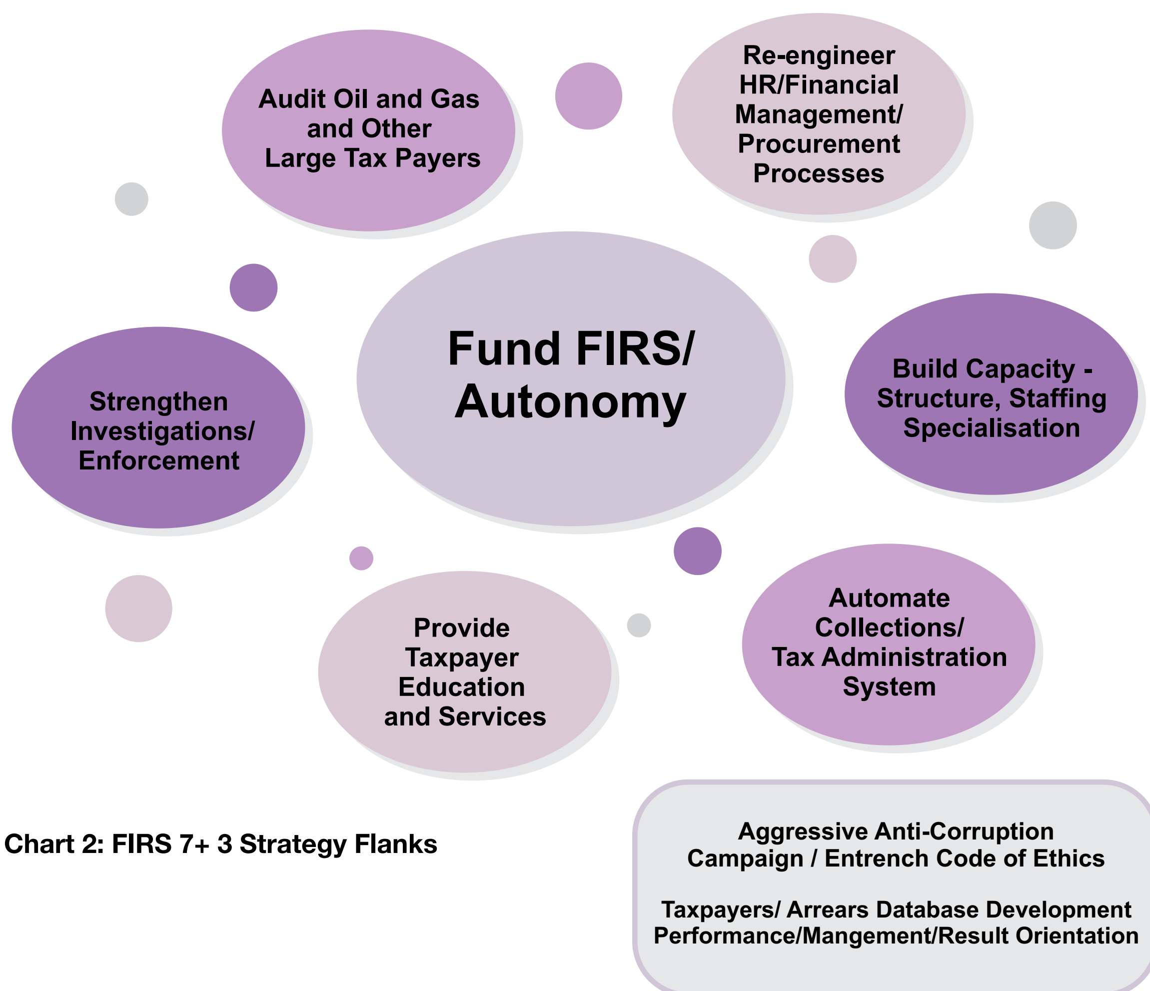


Chart 2: FIRS 7+ 3 Strategy Flanks

ACHIEVEMENTS

In the eight-year period from May 2004 when the processes of developing the harmonised tax reform agenda commenced, several milestones were achieved in the FIRS, the JTB, the member State tax authorities and the general tax system. Some of the achievements are enumerated below:

Policy Achievements

The major achievement recorded here was the development, approval and launch of the National Tax Policy.

Legislative Achievements

A number of legislative achievements we achieved:

1) The drafting of 9 tax bills at the initial start of the tax reform, in 2005, 4 of which were either, withdrawn, converted to be part of a wider reform arrangement or not considered as priority by the National Assembly. These bills and their status as at the time of my exit in April 2012 are stated below:

   a) Petroleum Profit Tax Amendment Bill, 2005 – the amendments contained in this bill were moved into the fiscal provisions in the Petroleum Industry Bill which is currently before the National Assembly after several iterations.
   b) Education Tax Amendment Bill, 2005 – the original intent was to remove the concept of earmarked taxes such as education tax levy so as to reduce multiple taxation with the concept of having education funded through a percentage of Consolidated Revenue Fund (as defined in the constitution) for the Federal Government. This bill was withdrawn with the view of the presidency that the status quo of having Education Tax Levy should remain.
   c) The National Sugar Development Council Amendment Bill, 2005 (and represented in 2010) – a bill to remove the sugar levy as part of attempts at addressing multiple taxation – this bill was not considered as priority by the National Assembly
   d) The Customs and Excise Tariffs Amendment Bill, 2005 (and represented in 2010) – a bill to remove the sugar levy as part of attempts at addressing multiple taxation - this bill was not considered as priority by the National Assembly

2) 5 of the 9 tax bills were signed into law:
   a) Federal Inland Revenue Service (FIRS) Establishment Act, 2007 – establishing the FIRS as an autonomous agency
   b) Personal Income Tax Amendment Act, 2011 – amended various provisions in the Personal Income Tax Act (PITA) since the last amendment in 1991
   c) Company Income Tax Amendment Act, 2007 - amended various provisions in the Companies Income Tax Act (CITA) laws since the last amendment in 1991
   d) Value Added Tax (VAT) Amendment Act - amended various provisions in the VAT Act for the first time since its enactment in 1991;

e) Nigerian Automotive Council Amendment act, 2007 – amended to remove the automotive levy as part of attempts at addressing multiple taxation

3) Having the Joint Tax Board reverse a regulation that was in force imposing higher stamp duties, after considering tax payer comments that noted that the regulation was not in consonance with the tax law. The view approved by the Joint Tax Board was that any change in stamp duties needed an amendment to the law and that a regulation could not stand in its stead.
4) Commencement of another review in 2010, the FIRS started another review of all tax laws with a view to further amendments to the tax laws or in some cases such as the Value Added Tax, a wholesome review. Some of the additional changes planned included a) development of a Tax administration code for the very first time, b) developing an Income Tax Bill – to pool together all income tax related acts under one umbrella in lien with typical practice.
5) The development and gazetting of a number of information circulars and regulations, for further understanding of tax laws and improved clarity.

Administrative Achievements

We initiated several reforms towards modernising the structure and processes of the FIRS and the JTB with the view of enhancing effectiveness and efficiency in tax administration. Some of the achievements as at April 2012 include:

1) Improved Corporate Governance

a) Putting in place a new Board made up of institutional and individual persons and building a sense of camaraderie and direction amongst board members and between the board and management and staff;
b) Developing and establishing policies to guide work ethics and
c) Developing a Governance charter to guide board and senior management conduct.

2) Strategic Planning and Performance Management

a) Articulating a clear direction for the FIRS and the JTB and
b) Development of a performance management culture throughout the organisation.

3) Improved Organisational Design

a) Restructuring and aligning the organizational structure of the FIRS from one that was tax focused to one that was focused on market segments and in alignment with expectations of a modern tax authority; various departments focused on taxpayer segments now exist with a view to ensuring policies and services are tailored to the needs of the following tax payer segments:
i) Large Taxpayers,
ii) Medium Taxpayers,
iii) Micro and Small Taxpayers,
iv) Enterprise and Income Tax payers.
b) Reorganisation of the JTB, for improved service delivery to member revenue authorities;

c) Creating new departments and functions for improved service delivery that hitherto never existed or had previously been part of the larger civil service pool environment. New departments and/or functions created were;

i) Servicom and National Tax Payer Advocate – to align with the SERVCOM office in the Presidency designed to ensure all Ministries, Departments and Agencies build a service oriented culture; also to create an ombudsman within the Service that provides a strong advocacy role on behalf of the customer;

ii) Tax Policy and Legislation – to provide primary liaison between the FIRS and the Ministry of Finance on the one hand, and the FIRS and the National Assembly on the other hand on all Tax Policy and Legislation matters;

iii) Risk Management – to effectively identify and ensure mitigation of risks;

iv) Procurement – to meet the needs of the Procurement Act 2007;

v) Facility Management, Security and Safety – to manage the assets of the Service as well as ensure security and safety of the work environment;

vi) Office of the Executive Chairman - with clear responsibility for managing weekly management and other meetings as well as for records and document management;

vii) Communication and Liaison – for improved communication to external and internal stakeholder as well as management of the liaison process between departments and relevant external stakeholders;

viii) Modernization Group - focused on driving the entire modernization effort with relevant program and change management functions; and

ix) Information and Communications Technology Department – to drive inculcation of 21st century technology driven processes and culture within the Service.

4) Improved Financial Management

a) Reorganisation and reengineering of the Finance Department

i) From staff that were deployed from the office of the Accountant General of the Federation to staff that had a career path within the Service and

ii) From cash based to accrual based accounting

b) Development of relevant financial management policies;

c) Commencement and conclusion of external audits of accounts from 2007 to 2010. The 2011 Financial Audit as at April 2012 was on-going; and

d) Improving funding of the Service, operational offices and departments

5) Improved Human Capital Management

a) Set up of Human Capital Management Department from a personnel department which was mostly administrative in nature implementing directives from the Federal Civil Service Commission, to a department handling the full range of human capital management functions include those functions previously handled by the Federal Civil Service Commission such as recruitment, discipline and promotion;

b) Clearance of the backlog of promotions and disciplinary cases and putting in place an improved promotion process with emphasis on merit;

c) Recruitment of over 3,000 new staff in the course of the reform period;

d) Management of the transition process of over 5,000 staff from the “old” FIRS to the “new” FIRS, including an induction program for all transiting staff;

e) Improvement in the overall financial and non financial remuneration package for staff

as well as improvement in the welfare and overall working environment for staff; and

f) Massive training and retraining initiatives covering over 5,000 staff, to bring skills in line with expectations; such initiatives have to be of a continuing improvement nature.

6) Improved taxpayer education and service delivery

a) Reengineering policies, processes and procedures especially in mission critical functions such as procurement, human capital management and financial management;

b) Reengineering and automating tax processes and systems to engender more efficient and effective tax operations procedures;

c) Putting in place a new service orientation in line with the requirements of modern tax administration;

d) Setting up of various departments/functions focused on continually improving tax administration processes and programs –

i) Taxpayer Services Processes and Programs Department,

ii) Debt Management Processes and Programs Department,

iii) Filing and Registration Processes and Programs Department, and

iv) Tax Audit Processes and Programs Department.

e) Having to embark on massive awareness drives and engagement of the public for improved sensitization, awareness and education on tax matters;

f) Transiting from a Body of Appeal Commissioners for Corporate Income Tax adjudication and VAT Tribunal for VAT appeals to a one stop shops for Appeals on all taxes in eight different locations (Tax Appeal Tribunals) regardless of whether collected by the Federal or State Government; and

g) Putting in a process for obtaining tax refunds and improvements in the refund of over paid taxes back to the tax payer.

7) Development of the early stages of an enforcement culture

a) Setup of the Tax investigation and Enforcement Department (from a unit to a full fledged department with a focus on enforcement;

b) Reorganisation of the Legal Department from staff that were deployed from the office of the Attorney General to staff that had a career path within the Service;

c) Commencement of the prosecution and conviction of tax offenders in an environment that believes more in reward and where sanctions seem "against the culture" with over 17 convictions secured for the period from 2010 to 2011; and

d) Creating audit functions in every tax office as part of ensuring alignment of a tax office with what is expected of a modern tax authority; staffing and developing processes for an effective audit function.

8) Actively developing domestic and international networks

a) Strengthening the relationship between the Federal and State Revenue Authorities and pushing for the approval and implementation of the unique tax payer identification number project designed as a multi agency project and involving all state authorities;

b) Working with other African tax authorities to set up the African Tax Administration Forum (ATAF), which is a platform to promote and facilitate mutual co-operation among African Tax Administrations (and other relevant and interested stakeholders) with the aim of improving the efficacy of their tax legislation and administrations;
c) Initiating the West African Tax Administration Forum (WATAF), a similar forum to ATAF, specifically for West Africa;
d) Becoming a Member of the Organisation for Economic Cooperation and Development (OECD) Global Forum on Transparency and Exchange of Information

Financial Achievements

Within the period, FIRS consistently surpassed the revenue targets set for the Service. Tax revenue grew from slightly below N428.8bn (about $3.4bn) in 2002, to over N4.6 trillion (over $30bn) in 2011. This represents growth in both oil and non-oil revenue as follows:

Year	Non-Oil Taxes	Oil-Taxes	Total Taxes Collected
2001	N163.3bn	N407.1bn	N570.4bn
2002	N204.4bn	N224.4bn	N428.8bn
2003	N255.4bn	N438.0bn	N693.4bn
2004	N316.2bn	N878.6bn	N1,194.8bn
2005	N389.2bn	N1,352.2bn	N1,741.4bn
2006	N513.7bn	N1,352.5bn	N1,866.2bn
2007	N716.3bn	N1,132.0bn	N1,848.3bn
2008	N911.3bn	N2,060.9bn	N2,972.2bn
2009	N1,147bn	N939.4bn	N2,086.6bn
2010	N1,359.1bn	N1,480.59bn	N2,839.69bn
2011	N1,557.8bn	N3,070.59bn	N4,628.3bn

CHALLENGES

Every day of the reform was a challenge. Managing the various tasks arising, staying focused on the reform agenda, managing change through the changes in the Presidency, Ministry of Finance and National Assembly and managing personal change as I got married in December 2007 right in the middle of the reform process. Yet, it was a most interesting experience. Specific challenges are worth discussing, more from the point of putting things in perspective for those that may want to embark on public service reform or indeed any reform at all. I have summarised the major ones under the following headings:

a) Multi-stakeholder expectation management
b) Tax "Consultants" or what others would call Tax "Contractors"
c) Personality as distinct from a process driven culture
d) Having a skilled work force able to speak your language
e) Multi-dimensional responsibilities and personal management

a) Multi-stakeholder expectations management

Managing the various stakeholders and their diverse and sometimes competing expectations and needs – Public, Private, Professional Associations, Domestic, and International, Individual and Groups was a challenge. To implement the aforementioned reforms, I needed to build support with stakeholders in advance.

Key individual stakeholders at the Executive, Legislative and Judiciary tiers of Government were:

- **Federal Executive** - Mr. President, Mr. Vice President, the Secretary to the Government of the Federation, the Head of the Federal Civil Service, the Federal Ministers of Finance and other members of the Federal Executive Council as relevant, Permanent Secretary, Federal Ministry of Finance, Chief Executives of Parastatals as relevant, Clerks of the National Assembly;
- **State Executive** - the Chairman of the Nigeria Governors' Forum, the State Governors in their individual capacities, Chairmen of the State Revenue Boards;
- **Federal Legislative** - the Senate President, the Speaker of the House of Representatives, the Chairman of the Senate Committee of Finance, the Chairman of the House Committee of Finance and other chairmen of relevant Senate and House Committees; and
- **Judiciary** - the Chief Justice of the Federation and Chief Judge of the Federal High Court.

Key institutional stakeholders were – the Presidency, the Federal Executive Council, the JTB, Ministry of Finance, the Board, Management and staff of the FIRS, the FIRS staff unions, the office of the Head of the Civil Service, the Federal Civil Service Commission, the State Governors, the National Assembly, and the Judiciary. I related at one point or the other and made presentations to all of them. Just selling the agenda, getting their support, getting their buy in, seeking their help, day after day after day.

In hindsight I realized that you never really know whether you're going to get support until after you've accomplished your task. You can go through these processes but the real test is what happens when you make that decision and you take that action. Then you'll know for sure those who are behind you, and those who are not. What also helped was the fact that we went through those processes so at least people could not fault you on not carrying everybody along. But it's no guarantee. Part of the implementation of a reform is getting buy-in from key stakeholders and in government I had to meet the lawmakers, the senators and members of the House of Representatives. I went to nearly every senator and representative especially those in the Finance committee to talk to him or her. I needed to interact with them. My meetings enabled me to give account and helped them relate with me as a person. Noteworthy is that after every change in government the same process almost has to be repeated again. As new people step into new shoes, new meetings, new consultations, new relationships are required.

b) Tax "Consultants" or what others would call Tax "Contractors"

I must have received close to 100 proposals as soon as I was appointed Executive Chairman from tax consultants telling me to work with them, to collect tax on behalf of the FIRS for a percentage of taxes collected. Such consultants are not as we typically know them – wanting to offer professional service for a fee as would assist in building an institution. That's why in some quarters they are regarded as tax contractors. Such "contractors" have a singular objective to make money from the collection of taxes on behalf of the FIRS at a commission. Usually they don't have the skills but rather hire others (including staff of the tax authority) to do the work for them. Such proposals had huge incentives built in for those involved. This practice existed before my appointment and was quite prevalent at the state government level. One thing was clear, the practices of the "contractors" created a situation where rather than develop the appropriate capacity within the institution, capacity to collect as well as the taxpayer database was in external hands at a huge cost to government.

As consultants came, my central message was, "if you want to offer service then tell me how you want to teach staff, or improve the processes and systems to offer this service, because if I worked with you and not my staff, I would not be building an institution." I was interested in growing revenues but not at the expense of the institution. Usually such consultants never returned. This helped me stay focused and firm in keeping such consultants or contractors away.

Managing these "contractors" was the single most recurring challenge I or indeed any other Executive Chairman may have to face because the incentives to the contractors are high without a corresponding benefit to the system. During my confirmation as Executive Chairman in 2007, a particular tax consultant was holding meetings with Senators and members of the House of Representatives to stall the confirmation process due to my "lack of cooperation'. Without the support of the Presidency, the leadership of the National Assembly, the Chairman of the Senate Committee in Finance, and some individual members of the Senate and House, the consultant may have succeeded.

The use of "consultants" or "contractors" in tax administration gained traction during the military era. Proponents of the practice argue that the use of consultants results in higher tax revenues for Government. Apart from the fact that the revenue leakages arising from such

arrangements exceed any perceived benefit, it must also be pointed out that apart from its detrimental effect on the development of a strong tax institution, the “use of consultants” in carrying out assessment and collection is illegal. The law permits the use of tax consultants in the provision of services such as training, accounting, management and technical support, all of which improve the capacity of the revenue authorities to deliver on their core mandate of tax collection.

The functions of assessment, collection and accounting for revenues which form the core of tax administration are assigned by law to the Federal Inland Revenue Service at the Federal level; State Boards of Internal Revenue at the State level; and Local Government Revenue Committees at the Local Government level. Beyond the issue of legality, the power of taxation is an index of sovereignty and the government, as the custodian of the sovereign status must not cede it to another party. Through the efforts of the Joint Tax Board, many States continue to jettison the use of tax consultants or “contractors” and instead invest in human capacity building, technology and other platforms that are necessary to modernize tax administration and enhance the overall capacity of the States’ Boards to deliver on their mandates. In doing so, it is important to note the need to have strong internal controls and oversight functions to check the excesses of unethical tax officers.

c) Personality as distinct from a process driven culture

FIRS and the JTB operate in the larger Nigerian environment with cultures that permeate the fabric of day-to-day management. One of the strong cultural factors that inhibit performance and for which one has to be most mindful of is that of a personality rather than process driven ethic. One hypothesis I have, that lends itself to empirical survey in the future, is that the personality-driven ethic is a result of the perception (or reality) of limited career and job options available. Accordingly, a lot of individuals feel personally threatened and tend to analyse every decision from the perspective of how it affects “his or her pocket”. Decisions taken could be significantly misinterpreted if not well-managed leading to rumours. Feedback if not directly and persistently sought will not be forthcoming. During the period under review, there was a high incidence of information leakages, in the wrong context, especially relating to decisions that affect staff.

To manage this challenge, ingenious ways of obtaining feedback were created. Also ways to communicate directly to staff using available technologies was helpful indeed. It also pays to be sincere in your interaction with management and staff, as even if they do not get the message immediately, much later, events will support your view point.

d) Having a skilled work force able to speak your language

To enable us to implement the reforms, skilled work force was and remains important for any organisation. At the onset of the reforms, whereas the FIRS had a staff strength of about 7,000 staff, only about 1,500 had the requisite qualifications or experience to handle the kind of work that the reforms necessitated. A sizeable number were of the office support and clerical cadre. This was not peculiar to the FIRS but it presented a major challenge within an institution that was to rely on the technical qualifications of its people. In addition, recognising the fact that automation was one of the critical outcomes for an institution positioned for improved efficiency,

it was also important to have technology savvy staff. Across the board, the level of technology literacy was very low indeed. In fact every conceivable process you could imagine was manually handled. Accordingly, a clear change management plan involving massive capacity building was critical. Funding enabled the changes to happen with the approval of the cost of collection funding mechanism. Also important was getting the FIRS Establishment Act 2007 passed on time to be able to improve the remuneration structures, targeted training programmes and general working environment. Managing the transition from clerical to a technical and technology driven institution staffed with motivated, relatively well-paid and technically competent people was also key. We had to ensure that staff was adequately trained on all areas of need. This led to different projects and initiatives to adequately assess and place staff, development of a career path for different skill types, a curriculum development plan, skills development matrix and annual domestic and international training/exposure for staff. The Joint Tax Board also supported efforts in the FIRS with the development of in-house taxation programmes tailored to meet the needs of different categories of staff.

e) Multi-dimensional responsibilities and personal management

At some point, I itemised my responsibilities – see table below, so as to put my difficulties in achieving work-life balance in perspective. Once I did that, I felt a bit better and encouraged that given the variety and number of responsibilities, my non-achievement of balance wasn't too surprising. To say I had my hands full is an understatement. I had to deliver results in spite of the several distractions. I constantly received phone calls and texts from persons seeking work or other help. In addition, given the technical nature of work done, I had to stay updated in an ever increasingly competitive environment where the technical content both in the domestic and international arena was ever evolving. Managing technical people as well as persons in technical positions who do not understand the technical nature of the job was also a challenge. The job of the Executive Chairman involves a lot of hard and smart work.

Table 2: Some of the Responsibilities of Ifueko M. Okauru from 2004-2012

Professional Responsibilities

- Chairman of the Federal Inland Revenue Service Board
- Chairman of the Joint Tax Board
- Chief Executive Officer of the FIRS- a 7,000 staff organisation
- Chairman of the FIRS Tenders Board

- Member of Economic Management Team, NEITI Board, United Nations Committee of Experts in International Cooperation in Tax Matters, the African Tax Administration Forum Executive Council, Management Committee of the Commonwealth Association of Tax Administrators, Professional Institutes and of Committees set up by the Presidency;
- Founder/Convener - West African Tax Administrators Forum;
- Represented on Boards of Nigeria Customs Service, National Identity Management Commission (NIMC), Education Trust Fund Board, Chartered Institute of Taxation of Nigeria;
- Steering the tax reforms at both federal and state level in the right direction and at the same time growing the revenue base for government in a sustainable manner and
- Accountable to Mr President, the National Assembly and the Minister of Finance

Personal Obligations

- Wife
- Daughter/Daughter-in-law
- Sister/Sister-in-law
- Aunty/Niece
- Cousin/Relative
- Friend
- Classmate/Old student and part of Alumni network of Primary, Secondary and Tertiary schools attended, and Community worker

CRITICAL SUCCESS FACTORS

If one were to step back to determine what could have been the Critical Success Factors that helped in addressing the challenges of the job, one could summarise them as follows:

1. Support of the boss
2. Achieving a common voice
3. Funding the reform
4. Building coalitions and networks
5. Complying with rules and regulations
6. Public and media support
7. Pipeline development
8. Staying focused, in spite of

1) Support of the Boss

As Executive Chairman of the Service, I was an appointee of Mr. President. Without the support of the three Presidents I worked with over my tenure, nothing would have been achieved. I therefore use this opportunity to thank Chief Olusegun Obasanjo, Late Alhaji Umaru Yar'Adua and Dr. Goodluck Ebele Jonathan for the invaluable support received. This should never be taken for granted. In addition to Mr. Presidents, I had several bosses. In the Ministry of Finance, it was the Minister of Finance. In the National Assembly, I had both the leadership of both houses in the National Assembly as well as the Chairmen of the Committees of Finance. I had the support of them all.

2) Achieving a common voice

Having a common voice was critical. It was also timely that one's mandate aligned with all others in this case the larger economic reform agenda of the Federal Government and the need to reduce dependence on oil revenues and build a sustainable revenue base; believing in the mandate given to me and having a clear vision of what was expected. One could not have achieved as much, if at all, without this. It was also useful not to take this alignment for granted. Creating the enabling environment to support change through sensitization helped. In my case, the right enabling environment involved the President, the Minister of Finance, the Ministry of Finance, members of the Federal Executive Council, related agencies such as the Federal Civil Service Commission, Federal Character Commission, members of the National Assembly as well as the board, management and staff of the FIRS as well as the immediate staff in the office. It was also helpful that one continuously built a "coalition" of management, staff and unions aligned to the vision and the changes required to achieve the vision. Other factors in achieving a common voice that helped were the strategic plans over a three-year period in an environment that hitherto was not used to developing plans and having performance managed by such plans. Also we stayed focus on the seven and then ten strategy flanks – this guided us throughout the entire period even when plans evolved.

Recognising the importance of communication and stakeholder expectations management in achieving a common voice was also critical. Cultivating the various publics using the various media channels was critical. The involvement and support of the various publics helped the reforms get the support received. Constantly needing to receive information directly (text, email, one-one-one) and to get information out first led to town hall meetings, weekly/quarterly/annual management meetings, quarterly stakeholder meetings etc. Educating the publics and cultivating the media to understand what was happening also helped in no small measure.

3) Funding the reform

I would be the first today to say that funding alone does not make a reform, it takes more. However, without the funding provided, one may not have been able to fund the improvement in the remuneration package, conduct and implement the promotion exercises, making changes to the working environment etc. Having improved funding helped. It however had its own challenges as people perennially questioned the funding provided, its legality. It is also important to note that with increased funding come demands from both internal and external

persons. You are perceived as a cash cow to meet the needs of others regardless of whether it meets the needs of the Service. Factors that however helped to secure these funds over the life-time of the reform could be summarised as:

- Ensuring an effective and credible collection system which encompassed different aspects of tax administration, starting from preparation of returns and filing assessment of the taxpayer, to issuing assessments by the tax authority and the acceptance of returns filed by the taxpayers
- Embracing the use of electronic payment (e-payment) systems in all transactions to drive automatic and improved remittances and collections resulting in higher tax remittances.
- Adopting a rigorous and transparent bookkeeping, financial regulation and reporting framework to minimize and avoid leakages of tax revenue. [2]

There are still leakages and still a number of areas where we could have been much more effective and efficient, but these helped to even get us to where we stood.

4) Building coalitions and networks

Given the sheer diversity of one's responsibilities and the demands on one's time, strong coalitions and networks were a MAJOR success factor without a doubt. The truth is that you never really know when they come in handy. And they did come in handy in so many different ways at different times, when one was present in the room and when one was not. Coalitions and networks that proved successful spanned from the personal to the organisational. On the personal end of the spectrum were networks around family, networks of family, networks from school, from previous employers, colleagues and associates at work, and networks from professional bodies and associations. On the organisational end were domestic and international coalitions built in the process of achieving a common voice - networks that evolved as a result of the tax reforms embarked on.

5) Complying with Rules and Regulations

I remember a Stephen Covey video I watched a long time ago that stressed the need for you to first be trust worthy before you can expect trust. It had to do with a father who wanted his child to stop eating sugar and then realised that he too needed to first stop eating sugar before requesting his child to do same. This is so true not just on an individual but also an organisational level. It was important that the FIRS as an organisation itself was compliant with the tax laws. It was important that the Executive Chairman at the helm of affairs was compliant with the tax laws as well as the policies and regulations developed. This helped built an environment where even if one was not in agreement with all that was said or expected, there was a window that gave it a chance to succeed.

During the period, FIRS also treated as priority the engagement of external auditors to audit financial accounts from 2007 (in line with the new Act) and the development of annual reports, from 2005.

[2] Ibid

Ensuring proper document and records management also helped. This remains a challenge but it also is a critical success factor as it helped in providing context to decisions made.

6) Pipeline development

Today is gone, the future is here. Reforms are only as relevant as the future.
In embarking on the tax reforms, we constantly built in the need for continuous improvement and to be constantly ahead. Beyond this was the need to develop the pipeline of future leaders, future thoughts, future advocates. An interesting coalition that developed in the course of the reform were those that had to do with the academia and the youth. The immediate impact of this coalition will not be felt today but in years to come. As part of pipeline development, the FIRS set up 13 professorial chairs in 6 Federal, 6 State universities and the Federal Capital Territory and set up the Student Tax Advocacy Initiative (STAI) to promote youth advocacy on tax matters nationwide.

7) Staying focussed, in spite of

Two lessons I learned once in public office was to never shy from taking decisions on time and to stay focussed. One helps the other. Ultimately at the end of the day, your ability to manage yourself will determine how much you achieve. In spite of the numerous stakeholders, in spite of the numerous expectations of others, in spite of the challenges faced, critical was the need for you, the leader, to stay focussed on the ball and to ensure that it influenced everything you stood for.

To enable this happen, I would again lean on Stephen Covey who states in his book “The 7 Habits of Highly Effective People”, that to achieve public victory one must first achieve self-mastery. In practical terms, self-mastery involved,

a) Understanding the terrain and the issues,
b) Being clear on who I was and the different experiences I brought to the job,
c) Having passion for and belief in my actions,
d) Making time out to think on my own,
e) Having a can do spirit as well as a proactive rather than reactive mind-set
f) Ability to manage people was also an invaluable skill because after all is said and done, every leadership job is ultimately about leading and managing people,
g) Education, Education, Exposure, Education – building a learning environment,
h) Having a diversity and merit driven mind-set – indispensable,
i) Making process rather than personality driven decisions no matter the pressure you face,
j) Having an incredible family support system – spouse, parents, siblings, understanding friends/relatives,
k) Having an extensive intelligence and supportive personal network – Domestic and international – built consciously as well as unconsciously,
l) Having a sense of empathy with others in all decisions taken, and
m) My belief in God, that with him all things good will come to pass.

UNFINISHED BUSINESS

The problems that led to the reforms over the period 2002 – 2012, have been reduced but still remain and will therefore need continuous and concerted action to continue on the path of progress and institution building.

A critical and perhaps fundamental drive of future major change however, is a clear review of the provisions of the Constitution of the Federal Republic if Nigeria to settle once and for all persisting disagreements in the nature of fiscal federalism to have in Nigeria. The 1999 constitution (as amended) of the Federal Republic of Nigeria places Income Taxation, Capital Gains Tax, Stamp Duties and Excise Taxes under the Exclusive legislative list of the Federal Government. Under the concurrent legislative list of the Nigerian Constitution, the collection of taxes, may be delegated by the Federal Government to the State Governments. In areas of Local Government administration, the constitution is clear on the role of Local Government to collect fees, rates and user charges. Whereas the constitution is not specific on the manner of administration of all other taxes, State Governments have used the provision in S. 4(7), which states interalia that " the House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say: -

a) any matter not included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution
b) any matter included in the concurrent legislative list set out in the first column of Part II of the second Schedule to this Constitution to the extent prescribed in the second column opposite thereto and
c) any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution"

to infer that residual taxes can be legislated on by them. It is this provision that has given rise to the dispute over who collects VAT and whether or not a State Government can collect sales tax or hotel and occupancy tax or environmental or infrastructure tax as some state governments have in their legislation. These matters are now the subject of judicial interpretation especially as the Federal Government has also averred that the same section referred to by the State Government, is preceded by S. 4(5) which states inter alia that, "if any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall, to the extent of inconsistency, be void."

These are issues that remain on the table, even after the National Tax Policy was developed as part of the Nigerian Tax reform process, even after the various amendments to the tax laws. Even after the various administrative improvements to make the Federal Inland Revenue Service more effective and efficient and to make the Joint Tax Board be more responsive to the needs of the 37 taxing authorities in Nigeria.

IFUEKO OMOIGUI OKAURU was the Executive Chairman of the Federal Inland Revenue Service, FIRS and Chairman of the Joint Tax Board, JTB from May 4, 2004 – April 9, 2012. She was responsible for development and driving institutional changes in the tax system at Federal and State levels leading to growth in annual tax revenues, amounting to over 15 billion US dollars ($15,000,000,000.00) to reduce dependence on mono product (oil) revenues; development and implementation of a Tax Reform agenda to improve the funding quality and effectiveness of tax administration in Nigeria; facilitated the drafting of a comprehensive legal framework and the passage of four Acts namely: FIRS (Establishment) Act 2007, Value Added Tax (Amendment) Act 2007, Companies Income Tax (Amendment) Act 2007, National Automotive Council (Amendment) Act 2007.

Now, that the constitutional reforms for Nigeria are under way, this is an opportunity for the future of taxation to be made clear once and for all. How should we structure tax administration? What do we mean by Fiscal Federalism? Does Fiscal Federalism mean that collection of taxes has to be done by the sub-national authorities? Or does it mean that revenues should be fairly allocated to all constituent parts even if collected at one point? How should revenues collected be allocated to provide an incentive for governments to cooperate with one another in the collection of taxes? These are fundamental issues requiring fundamental solutions that will truly provide the basis for eliminating issues like multiple taxation which remains an issue, issue of dependence on oil revenues which in spite of progress made remains an issue, issues of having a revenue generating mind-set in every action we take, issues of building a competitive workforce and business environment amongst others. These issues remain outstanding.

CONCLUSION

Tax reforms are a permanent part of any country's economic space. A system can never be, as you want it to be. With changes in the polity and changes in the economy, come changes in the tax system to make it even more responsive to the nation we want to build. I was part of a decade long series of initiatives designed to make the tax system better than we found it. We succeeded. We have passed the baton to those who will drive the next decade of actions that will make the system much better than what we have handed over.

Jacob Babalola Okele

Evolution and Enactment of Taxes:

Dividends of Good Governance in Nigeria

It will be time-wasting to go as far back to 1938 reminding ourselves of what had happened to the Nigerian Tax system except for the purpose of learning from mistakes made and ensuring that such mistakes are not repeated. Those of us who are familiar with the provisions of tax legislations will agree that Nigeria is yet to have a perfect tax system. As a matter of fact, no country in the whole world can boast of having a perfect tax system. This explains why the developed countries in Europe and the Americas always ensure that their tax laws are reviewed yearly for amendments and additions to the existing laws.

Taxation is an underrated tool in the effort to build more capable and responsive states. The role of taxation as a central force in the development of democracy resonates strongly throughout history. The duty of paying for government legitimizes demands for services and accountability.

"the origin of representative government is intimately bound with that of taxation

When eighteenth-century American rebels declared "No taxation without representation!", they were echoing convictions developed in earlier struggles between rulers and revenue-producers in Britain.

Democracies are built not only on periodic elections but also on a social contract based on bargaining over the collection and spending of public revenue. Without the ability to raise revenue effectively, governments are limited in the extent to which they can provide security, meet basic needs, and foster economic development. Yet the political importance of taxation extends beyond the raising of revenue.

Taxation can stimulate calls for more representative and accountable governments, while the need to increase revenue can stimulate institution-building. Both have the potential to bolster the legitimacy of the government and enhance democracy. Funding state expenditures primarily through resources that are raised without much effort (foreign aid or revenues derived from oil and other natural resources) does little to stimulate the development of state capacity.

In Europe, taxes not only helped create the state, they also helped make it democratic. The origins of representative government are intimately bound up with the evolution of taxation. When parliaments began taxing their citizens, governments became more skilled at collecting the information they needed to respond to popular demands for accountability. Over time, the need for revenue fostered reform of tax systems, shifting from simple systems of "tax farming" (in which governments delegate the collection of taxes to private individuals who are allowed to keep a percentage) and customs duties to permanent, modern bureaucracies. The bargain between taxpayers and monarchs encouraged a rule of law that protected private property rights. Backed by taxation, rulers were able to sell bonds in private capital markets. Formed originally to finance wars, these revenue authorities became essential supports for the economic development of Europe.

Representation, however, is only one element of the fiscal contract. The bargain might also involve services: public goods (such as defence, schools, or roads) or semi-public goods (benefits provided to producers or consumers). And it involves pressure on governments to be accountable to taxpayers for the use of their money.

From the above, we are brought to the realization that accountability connotes responsibility and transparency. Persons occupying positions of authority and entrusted with huge financial resources are expected to discharge their functions diligently and in good faith; the resources committed into their hands are to be judiciously utilized and properly accounted for.

However, studies have shown that countries endowed with mineral resources face fewer internal pressures to improve state capacity and accountability. When revenue does not depend on the taxes raised from citizens and businesses, there is less incentive for governments to be accountable to them. Rulers whose revenue came without much effort found themselves making decisions mainly about largesse, or as a popular saying goes, the distribution of the "national cake".

However, when citizens fulfil their duties as taxpayers, they have a right to make claims on the state for provision of public goods and public services.

With the advent of democracy in Nigeria and realization of the need for a shift of the source of revenue from the oil to the non-oil sector, it is expected that the authorities will be more transparent and open with the application of taxes collected and institute tax reforms that will continuously clear all ambiguities within the tax statutes. With this level of tax accountability, citizens will be more responsive to public policies and subsequently be more tax compliant.

> "when revenue does not depends on the taxes raised from citizens and business there is less incentive for governments to accountable to them"

With the institution of tax reforms and the adherence to the principles of transparency and accountability in the application of funds raised, there will be a corresponding increase in the provision of the dividends of good governance.

The Nigeria Tax System

In Nigeria, the taxation system dates back to 1904 when the personal income tax was introduced in Northern Nigeria before the unification of the country by the colonial masters. It was later implemented through the Native Revenue Ordinances to the Western and Eastern regions in 1917 and 1928, respectively. Among other amendments in the 1930s, it was later incorporated into Direct Taxation Ordinance No. 4 of 1940. Companies Income Tax was introduced in 1939 as a source of revenue for the Federal Government of Nigeria. First, tax on companies was imposed under the Companies Income Tax Ordinance of 1939. This was to cover the aspect of income tax that was not covered by the Native Revenue Ordinance of 1917 with all its subsequent amendments. In 1940, the Income Tax Ordinance of 1940 was promulgated to consolidate the Companies Income Tax Ordinance of 1939. Tax under the 1940 Ordinance was imposed upon any "person" and this expression was defined to include a company. By 1943, the Income Tax Ordinance was enacted for Lagos residents and Foreigners, including Corporate Organizations, which took care of some major changes such as the introduction of penalties on failure to file in a return, to keep the required accounting records or for furnishing any false returns, which offences are punishable with fines or imprisonment or both. Since then different governments have continued to try to improve on Nigeria's taxation system. The general opinion among scholars is that Nigeria's fiscal regime is characterized by unnecessarily complex, distortionary and largely inequitable taxation laws that have limited application in the formal sector that dominates the economy.

The Nigerian tax system is basically structured as a tool for revenue collection. Later on, emphasis shifted to infant industries protection and income redistribution objectives.

Expectations of a Good Tax System

Simplicity, certainty and clarity

Taxpayers should understand and trust the tax system and this can only be achieved if Nigerian tax policy keeps all taxes simple, creates certainty through considerable restrictions on the need for discretionary judgments, and produces clarity by educating the public on the application of relevant tax laws.

It is therefore imperative that the Nigerian tax system should be simple, (making it easy to be understood by all), certain (its laws and administration must be consistent) and clear (stakeholders must understand the basis of its imposition).

Low compliance cost

To enable a high level of compliance, the economic costs of time required, and the expense which a taxpayer may incur during the procedures for compliance, shall be kept to the absolute minimum at all times. Furthermore, taxpayers should be regarded as clients with the right to be treated respectfully.
The convenience of the taxpayer and minimal compliance cost should guide the design and implementation of every tax in Nigeria.

Low cost of administration

A key feature of a good tax system is that the cost of administration must be relatively low when compared to the benefits derived from its imposition. There must therefore be a proper cost-benefit analysis before the imposition of any taxes and the entire machinery of tax administration in Nigeria should be efficient and cost-effective.

Fairness

Nigeria's tax system should be fair and as such observe the objectives of horizontal and vertical equity. Based on the foregoing, there must be overwhelming reasons for granting tax incentives and concessions to some preferred sectors over others within the economy. Otherwise incentives and concessions shall as much as possible be general and apply to all tax-payers.

Flexibility

Taxes in Nigeria should be flexible enough to respond to changing circumstances. Prevailing circumstances should also be considered before the introduction of new taxes or the review of existing ones.

Economic efficiency

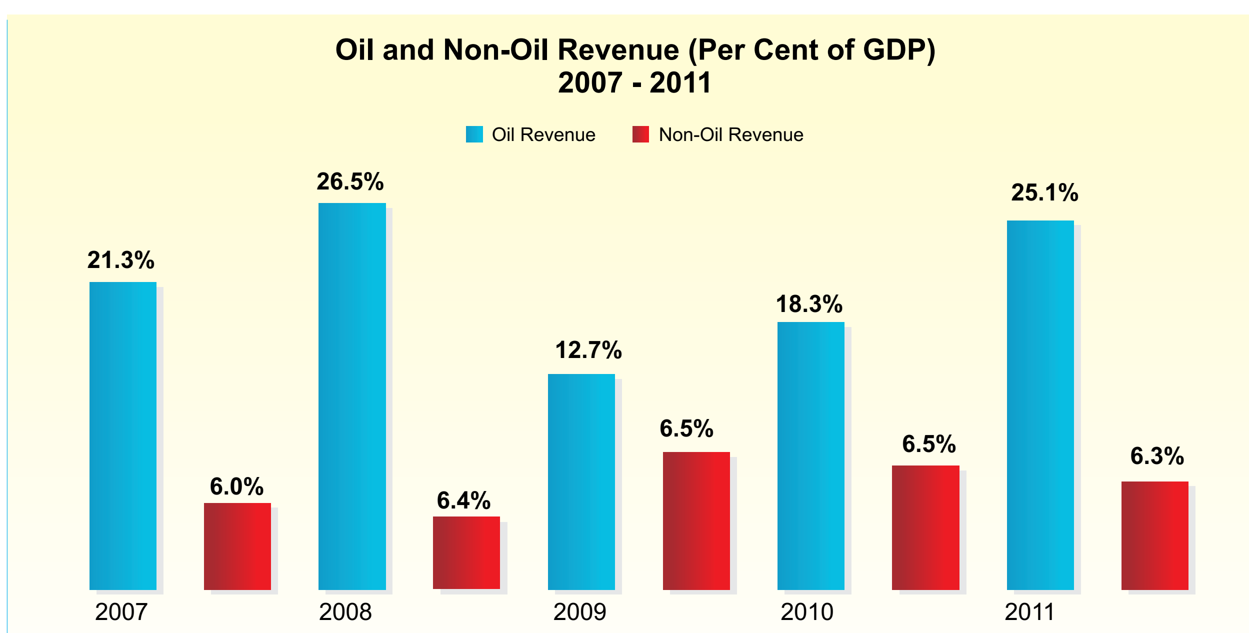
The Nigerian tax system should at all times strive to minimize the negative impact of taxes on economic efficiency by ensuring the marginal propensity to save and invest.

Tax revenue performance X-ray

The need for diversification of the revenue base of the economy has increased over the last couple of years owing to a number of factors such as the recent shock in the global financial economy, the unpredictable volatility in the world oil market, the restiveness in the Niger Delta (though this has been doused with the amnesty programme), the uprising of the Boko Haram

sects in the north and the unending search by the developed economies for alternative sources of energy. These elements emphasize the need to shift focus from being a mono-revenue generating economy (i.e. crude oil only) to diversifying the revenue base. Excessive dependence on oil revenue over the years have created a gap in revenue-expenditure financing, incessant fiscal deficits and absence of sustainability of revenue to support growing socio-economic needs of the Nigerian economy. The need to develop other revenue sources especially having a well-structured tax system have remained the policy thrust of various governments' macro-economic policies over the years.

Statistics from the Central Bank of Nigeria (CBN) Annual Report (2011) on the revenue performance of the country is presented below:



Total federally-collected revenue rose by 52.2 per cent to N11, 116.9 billion in 2011 and constituted 31.4% of GDP. The development was attributed to enhanced receipts from both oil and non-oil revenue sources.

Of the total receipts, oil revenue (gross) accounted for N8,879.0 billion representing 79.9% of the total (25.1% of GDP), indicating an increase of 64.5% above the level in 2010. A breakdown showed that revenue from crude oil and gas exports grew significantly by 34.9% to N2, 287.9 billion. In the same vein, receipts from petroleum profit tax (PPT) and royalties increased by 104.5% to N3,976.3 billion, while revenue from domestic crude oil sales rose by 49.4% to N2,608.8 billion. The development reflected improved crude oil production, occasioned by the relative peace in the Niger Delta region, as a result of the amnesty programme of the Federal Government, and increased export receipts, driven by sustained demand and favourable prices in the international market. The sum of N1,008.8 billion was deducted from the gross

oil receipts for the Joint Venture Cash (JVC) calls, N3,854.8 billion in respect of excess crude/PPT/royalty proceeds and “others”, leaving a balance of N4,015.4 billion for distribution to the three tiers of government.

Gross revenue from non-oil sources increased by 17.3% to N2, 237.9billion representing 0.1% of the total or 6.3% of GDP. A breakdown indicated that Value Added Tax (VAT) rose by 15.4% to N649.5billion, while corporate tax (CT) and customs/excise duties rose by 6.6% and 41.8%, to N700.5billion and N438.3billion, respectively. The Independent Revenue of the Federal Government and custom levies also grew by 18.8% and 51.6%, to N182.5billion and N156.8billion, respectively. The rise in most of the components of the non-oil revenue reflected improved economic activities, particularly in the second half of the year, resulting in enhanced collection by the revenue-collecting agencies.

From the statistics provided by the CBN, an increase of 17.3% was made with respect to revenue from the non-oil sector of the economy in 2011, yet this was only 6.3% of the GDP while the oil sector accounted for 25.1% of the GDP. According to the World Bank, the optimal Tax/GDP ratio for industrialized countries is between 45-55% while for emerging and transitional economies like Nigeria should be closer to 20%. Therefore the current position of the contribution of tax revenue to GDP at 6.3% requires urgent intervention so as to increase tax revenue performance.
This captures the low level of collections from the non-oil sector and the need to develop a robust tax system that will provide sustainable finance on a long term basis and facilitate the delivery of the benefits of good governance. The need for a major policy shift cannot be over-emphasized considering the rapid depletion of our oil reserves that, according to experts, may dry up in the next 25 years, and the development of alternative energy sources by the major oil importers in the developed economies.

Review of Tax Reforms

The Nigerian Tax System has been plagued by numerous challenges over the years necessitating the advocacy for reforms by stakeholders. The reasons for reform could therefore be traced back to the structure of the existing tax system and some of its inherent problems such as: the increased demand to grow internally generated revenue, which has led to the exercise of the powers of taxation to the detriment of the taxpayers who suffer multiple taxation and bear a higher tax burden than anticipated; insufficient information available to taxpayers on tax compliance requirements, which created uncertainty and room for leakages in the tax system; multiple taxation by Government at all levels, which impacted negatively on the Investment climate in Nigeria.

Elimination of multiple taxation is therefore of major concern at all levels of Government. Lack of accountability for tax revenue and its expenditure; lack of clarity on taxation powers of each level of Government / encroachment on the powers of one level / State by another; lack of skilled manpower and inadequate funding, which led to the delegation of powers of revenue officials to third parties, thereby creating uncertainty in the tax system and increasing the cost of tax compliance. The use of aggressive and unorthodox methods for tax collection; the non-refund of excess taxes to tax payers due to the lack of an efficient system for arid funds; the non-review of tax legislation, which led to obsolete laws that do not reflect Nigeria’s current

realities – the lack of a specific policy direction for tax matters in Nigeria and the absence of laid-down procedural guidelines for the operation of the various tax authorities.

These and other problems plaguing Nigeria's tax system have not been adequately tackled for many years. One of the reasons for this was Government's heavy reliance on revenues derived from oil, as a result of which little or no attention had been given to revenue from other sources, such as taxation.

Unlike what is obtainable in the UK where tax laws are updated yearly, the last time there was a comprehensive review of the tax legislation was 2003. Before then, there were piecemeal amendments. Among these are;

The 1978 Task Force on Tax Administration headed by Alhaji Shehu Musa. The major thrusts of the report of the task force are:

- Introduction of the Withholding Tax (WHT) regime
- Imposition of 10 per cent special levy on Bank's excess profits
- Imposition of 21/22 per cent turnover tax on building and construction companies.

The 1992 Study Group on Nigerian Tax System and Administration headed by Professor, Emmanuel Edozien, recommended;

- The establishment of FIRS as the operational arm of FBIR and
- Setting up of Revenue Services at the other tiers of government (State and Local Governments).

The 1992 Study Group on Indirect Taxation headed by Dr. Sylvester Ugoh recommended a policy shift from direct taxation to indirect/consumption (VAT evolved).

Another Study Group was eventually inaugurated on August 6, 2002 to examine the tax system and make appropriate recommendations to the government, on ways to entrench a better tax policy and improve tax administration in the country.

The 2002 exercise was more comprehensive as it covered the entire gamut of taxes at Federal, State and Local Government levels. Some of its recommendations include:

- Nigeria to have a 24 clause national tax policy;

- Compilation of registers of individuals and corporate tax payers and also issuance of smart tax identity cards for all tax payers;

- Raising of the threshold of personal income tax up to N200, 000, consolidation of personal income tax free allowances to a single bulk of 40% of assessable income and the highest income rate should be 20%;

- Limitation of special tax incentives such as tax holidays and import duty reliefs to only industries located in rural areas, fully export-oriented industries, solid minerals production companies and oil and gas operations;

- A company to make profit before being exposed to companies' income tax in any assessment year;

- Reduction of companies' income tax rate to 20% from the current 30% rate;

- Companies with less than N50, 000,000 to henceforth pay its companies income tax to state where it operates;

- Speedy constitutional amendments to confirm the legality of Value Added Tax(VAT) which should be shared among states after 3% had been deducted as part of its administration cost nationwide; and

- Local government to charge tenement rate and capitation rates and other clear-cut user charges for services directly beneficial to the citizens only.

In January 2004, a private sector-driven Working Group was constituted to review the recommendations of the Study Group. Both groups (Study and Working) addressed macro and micro issues in tax policy and administration. Among the macro issues discussed were the drafting of a National Tax Policy, Taxation and Federalism, Tax Incentives and Tax Administration generally. Their recommendations were further reviewed and commented upon by various stakeholders.

Though not all the Professor Dotun Phillips 2003 Tax Review Panel recommendations have been implemented, yet, a considerable number of developments have occurred in the tax sector of the country more so under the watchful eyes of the outgone Chairman of the FIRS (Ms Ifueko Omoigui-Okauru) who re-engineered the tax system and reformed a moribund entity to a modern organization by instituting a legal framework that will guide our tax administration and drive the reforms in that sector for many years to come.

During Ifueko's two-term tenure as the Chairman of FIRS, nine bills were presented to the National Assembly, out of which five became laws. These are the Personal Income Tax (Amendment) Act 2011, Federal Inland Revenue Service Establishment Act (FIRSEA) 2007, Value Added Tax (Amendment) Act, Company Income (Amendment) Act, and the National

Automotive Council (Amendment) Act. Worthy of note is the autonomy granted FIRS and the development of the National Tax policy which is expected to chart a direction for Nigeria's Tax system and establish a framework that all stakeholders would subscribe to and to which they would be held accountable.

It should however be noted that these reforms are not exhaustive but should be carried out from time-to-time so as to keep reflecting current realities while tax bills such as the Petroleum Profit Tax Act, National Sugar Development Council Act and the Custom, Excise Tariff Consolidation Act should be passed by the National Assembly. Other aspects such as the Capital Gain Tax Act, Withholding Tax, and Education Tax Act (initially submitted as a bill but later withdrawn) should be looked at and needed reform carried out.

CHALLENGES

The challenges in the Reforms of the Nigerian Tax System can be summarized thus:

(a) Willingness of government to regard taxation as a tool for regulating the economy, raising revenue for the provision of social services e.g. health delivery, education, security of lives and property, closing the gap between the rich and the poor through indirect taxation.
(b) Provision of adequate infrastructure for effective tax administration and manpower development.
(c) Information technology.
(d) Monitoring of performance and motivating staff to put in their best.
(e) Reducing the level of corruption to the barest minimum
(f) Tax evasion as opposed to tax avoidance
(g) Use of tax consultants to train staff.
(h) Government's delay in implementing recommendations following periodical review of the tax system.

Recommendations

State capacity and democracy can both be strengthened by taxation, creating pathways to a more responsive, effective, accountable and self-reliant governance structure. For a globally competitive tax system the task of pushing the drive to a destination that would accelerate our economic development is a collective one. It is therefore important that all stakeholders, particularly corporate taxpayers must lend their hands, when required, to every tax reform initiative in our national interest while the government maintains an open-door policy in the use of the revenue generated ensuring provision of an improved standard of living for the citizens.

Conclusions

There is need to ensure full and timely accountability for all revenue generated by Government. As earlier said, the contribution of tax by the citizenry confers the right to hold the custodian (i.e. government) of the resources accountable for due diligence and accountability in the usage of the resources. The evasion of tax currently experienced stems from the mistrust potential taxpayers have over the sincerity of the custodian and the delivery of the expected dividends of good governance. Consequently, the following suggestion is provided to make the government accountable and improve the tax system:

- Dissemination of information to tax payers on how tax monies collected are applied. Where tax payers are carried along in the disbursement and utilization of tax revenue, it will create increased public confidence in the tax system. Accountability for tax revenue can be achieved in the following ways:

    - regular and timely publication of revenue collected in widely available mass media, such as newspapers, magazines, National Television and Radio stations and the internet

    - storage of revenue information in electronic format, which is accessible to the general public; and

    - holding of regular forum, where there is interface between revenue authorities/government and the tax payers/public and where the disbursement and utilization of tax and other revenue generated is discussed and clarification provided to tax payers

- The National Tax Policy, which is a document that provides a platform for creating a tax conscious citizenry, approved by the Federal Executive Council and also Federal Economic Council but still awaiting launch for administrative implementation should be put into full use. It is pertinent to mention here that this all-encompassing document mentions the need for the tax authorities to account for tax revenue collected. The responsibility to ensure that proper, timely and complete account of all revenue collected is placed on all tax authorities within the country. Tax authorities are to ensure that records of revenue collected are published in a manner which 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.

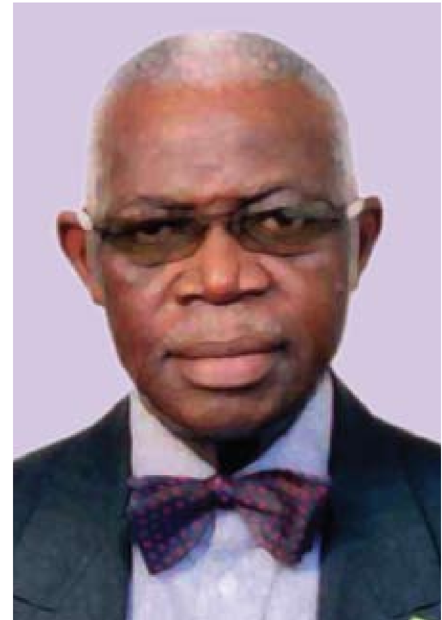
- In addition to ensuring proper accountability for tax revenue collected, there is need to ensure proper utilisation of tax revenues, given that the revenue is generated and utilised by the Government in trust on behalf of its citizens. To this extent, tax revenue should be utilised in a manner to achieve the objectives of the Nigerian tax system which includes, among others, the following:

    - To promote fiscal responsibility and accountability
    - To facilitate economic growth and development
    - To provide the government with stable resources for the provision of public goods and services
    - To address inequalities in income distribution
    - To provide economic stabilisation
    - To pursue fairness and equity
    - To correct market failures or Imperfections

- With the commitment by Government to diversify the economy in order to develop a stable and sustainable revenue base there is need to institute further tax reforms that will deepen the tax base and strengthen the tax administration system.

- The appointment of the Chairman of the FIRS should not be politically-motivated, rather a credible person with the requisite technical know-how should be appointed to drive the system. The economic and infrastructural renewal we need for our nation's rebirth will not be successfully driven by leaders and managers chosen on the recommendation of political godfathers.

As stated above, government and revenue authorities shall be responsible for communicating the uses to which revenue is put. It is expected, that the more effectively and efficiently revenue is utilized by Government to create growth, employment opportunities and wealth in the economy, the more willing taxpayers would be to meet their obligations to the Government and discharge their duties in the overriding goal of achieving National Development.



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The key issues and challenges of implementing the National Tax Policy

Having a roadmap is good, but it is only a start – walking the road is what makes a difference

Taiwo Oyedele

According to the former United States President, Franklin D. Roosevelt, "Taxes, after all, are the dues that we pay for the privileges of membership in an organised society." In Nigeria, like many other countries around the globe, taxes play a critical role in ensuring the existence of the Nation and the wellbeing of her people.

Given the significance of taxation, it is important for governments at all levels to pay attention to what is collected, how it is collected, who collects what, who controls what is collected, how what is collected spent and who is ultimately responsible and accountable to the taxpayers for the revenue collected and its utilization.

The National Tax Policy (NTP) was approved in January 2010 and seeks to provide a set of guidelines, rules and modus operandi that will regulate Nigeria's tax system and provide a basis for tax legislation and tax administration. Several years after, it is yet to be substantially implemented neither is there a structure in place to ensure its implementation.

According to the NTP, the existing tax system has some inherent problems such as:

- the increased demand to grow internally generated revenue, which has led to the exercise of the powers of taxation to the detriment of the taxpayers who suffer multiple taxation and bear a higher tax burden than anticipated;
- insufficient information available to taxpayers on tax compliance requirements, which creates uncertainty and room for leakages in the tax system;
- lack of accountability for tax revenue and its expenditure;
- lack of clarity on taxation powers of each level of government and encroachment on the powers of one level or state by another;
- lack of skilled manpower and inadequate funding, leading to the delegation of powers of revenue officials to third parties, thereby creating uncertainty in the tax system and increasing the cost of tax compliance;
- the non refund of excess taxes to taxpayers, due to the lack of an efficient system and funds;
- the non-review of tax legislation, which had led to obsolete laws, that do not reflect Nigeria's current realities; and
- the lack of a specific policy direction for tax matters in Nigeria and the absence of laid down procedures for the operation of the various tax authorities.

Having identified the inherent problems with the tax system, it is necessary to clarify what a tax is for the avoidance of doubt. According to the Black Law Dictionary (BLD), "Tax is a monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue." Another definition by BLD which has been quoted and endorsed, or approved, expressly or otherwise, by many different courts is "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."

Although the main purpose of raising taxes is to generate revenue for the government, other purposes include addressing inequalities in income distribution to bridge the gap between the haves and have-nots; representation which implies that taxes are imposed to assure citizens of

representation in the governance of the society and for them to demand accountability in return. The objectives of the tax system also include facilitation of economic growth and development, providing the government with stable resources for the provision of public goods and services, economic stabilization, fairness and equity, and to correct market failures or imperfections.

There are many areas in the Nigerian tax system requiring 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 taxation on income, capital gains and stamp duty on the federal government. It also places collection of taxes on the concurrent legislative list, enabling the federal government to delegate administration or collection of taxes as it pertains to taxation or duty on capital gains, incomes or profits of persons other than companies; and stamp duties on documents or transactions, to the state government. At the same time, the Constitution places the responsibility for legislating on the collection of taxes, fees and charges that can be collected by the local governments on the state governments. 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. To control the incidence of multiple taxation, the Constitution gives the responsibility to the Federal Government in the case of State Governments, and to the State Government in the case of Local Governments.

Another major contributory factor is earmark taxes whereby separate taxes are introduced from time to time for various reasons. Examples of this include Education Tax, Information Technology Tax, Local Content levy, Industrial Training Fund levy and so on. Despite the enormous amount of funds generated by these earmark taxes at significant cost to businesses, it is unfortunate that very little or no positive impact has been made on the people and the economy.

From sports to entertainment, tourism to technology, infrastructural development to industrialisation, and the list goes on - Nigeria is a country that is often celebrated more for her potentials than real achievements. The same is our experience in the area of natural resources. Nigeria is one of the largest producers of petroleum in the world, with one of the largest proven oil reserves of over 35 billion barrels and over 185 trillion cubic feet of proven natural gas. No doubt the country is rich but unfortunately her people are poor which can be attributed in large part to defects in the tax system.

There are many areas in the Nigerian tax system requiring urgent attention, one of which is multiplicity of taxes often blamed on the country's system of government.

The Petroleum Industry Bill (PIB) was initiated to address some of these issues but no concrete progress has been made and hence the negative impact on the much needed local and foreign direct investment in the sector. The inability to pass the previous versions of the PIB was due to vested interests pulling in opposite directions and lack of sufficient will by the political class.

The key objectives of the PIB include the creation of a conducive business environment for petroleum operations to enhance exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people, optimise

So whether it is called a tax, duty, levy, fee, toll, rates or charges, to the extent that it is compulsorily imposed by government and usually without a direct benefit to the payer – then it is a tax.

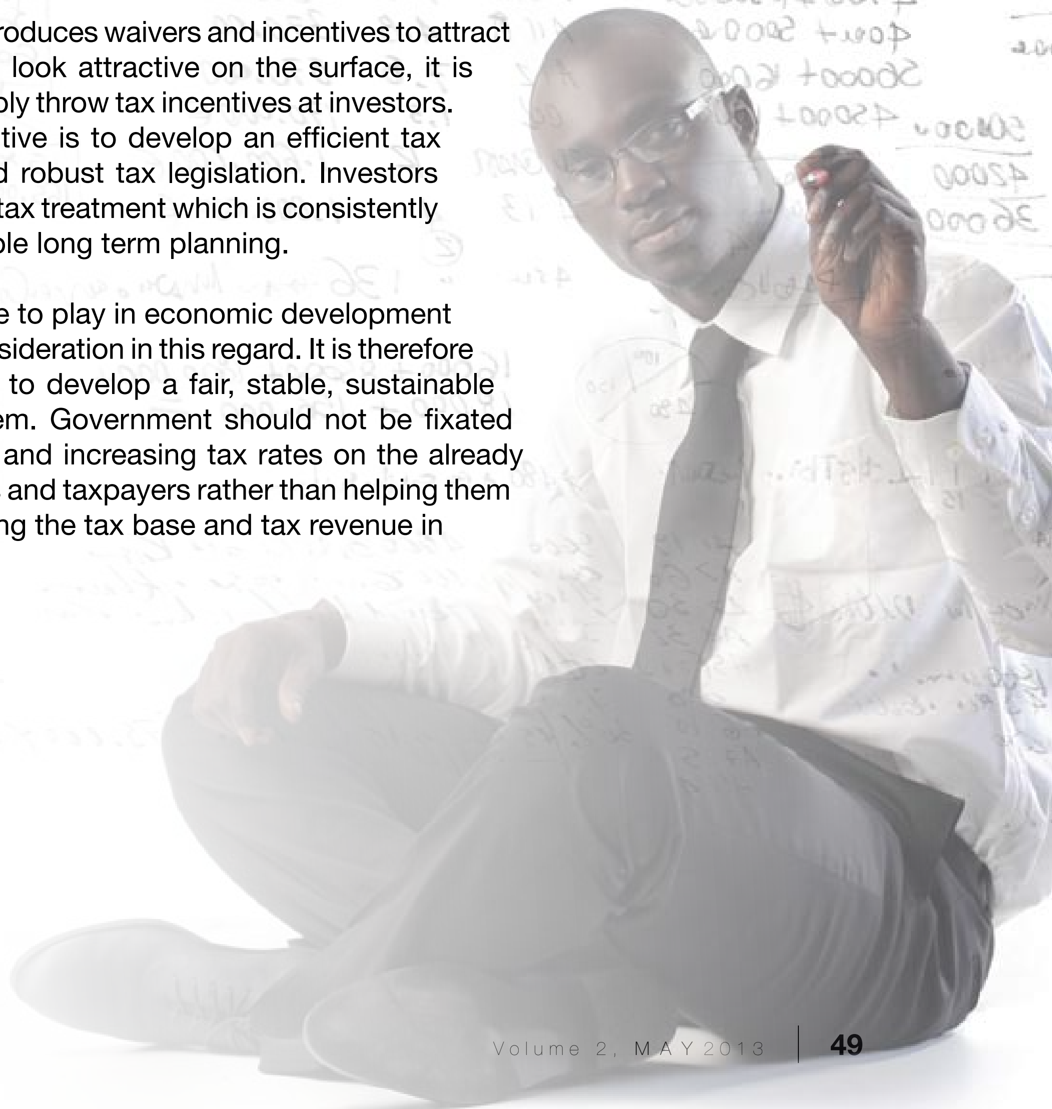
domestic gas supplies particularly for power generation and industrial development.

On balance, the PIB is laudable as it is expected to introduce some positive developments including moves to address host community concerns, promotion of local content, and streamlining of incentives in a transparent manner. However contentious issues in the new draft bill include dispute resolution and potential conflicts with the existing laws such as the Companies Income Tax Act, NDDC Act and so on. There is also insufficient distinction regarding the roles of various agencies mentioned in the bill which is capable of increasing bureaucracy and complexity in the industry.

As much as it is considered desirable to optimise government take in petroleum operations, it is necessary to develop a tax impact simulation or model to determine the additional revenue that is likely to accrue to government and by implication cost to the operators. This should also be the case for all fiscal policies, for instance, government should be required to quantify the impact of new taxes, waivers and compliance requirements.

Oftentimes government introduces waivers and incentives to attract investors. Whilst this may look attractive on the surface, it is seldom the solution to simply throw tax incentives at investors. The most important incentive is to develop an efficient tax administration system and robust tax legislation. Investors are looking for certainty of tax treatment which is consistently applied and stable to enable long term planning.

Businesses have a key role to play in economic development and taxation is a major consideration in this regard. It is therefore important for government to develop a fair, stable, sustainable and competitive tax system. Government should not be fixated on introducing new taxes and increasing tax rates on the already over-burdened businesses and taxpayers rather than helping them grow and thereby increasing the tax base and tax revenue in the long-run.



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Paying Taxes Report and Worldwide Tax Summaries. In his role on these projects, he examines the various areas requiring reforms in the tax legislation, administration, policy and practice in Nigeria compared to over 180 other countries around the globe.

He represented Nigeria at the ACCA International Assembly in the UK in 2010 and in 2011 he was elected into the ACCA Council making him the first and only Nigeria based professional accountant to achieve this feat.

Taiwo is a Fellow of the Institute of Chartered Accountants of Nigeria (FCA), Fellow of the Chartered Institute of Taxation of Nigeria (FCTI), and Fellow of the Association of Certified Chartered Accountants (FCCA).

Concluding thoughts and action points

Action #1 – Establish a body to implement the National Tax Policy

As part of the implementation strategy, it is necessary to constitute a central body with departments within governments at different levels to monitor implementation and report regularly to an appropriate authority such as State and the National Assembly. The body will also have the responsibility of keeping the National Tax Policy under constant review.

Action #2 – Address multiple taxation

To address multiple and numerous taxation, earmark taxes should be reduced to the barest minimum and approved list of taxes should be streamlined and adhered to by all tiers of government. The ongoing review of the Constitution should include relevant amendments to clearly outline the powers of governments at different levels regarding imposition and collection of taxes.

Action #3 – Simplify the tax system

Tax legislation – tax laws should be written in plain language and ambiguities should be reduced to the barest minimum. Conflicting provisions should be removed. With respect to introduction of new taxes, there should be a mechanism to pass all proposed tax laws through the FIRS, JTB and CITN in addition to existing procedures in place to prevent arbitrary tax laws which are contrary to the overall policy direction. Also the commencement date of any new tax law or regulation should give adequate notice and allow a reasonable period of time for taxpayers to make the necessary changes required for implementation. Tax laws should not apply retrospectively.

Tax administration - both FIRS and State Tax Boards should consider issuing a Taxpayer Bill of Rights, or Taxpayers' Charter. This can include taxpayer obligations, as well as a commitment to professional and legal behaviour by tax consultants and the tax authorities. Technology should be used to automate the tax system and information regarding taxation should be freely available and easily accessible electronically via

tax authorities' websites and printed copies at the various tax offices. Tax refunds should be paid promptly within 90 days as provided in the law. There should also be continuous taxpayer engagement, education and awareness

Tax adjudication - Tax courts and appeal tribunals should be more active and functional at all times. Tax disputes should be resolved as quickly as possible. Sanctions for non compliance should be of both a civil and criminal nature - to be used in an appropriate and graduated manner. Civil penalties should be proportionate to the tax lost. Interest should be charged at reasonable commercial rates, on an annual or other periodical basis - to reflect that the taxpayer has used government's money. Likewise, offences such as failure to file tax returns, or failure to provide information on request, should carry a civil penalty. For flat rate penalties, there needs to be some simple manner for adjusting these to reflect changes in the economy such as inflation (perhaps as a percentage of minimum wage).

Action #4 – Set the tone from the top and lead by example

An effective mechanism for achieving high compliance is to lead by example as well as by making the most efficient use of the tax revenue collected by the government. Accordingly, all political office holders on an annual basis should fully disclose all their sources of income and ensure the right taxes are paid culminating in the publication of their tax clearance certificates annually as recommended in the National Tax Policy.

History of tax compliance which must bear some correlation with declaration of assets must be a precondition for election and political appointments. Tax compliance must be all encompassing – before, during and after holding a political office.

M. L. Abubakar

Internally Generated Revenue: Diversification of revenue base without multiple taxation

Exploring and exploiting untapped and potential sources of revenue, job creation, private sector driven economy and political will are basic ingredients in diversifying revenue base

Typically, available sources of revenue for funding a State Government's projects and administration in Nigeria include loans, grants, allocations from Federation Accounts and Internally Generated Revenue (IGR).

Over the years, revenue sharing by the Federal Ministry of Finance's Federation Account Allocation Committee (FAAC) to the State formed the major source of funding for the State's annual budgets. This trend has ceaselessly continued due to so many factors some of which are neglect of internal sources of revenue, inadequate application of tax laws and legislation and lack of political will on the part of Government.

Generally speaking, availability of oil revenue to the country has blindfolded government authorities at all levels so much that sectors like Agro-allied and mining industries which hitherto provided the needed revenue are now near moribund. There is no gainsaying that revenue from agricultural activities, and solid minerals gradually dwindled over the years since the discovery of oil in Nigeria. This phenomenon continued unchecked to the extent that items which contributed substantially to the gross domestic products (GDP) in the past are today being imported to support the growing population.

Internally Generated Revenue (IGR)

Internally generated Revenue of any government includes all monies accruing from all sources under the jurisdiction of that government arising, either by principles of derivation, bringing in or earning of income within the state. In Nigeria's political setting of three (3) tiers of Government, namely: Federal, State and Local, the tiers have revenue sources spelt out for them in the Taxes and Levies (Approved List of Collection) Act of 1998. A major reason for this arrangement is to curb multiple taxation in the Nigeria tax system. Each of these levels of government administers those taxes, levies, fines and fees as provided for in the Act (see taxes collectible by the three (3) tiers Government in Nigeria in Table A).

Table A- Taxes Collectible by the 3 Tiers of Government in Nigeria

Taxes to be collected by the Federal Government

Company income tax

- Withholding tax on companies, residents of the Federal Capital Territory, Abuja and non-resident individuals
- Petroleum profits tax
- Value added tax
- Education tax
- Capital gains tax on residents of the Federal Capital Territory, Abuja, bodies corporate and non-resident individuals
- Stamp duties on corporate bodies and residents of the Federal Capital Territory, Abuja
- **Personal income tax in respect of-**
  - a) Members of the armed forces of the Federation;
  - b) Members of the Nigerian Police Force
  - c) Residents of the Federal Capital Territory, Abuja; and
  - d) Staff of the Ministry of Foreign Affairs, and non-resident individuals

Taxes and levies to be collected by the State Government

Personal Income tax in respect of:-

a) Pay-As-You-Earn (PAYE); and

b) Direct taxation (self-assessment)

- Withholding tax (individuals only)
- Capital gains tax (individuals only)
- Stamp duties on instruments executed by individuals
- Pools betting and lotteries, gaming and casino taxes
- Road taxes

Business premises registration fees in respect of-

a) Urban areas as defined by each State, maximum of-
   N10,000 for registration; and
   N5,000 per annum for renewal of registration; and

b) Rural areas-
   N2,000 for registration; and
   N1,000 per annum for renewal of registration
   Development levy (individuals only) not more than N100 per annum on all taxable individuals

- Naming of street registration fees in the State capital

Taxes and levies to be collected by the Local Government

- Shops and kiosk rates
- Tenement rates
- On and off liquor licence fees
- Slaughter slab fees
- Marriage, birth and death registration fees
- Naming of street registration fees, excluding any street in the State capital
- Right of occupancy fees on lands in rural areas, excluding those collectable by the Federal and State governments
- Market taxes and levies excluding any market where State finance is involved
- Motor park levies
- Cattle tax payable by cattle farmers only
- Merriment and road closure levy
- Radio and television licence fees (other than radio and television transmitter)
- Vehicle radio license fees (to be imposed by local government of the State in which car is registered)
- Wrong parking charges
- Public convenience, sewage and refuse disposal fees
- Customary burial ground permit fees
- Religious places establishments permit fees
- Signboards and advertisements permit fees

Source: Taxes and Levies (Approved Lists of Collection) Act of 1998.

Regardless of the provisions of this Act, the quest of achieving optimum revenue generation by the State and Local Government has negatively landed us in a maze of multiple taxation. Many a State or Local Government desperately and without regard to existing relevant laws imposes on and enforces collection of one form of levy or another from its residents.

Multiple Taxation

Lucidly, multiple taxation has been defined by Abiola Sanni, University of Lagos as "various unlawful compulsory payments or extortions being collected by the Local and State Governments without appropriate legal backing through intimidation and harassment of the payers". The National Tax Policy Document also views multiple taxation as "where the tax, fee or rate is levied on the same person in respect of the same liability by more than one State or Local Government Council"

In fairness to State and Local Governments however, collection of some of the fees, levies and fines are mere charges for certain services rendered by such Governments and should not be termed as multiple taxation. It is also important to differentiate between tax, levy, fee and fine before crucifying State and Local Government for being guilty of multiple taxation.

A **tax** is a compulsory levy imposed by a constituted Government authority on the income of individuals or corporate entities under the jurisdiction of that Government and administered through a legal instrument. It therefore means that three (3) characteristics are evident in a tax. First, it is compulsory, second, its imposed by Government to enable it deliver services such as provision of essential infrastructure and services and maintenance of law and order in the common interest of the populace and third, it is backed by a law. There is also a fourth characteristic of a tax: that individual payer should not expect direct benefit as a result of the tax he or she has paid.

This perhaps, should not be considered in the Nigerian context where taxpayers repeatedly challenge Governments for not living up to their expectations in terms of delivery of quality services.

A **levy** may be termed as contribution by citizen to defray Government Expenditure towards a specific project and for a given period.

A **fee** is that amount paid for a specific service delivered by a Government Agency.

Fine is imposed as a result of violation of Government rules or laws. Considering these definitions in their various contexts, it can be safely said that whereas there are some clear cases of multiple taxation in our system, there are also genuine situations where fees, levies and fines collected for purposes which they came into being cannot be seen as multiple taxation, especially where the relevant legislations are put in place. The following activities by some State and Local Governments are a few example of multiple taxation:

- Hotel occupancy tax – in addition to service charge, VAT and tourism development levy paid by the guests
- Land use charge if not clearly differentiated from tenement rate, Ground rents, certificate of occupancy fee and consent fee
- Cattle tax collected at road blocks mounted at various spots on highways from cattle dealers as they pass through the States where such taxes are illegally imposed.
- Telecommunication mast installation tax – charged by some State and Local Governments in addition to the statutory fees and taxes payable to the National Communication Commission (NCC) and Federal Inland Revenue Service (FIRS) respectively.
- Telecommunication equipment carriage permit fee imposed by some Local Government on highways.
- Sale of stickers to motorists where there is no basis or legal backing

Diversifying Revenue Base

As we try to identify ways of diversifying revenue base it's pertinent to do an overview of collections of internal revenue by the States in the recent past. It is disturbing to observe that IGR contributions to total revenue were below 10% in 28 States of the Federation in 2007. Seven States' IGR contributions to the total revenue were between 10% and 17% with only Lagos State having IGR contribution of 109.4% to total revenue in the same year.
Similarly in 2008, 28 States' IGR contributions to total revenue were below 10% while six States' contributions to IGR in the same year were between 10% and 16%. There was a slight improvement as Kwara State came up to 41% IGR contribution to its total revenue in 2008 and Lagos State moved up to 131% in the same year. (See Revenue Allocation from Federal Accounts and Internally Generated Revenue Table).

Perhaps, in discussing ways to diversify revenue base it may be necessary to first look at various strategies required in improving internally generated revenue of a State.

In order to adequately harness revenue collectible internally, it's important that the tax authority is able to identify its taxpayers by their locations, nature of business and tax type payable. This can be achieved by an effective means of registration of taxpayers through direct enumeration, street combing, taxpayer registration exercise at designated centres and liaising with stakeholders like banks, Government and private organizations by having access to list of employees and companies that are registered for award of contracts.

In addition to the above means, the recent efforts of tax authorities to register taxpayers electronically using biometrics would in no small measure improve taxpayer database in the Nigerian tax system. The Taxpayer Identification Number (TIN) project embarked upon by the 36 tax Boards of Internal Revenue (BIRs) and the Federal Inland Revenue Service (FIRS) aimed at providing a common platform of registering taxpayers online will greatly provide taxpayer database and form a good foundation for achieving real-time tax collection which is a global focus of all modern tax systems.

There may not be much improvement on IGR if provisions of the existing tax laws which are obsolete are not reviewed and amended.

Other important strategies of improving IGR are; adequate funding of Revenue Boards, training of tax officers, sincere and absolute support by Governments, checking fraudulent activities of taxpayers and tax officials, adequate focus on the informal sector and effective enforcement mechanism.

2007

S/N	STATE	FAAC	VAT POOL A/C	IGR	% OF IGR TO FED ALLOCATION
1	ABIA	32,609,025,151.00	3,132,914,489.00	3,117,746,188.84	8.72
2	ADAMAWA	31,144,666,125.00	3,083,468,777.00	1,877,192,387.04	5.48
3	AKWA IBOM	141,399,518,272.00	3,614,264,316.00	16,967,129,735.00	11.70
4	ANAMBRA	31,470,859,250.00	3,543,459,997.00	5,899,024,081.00	16.85
5	BAUCHI	35,174,771,221.00	3,511,951,064.00	1,644,743,591.68	4.25
6	BAYELSA	92,609,466,146.00	2,831,595,820.00	2,955,746,712.28	3.10
7	BENUE	33,870,747,784.00	3,527,897,288.00	2,340,888,969.72	6.26
8	BORNO	35,550,521,237.00	3,416,805,005.00	1,289,111,707.15	3.31
9	CROSS RIVER	39,783,829,441.00	4,956,254,089.00	3,342,876,034.00	7.47
10	DELTA	101,853,417,844.00	4,045,762,651.00	9,563,816,115.00	9.03
11	EBONYI	26,605,526,126.00	2,830,056,457.00	1,538,441,295.65	5.23
12	EDO	33,204,014,935.00	3,333,071,145.00	3,719,332,594.73	10.18
13	EKITI	26,530,373,997.00	2,884,301,259.00	1,706,422,327.37	5.80
14	ENUGU	29,608,282,374.00	3,622,529,824.00	5,506,181,604	16.57
15	GOMBE	26,910,010,410.00	2,861,371,280.00	1,875,897,241.90	6.30
16	IMO	38,064,151,848.00	3,328,307,963.00	2,176,000,000.00	5.26
17	JIGAWA	34,219,838,143.00	3,467,478,017.00	399,994,971.57	1.06
18	KADUNA	38,691,403,075.00	4,239,198,549.00	6,979,912,991.17	16.26
19	KANO	47,755,927,831.00	5,754,786,518.00	2,864,790,587.33	5.35
20	KATSINA	36,816,062,078.00	3,966,968,436.00	1,455,298,010.00	3.57
21	KEBBI	30,614,545,902.00	3,288,218,383.00	1,644,572,795.45	4.86
22	KOGI	30,889,510,621.00	3,462,044,695.00	1,281,712,296.56	3.73
23	KWARA	27,754,366,064.00	2,831,022,551.00	3,659,567,222.76	11.97
24	LAGOS	64,264,735,735.00	22,644,812,264.00	94,854,379,863.51	109.14
25	NASARAWA	26,343,878,556.00	2,768,811,952.00	468,189,519.25	1.61
26	NIGER	34,949,412,347.00	3,269,281,709.00	1,646,341,520.60	4.31
27	OGUN	30,207,122,308.00	3,462,023,641.00	4,006,655,664.32	11.90
28	ONDO	3,316,215,427.00	58,319,792,715.00	2,521,787,850.69	2.80
29	OSUN	28,987,193,540.00	3,266,387,635.00	18,888,083,285.25	5.85
30	OYO	36,244,771,324.00	4,147,695,915.00	2,626,046,430.00	6.50
31	PLATEAU	30,692,824,458.00	3,329,569,978.00	1,876,365,651.04	5.52
32	RIVERS	213,189,791,181.00	6,570,957,009.00	20,731,143,628.10	9.43
33	SOKOTO	32,564,394,985.00	3,600,651,913.00	1,950,479,085.92	5.39
34	TARABA	29,902,525,206.00	2,910,865,690.00	702,626,832.81	2.14
35	YOBE	29,239,815,681.00	2,970,472,858.00	762,598,094.07	2.37
36	ZAMFARA	30,330,924,685.00	3,117,911,075.00	1,200,694,165.38	3.59

Table B: Federal Allocations from Federation Accounts and Internally Generated Revenue (IGR) of States

2008

S/N		FAAC	VAT POOL A/C	IGR	% OF IGR TO FED ALLOCATION
1	ABIA	42,219,208,654.00	4,217,482,959.33	4,340,485,461.00	9.35
2	ADAMAWA	40,700,538,922.00	4,125,460,973.17	2,563,038,144.64	5.72
3	AKWA IBOM	228,737,684,430.00	4,729,339,336.35	11,464,280,363.00	4.91
4	ANAMBRA	41,695,590,379.00	4,672,376,420.14	5,981,607,823.00	12.90
5	BAUCHI	47,674,118,024.00	4,878,659,377.89	2,511,305,820.22	4.78
6	BAYELSA	158,385,536,670.00	3,654,566,163.02	3,124,580,784.77	1.93
7	BENUE	44,195,223,053.00	4,661,242,535.77	3,655,304,697.00	7.48
8	BORNO	48,019,955,437.00	4,594,746,629.38	2,375,124,477.00	4.51
9	CROSS RIVER	55,488,056,482.00	6,609,760,089.00	6,429,071,949.37	10.35
10	DELTA	155,000,113,706.00	5,121,649,390.60	15,927,227,016.00	9.95
11	EBONYI	34,266,806,979.00	3,779,225,426.21	3,100,128,463.46	8.15
12	EDO	41,177,604,316.00	4,263,723,585.06	4,484,516,543.32	9.87
13	EKITI	34,590,497,591.00	3,855,382,109.23	4,153,780,092.56	10.80
14	ENUGU	37,752,671,998.00	4,694,229,935.00	6,500,000,000	15.31
15	GOMBE	36,184,658,239.00	3,824,362,324.04	2,788,949,925.81	6.97
16	IMO	54,732,052,193.00	4,624,084,596.11	4,187,562,380.00	7.05
17	JIGAWA	45,316,907,101.00	4,773,781,260.50	618,297,131.69	1.23
18	KADUNA	51,710,070,197.00	5,569,323,686.50	7,614,998,196.69	13.29
19	KANO	65,663,703,984.00	7,932,577,353.70	4,270,678,165.40	5.80
20	KATSINA	49,316,475,260.00	5,321,082,041.30	2,110,713,855.00	3.86
21	KEBBI	40,955,863,413.00	4,213,353,523.64	3,595,002,311.63	7.96
22	KOGI	40,755,932,203.00	4,223,775,928.35	1,460,061,171.02	3.25
23	KWARA	35,899,866,437.00	3,897,553,576.50	16,444,205,360.00	41.32
24	LAGOS	86,739,117,938.00	32,165,291,389.75	156,093,785,351.38	131.28
25	NASARAWA	35,204,938,139.00	3,843,148,044.89	864,722,368.43	2.21
26	NIGER	45,601,571,611.00	4,442,423,652.93	2,525,264,994.77	5.05
27	OGUN	40,298,271,657.00	4,622,652,058.28	5,354,583,416.86	11.92
28	ONDO	86,223,482,865.00	4,393,262,706.04	2,515,080,670.32	2.78
29	OSUN	36,747,528,789.00	4,273,405,529.13	2,088,031,608.45	5.09
30	OYO	48,372,522,870.00	5,575,891,567.67	5,148,841,555.00	9.54
31	PLATEAU	38,417,631,104.00	4,134,412,492.03	2,736,335,063.54	6.43
32	RIVERS	347,115,726,175.00	8,282,968,971.91	22,837,533,347.20	6.43
33	SOKOTO	42,730,019,268.00	4,525,406,680.56	3,347,993,953.56	7.08
34	TARABA	39,858,709,703.00	4,002,943,901.29	733,896,564.42	1.67
35	YOBE	39,707,091,393.00	3,980,835,229.92	1,221,780,686.00	2.80
36	ZAMFARA	40,271,242,600.00	4,216,529,430.88	1,337,167,378.45	3.01

Source: Revenue Mobilization, Allocation and Fiscal Commission

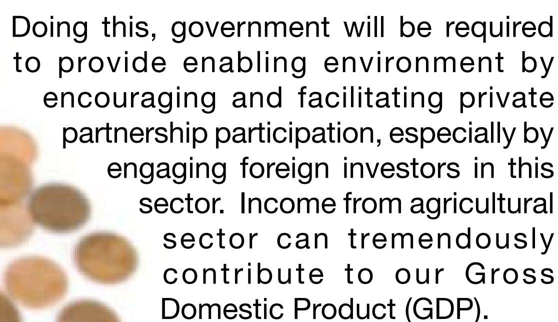
Actions to be taken

Given the current lopsided nature of revenue profiles where all the States, except Lagos depend largely on the Federal allocations from Federation Accounts, one will like to proffer solutions by way of diversifying the revenue base through the following action points:

Action #1- Re-introduce value orientation and basic education for the citizens. All efforts in improving internal revenue of the State and Local Governments will be a mirage if the current attitudes of people towards conducting government activities are not changed. There is a great need for a change in our behaviour and improvement of our values, nationalism and patriotism in the ways and manner we treat or respond to affairs of government. We need to go back to the past years where nation building was considered a collective responsibility of the populace. This of course, can be achieved by providing the needed education at the grassroots and sensitization campaign by National Orientation Agency (NOA).

Action #2 – Provide Infrastructure. It is a known fact that there hardly can be any meaningful achievement in economic transformation where there is shortage or inadequate electricity supply, which is highly needed to propel economic activities in all its ramifications. Other infrastructural facilities required for diversifying revenue base is good transportation system in the following areas – road network, air transport, railways and inland waterways.

Action #3 – Engage youth in agriculture and agro-allied activities. With available land mass in Nigeria, agriculture stands out as a major means of job creation for our teeming population. The Nigerian agricultural potentials if properly harnessed can take care of unemployment among the youth.



Doing this, government will be required to provide enabling environment by encouraging and facilitating private partnership participation, especially by engaging foreign investors in this sector. Income from agricultural sector can tremendously contribute to our Gross Domestic Product (GDP).

In specific terms, livestock production and dairy industries could be a great revenue source to many States, given the friendly nature of the Nigerian climate for livestock. Efforts could also be intensified in cultivation of cash crops such as cocoa, cotton and the likes to increase earnings from exports.

Action #4 – Harness solid mineral resources. Solid minerals which Nigeria is endowed with should be properly exploited and activities of all persons engaged in illegal mining across the nooks and crannies of the country should be checked. Several studies have shown that solid minerals in Nigerian if effectively managed could compete with the petroleum sector which presently contributes about 80% of our GDP.

Action #5 – Encourage local and foreign investors. Local and foreign investors should be encouraged to invest in all spheres of our economy so as to facilitate income generation that would in turn boost the revenue base.

Having attempted to identify some key areas to be considered in diversifying the revenue base of State and Local Governments in Nigeria, with regard to similar discussions that may have taken place, I think a platform has been created for relevant authorities and stakeholders to ponder on. It is my wish that our governments at the 3 tiers will concertedly engage experts and professionals in these areas in order to get the needed assistance in improving their internally generated revenue.

Mr. M L ABUBAKAR is currently the Secretary to the Joint Tax Board, a statutory body of all tax authorities in Nigeria saddled with the responsibility of ensuring uniformity and harmonization in administration of personal income tax in Nigeria. He is also a former Executive Chairman, Niger State Board of Internal Revenue. A fellow of the Chartered Institute of Taxation of Nigeria and Associate member of the Association of National Accountants of Nigeria, Mr. Abubakar worked at the Federal Inland Revenue Service and has been the head of Tax Enforcement and Tax Controller as well as head of Risk and Facility Management

The burden of paying taxes in Nigeria

- Titilayo Oke

To develop the private sector, the government must strengthen and streamline the current tax administration and regulatory procedures.

One of the key factors that has promoted growth in developed economies is the institutionalization of an enabling environment which guarantees provision of required infrastructure, security and efficient government structure. This key factor has and remains funded by respective governments' capacity to collect taxes accurately and efficiently.

In Nigeria, the dearth in infrastructure has continued to plague the growth potentials of the private sector which the government has over time attributed to lack of funding though it is common knowledge that corruption and good governance are more of the critical issues. From this, the need for strong and robust government sourcing of developmental funding from taxes cannot be over-emphasized. In general, they are used in creating economic well-being for the citizenry and in view of this, the Federal Government's 2012 revenue projections suggest that taxes would contribute 22% of the total revenue to be generated. Although this excludes oil revenue projections at 55%, a large part of which constitutes taxes and royalties to be paid by oil producing companies.

However, tax payment constraints are twofold. On one hand is the financial burden characterised by actual tax costs through rates and multiple taxes, Also crucial is the

administrative burden resulting from the inefficiency of regulations and tax authorities in their dealings with taxpayers. According to the World Bank, in 2011, a typical medium-sized Nigerian company had to make 35 payments of 13 different types of taxes and spent 117 days (938 hours) of compliance time. The effect of this administrative inefficiency is that investors are discouraged while also placing the Nigerian economy among the most difficult economies in which to pay taxes and in general, carry on business.

Of note is the fact that the private sector while reputed as the growth-drivers of the economy also double as the choice taxable entity for the government. Consequently, the challenge for many governments in the imposition of tax is how to ensure tax revenue targets are achieved while encouraging the growth of businesses operating within the economy. Hence, the current trend sees developing countries embracing the tax system as an important component in their development strategy. This goes beyond increasing tax rates but striving to tax a larger share of the population and improving the administration of taxes by reducing the compliance burden it places on the taxpayer.

The Nigerian government must focus on creating an enabling environment for businesses through low and simple taxes coupled with fast and efficient administration; there is no better time than now to do so. This paper aims to evaluate the Nigerian tax system and outline practical actions that may be taken in order to achieve effective but streamlined procedures of tax administration and regulatory system.

The Current Situation

Out of 183 economies measured by the World Bank's Doing Business 2012 report published in November 2011, Nigeria ranks 138 on the indicator of measuring the ease of paying taxes. Thus, it is placed far behind a number of African countries such as Botswana(22), Ethiopia(40), Ghana(90), Malawi(23), Rwanda(19), South Africa(44) and Zambia(47).
Three fundamental standards employed by the report in comparing the efficiency of the tax systems in various economies will form the basis of examining the Nigerian situation.

1. Number of Payments: Multiple taxes per tax base?

It measures the frequency with which the company has to file and pay different types of taxes on the same or various tax bases although adjustments are made for the manner in which such payments are made.

In simple terms, a tax base is the total amount of money or assets upon which taxes can be imposed. Thus, 'multiple taxes per tax base' arises where two or more taxes are paid on the same or substantially similar tax base. An example in Nigeria is the imposition of Companies' Income Tax, Education Tax, and Information Technology Tax, all on the taxable income or profit of a company. Also, a company is required to contribute 1% of its payroll cost to the Industrial Training Fund and the Employer Compensation Scheme respectively. There are a few other instances where different taxes are levied on the same tax bases. Similarly, new taxes or levies are introduced arbitrarily. Some of such levies introduced recently include the Local Content levy which every company in the Oil and Gas industry must pay to the Nigerian Content Development and Monitoring Board (NCDMB), the Employment Compensation Contribution payable to the Nigerian Social Insurance Trust Fund (NSITF).

The concept of multiple taxes must be differentiated from numerous taxes which can be described as having many taxes on different tax bases. However, both concepts cannot be said to be mutually exclusive. Nigeria has numerous taxes which may be attributed to our federal system of government and more so because the Constitution and our legal system gives powers to each level of government to impose taxes. Such decentralised tax systems are known to have increased complexity and compliance burden for businesses. In addition to the different levels of governments which impose and collect taxes and levies, certain government agencies like the ones mentioned above are also mandated by law to do same. The consequence of multiple and numerous taxes payable to different collecting authorities is an increased burden for the taxpayer who must strive to keep up and comply with the different taxes.

2. Time

This relates to the amount of time an organisation spends complying with the three major categories of taxes i.e. profit taxes, labour taxes and consumption taxes. Tax processes are largely manual in Nigeria and therefore take a considerable amount of time to prepare, file and pay tax returns. Ambiguities in laws and the level of inefficiency and complacency of revenue officials are contributory factors to the time burden of a taxpayer. As established, several collecting authorities exist for different taxes thus filing manual returns and making payments to separate tax authorities which to a large extent display various levels of unprofesionalism increases the time to comply for taxpayers.

3. Total Tax Rate

The Total Tax Rate (TTR) focuses on the financial burden which taxes (profit, labour and consumption) pose to a business. It measures the amount of taxes borne by a business expressed as a percentage of its ‘commercial profit’.

The Doing Business report recorded a TTR of 32.7% for the medium sized case study Nigerian company. Compared to other economies, notional tax rates cannot be said to be unrealistically high in Nigeria. However, considering this from a holistic perspective, businesses hardly rely on electricity or water provided by the government, many roads are in a despicable state and there is an alarming rate of insecurity in the nation. The effect therefore is that such businesses compulsorily set aside a substantial part of their income to provide such required infrastructure to enable their businesses run effectively. Thus, it is difficult not to wonder what the benefit the taxes they have paid are to them other than their civic responsibility and the associated sanctions and penalties for non-compliance.

Action Points

1. Fewer taxes : One tax per tax base

The Nigerian tax terrain is an expansive one and there is a wide array of taxes and levies imposed by the different levels of government. To address multiple and numerous taxation, earmarked taxes should be reduced to the barest minimum and approved list of taxes should be streamlined and adhered to by all tiers of government. Caution must be exercised in the introduction of new taxes and the prevailing circumstances must be thoroughly assessed in order to minimize the negative impact of such new taxes for economic efficiency.

2. Improved tax laws

Laws form the basis of taxation. What taxes are collected, their bases and how they are collected are all backed by law. Most Nigerian tax laws are essentially copies of similar laws in Britain since colonization and several aspects remain substantially unchanged up to the present period even though such laws have, over the years, undergone continuous series of reviews and amendments in Britain. Complicated and ambiguous tax rules increase the compliance burden for businesses and for this reason it is necessary for taxpayers to find such laws easy to read and apply. Therefore, there is an immediate need to reduce tax law ambiguities, eradicate unintentional errors in tax legislations as well as amend or expunge obsolete provisions.

3. Use of technology

This involves offering some form of electronic tax filing and payment options to businesses. Nigeria has come of age and with its vision of becoming one of the largest economies by the year 2020, embracing technology should be top priority. Creating a platform for taxpayers to file and pay taxes online will reduce compliance time and the associated costs. However, most importantly, taxpayers need to trust the system and must be assured of the protection of their data through high quality security systems. If properly implemented and adopted by businesses, electronic tax systems speed up processing, improve tax collection and reduce error rates. Although, its implementation may be quite difficult in the beginning, its many benefits will be reaped in the long run.

4. Centralized and interconnected payment systems

In making tax payments simpler, the government must devise mechanisms of centralising the collection of tax revenue and then carrying out apportionments as necessary. Also, means of interconnecting tax payments of the different types of taxes in such a way that an overpayment of one can be used to offset another should also be considered thoroughly. For the government, it is more efficient and cost effective to reduce and interconnect the windows through which tax payments are made while considerably reducing compliance time and burden of the taxpayer.

5. Professionalism and orientation of tax authorities

With increased revenue projections, the tax authorities have become more aggressive in revenue collection and this is realistically so. However, their approach and attitude is a contributory factor to how much time taxpayers will spend to comply with tax requirements. Causing their aggression to translate into more compliance time does not determine the efficiency of the system or that even more revenue would be generated. Thus, there should be continuous trainings and re-orientation for staff members of the tax authorities. They must be technically sound and understand the importance of professionalism in carrying out their duties at all levels. Also, there must be mutual trust and respect between taxpayers and the tax authority as well as independent and effective mechanisms for resolving disputes with the tax authorities.

Conclusion

The impact of tax compliance costs is not only on the profitability or levels of investment that can be devoted to other aspects of a business; it also creates an administrative burden in terms of the time and resources which a business must devote to their tax function. This can have a destabilising effect on the existence of companies particularly for small and medium sized enterprises which are usually the most affected by harsh operating environments. Hence, an overly complicated tax system is more likely to witness high degrees of tax evasion, large informal sector, more corruption, reduced investment and declining employment rates.

That the Nigerian tax system is not operating at its optimum is not debatable. Although it has come a long way, there is still quite a journey ahead of us. To achieve real economic growth and help the economy assume a more competitive position on the global stage, the government must do all it can to encourage new and existing businesses by providing a favourable business environment that incorporates a fair tax system with reliable policies and regulations that are applied in an attractive manner. The use of technology, low tax rates, a streamlined and simplified tax system would contribute largely to achieving this cause.

The core of this article has been on the administrative and regulatory inefficiencies experienced in the Nigerian tax system with reference to the World Bank's Paying Taxes survey. However, surveys have limitations and an economy's ranking in a 'paying taxes' survey might not tell the entire story about the tax environment. They provide an indication of what the system represents and can therefore serve as a guide as to what needs to be fixed.
Possible explanations for this include the exclusion of factors such as the fiscal health of the economies under survey, the macro-economic conditions under which the government collects revenues or the provision of public services supported by taxation. In view of this, there has been a conscious effort to avoid emphasis on the appropriation of taxes or the lack of infrastructure which is without doubt a major hindrance to private sector development in Nigeria

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- Emuesiri Agbeyi

Top 10 Tax Issues in Nigeria

The quest for improvement in the tax administration system should be ever dynamic if we must become the twentieth largest economy by 2020

With an estimated population of 160 million people and a large consumer market, Nigeria is one of Africa's foremost business destinations. In 2005, the Goldman Sachs investment bank listed Nigeria as one of the "Next-11" emerging markets in the 21st century with promising outlooks for investment and future growth. The criteria that the bank used were macroeconomic stability, political maturity, openness of trade and investment policies, and the quality of education. The concept of Vision 2020 seeks to grow the size of Nigeria's economy from its current position of 40th to the 20th nation in the world by the year 2020. Unfortunately, there seems to be no physical evidence of an intelligent positioning strategy to attain this vision which might fast become a mere dream rather than reality.

Taxation plays a vital role in creating the right framework for investment and Government policies. Although the Nigerian tax system has improved in the recent past, there is still much to be done. The quest for improvement should be ever dynamic if we must attain the status of an emerging economy or the Vision 2020 dream. My aim is to draw attention to some tax issues in Nigeria requiring immediate improvement and propose a way forward for better tax administration in Nigeria.

1. Multiplicity of Taxes: When Lagos State revived the Sales Tax which had been repealed by the introduction of VAT in 1993, it resulted in extensive debates and court cases. The same base was being taxed twice by different taxing authorities an issue known as multiplicity of taxes. Revenue generation seemed more of a concern for the tax authorities at the expense of the growth of companies. Multiple taxes at best creates confusion for the taxpayers and discourages compliance. It raises doubt as to the credibility of the revenue agencies and generally does not inspire confidence in the tax system.

2. Bureaucratic Bottlenecks: Imagine being stuck in traffic for hours only to find a trail of yellow buses picking passengers right on the road even though a bus stop is nearby! Bureaucracies in tax administrative systems can be equally distressing as they follow complex procedures, impede effective action and are time wasting. For example, the Companies Income Tax Act (CITA) requires a certificate of acceptance to be obtained for assets addition from the Ministry of Industry for capital allowance purposes. This is of no relevance and creates an extra burden without adding any value to the process in addition to creating an avenue for sharp practices. The need for certificate of acceptance should be abolished. Nigeria needs to embrace simpler approaches adopted by more tax driven economies in order to reach its full tax potential.

3. Draconian Tax laws: Draconian tax laws have the tendency of discouraging investment and increasing the risk of failure for companies. There are several examples of such provisions in the tax laws that should have either been abolished or redrafted. A few examples are provisions which were inherited from the United Kingdom. While these may have been abolished in the UK, our tax laws have not been revised to reflect obvious realities. Some of them which are major and requiring immediate redress are as follows:

Commencement change of accounting date and cessation rules: CITA sets out the rules for the taxation of a company during commencement of business, change of accounting date and cessation. Commencement rules often lead to double taxation on a company at its early stage thereby increasing the risk of business failures. These rules create unnecessary complications especially where a company changes its accounting date or ceases operation within the first 3 years of commencement. Commencement, change of accounting date and cessation rules should be abolished. Tax should be based on accounting period using preceding/actual year basis.

Excess dividend tax: The relevant provision of the law is usually interpreted and applied by the tax authorities to levy tax on a company whose dividend exceeds taxable profit regardless of whether the profit being distributed has already suffered tax (as in the case of dividend income received by a holding company or taxed retained earnings) or whether the profit is tax exempt (as in the case of pioneer profit and capital gains on stocks). The section should be amended to specifically exclude taxed profits and profits exempt from tax.

4. Due Process and Tax Dispute Resolution: One major issue of concern is the lack of regard for due process in the way some tax authorities approach audits, particularly at the state and local government levels pursue their revenue generation drive. Notwithstanding the due process laid down in the tax laws, they resort to intimidation and harassment of tax payers, engage in selective treatment, and a lot of sharp practices. In order to address this, the government should consider a means of bringing the tax payer and the revenue authorities together on an equal platform. Tax Appeal tribunals should be functional, and all stakeholders must commit to professional and legitimate behavior. A standard code of ethics that informs the conduct of all tax practitioners should be in place so that practices are uniform across the nation. Trainings should be held annually to remind tax officials of their duty to the nation and professional conduct required when dealing with tax payers.

5. Tax Evasion is illegal and in simple terms is a wilful act of not paying taxes due. The various structures which are required to work together to make tax evasion difficult are not properly coordinated. For instance, it is possible for a company to register with the Corporate Affairs Commission (CAC) without registering with the FIRS when it could have been one of the conditions in the company registration process. The "crucify goose syndrome" which focuses on the same tax payers instead of harnessing information on other tax payers only results in loss of valuable time, efforts and money to the nation as a whole. It goes without saying that the tax payer that settled a huge tax payout would have made good the gap although this is not to say that there aren't perpetual defaulters to easily cash in on.

The tax base can be widened through proper use of the information generated from other systems e.g. TINs generated for WHT collection, various government agencies (land registry, CAC, vehicle registration department, immigration etc) should collaborate and share information to reduce tax evasion. Costs can be saved if some strategic thinking is applied to tax payers to be audited in a year based on a risk approach.

6. Legislative Process: Some tax laws like the Value Added Tax Act or Industrial Development (Income Tax Relief) Act (IDITRA) are yet to be amended after 20 years of enactment. Meanwhile there are a whole load of contentious issues in these Acts and the judiciary system is bogged down with too many cases to issue rulings at a faster pace. Enactment of bills are unnecessarily prolonged as has been the case with the Petroleum Industry Bill which has only heightened uncertainty and delayed foreign investment

Tax laws should be reviewed every year as is done in other countries such as South Africa and the United Kingdom where a finance bill which encompasses all changes to be made to the tax law for the year is reviewed annually without fail. The process is an active one and the respect to timing and frequency of such bills ensures tax revenue generation is given the most needed attention. By doing this obsolete tax provisions are deleted, ambiguous tax provisions that do not provide any real benefit deleted or simplified to enhance efficiency and certainty for both tax payers and tax authorities.

7. Withholding Tax Credit Notes

The tax laws require that certain businesses acting as Government agents withhold taxes from qualifying payments made to vendors and remit same to the tax authorities. The withholding tax (WHT) is an advance payment of tax liability as tax payers can then use it to offset their

tax liability computed on a yearly basis. Unfortunately, the process [3] of issuing credit notes is time consuming and very inefficient. In certain instances, years go by with no credit notes causing companies to then settle taxes in cash. This is usually at the expense of additional borrowing costs to the companies. When credit notes are not forthcoming even though there is evidence that the taxes have been remitted by the agents, companies may have to write off these assets in line with accounting principles. Writing off the assets is not an allowable tax deduction and added back to increase the tax payable. Another vicious cycle! Ultimately, funds which could have been used to expand the business are trapped in Government coffers, gradually crippling business growth.

There is need for a robust electronic system where vendors can log in directly and confirm if the tax withheld from their invoices are actually remitted, and such remittances credited directly to the vendor's account. Evidence that tax has been remitted should suffice in the meantime without having to wait for credit notes.

8. Difficulty in Accessing Tax Refunds

In line with the resolve to follow due process in tax administration, the FIRS Establishment Act 2007 provides that tax payers refund claims should be settled within 90 days of the application subject to appropriate audit. Although there are specific provisions in the tax law for tax refunds this has yet to be fully functional. In practice it is easier for the proverbial camel to pass through the eye of a needle than for a taxpayer to get a refund, and this has got to change. Audits required to verify claims are usually slow and time consuming sometimes running into several years. Even after refunds have been verified, there are no funds to pay.

There should be appropriate funds allocated or retained out of tax collection to cater for tax refunds both at the federal and state levels. Fairness and equity requires that cash refunds be made promptly to deserving tax payers. Failure to pay refund within the stipulated timeframe should attract commercial interest.

9. Poor Double Taxation Treaty (DTT) Network

Double Tax treaties (DTTs) are instruments of economic cooperation between countries designed to minimize the burden of double taxation on persons or corporations taxable in both jurisdictions, and foster cross border trade. Presently, Nigeria has DTTs with 12 countries, most of whom are not our major trading partners. It also has a shipping and air transport double taxation agreement with Italy. This is still a long way from countries like South Africa (over 60), the United Kingdom (over 80) and the Netherlands, which has DTTs with about 100 countries. Nigeria should actively seek to enter into strategic tax treaty partnerships with other countries in the interest of international trade and cooperation as this will boost foreign direct investment. Building strategic business affiliations and economic partnerships is a catalyst for economic growth and would be an indication of Nigeria's readiness to take its place on the skyline of the world economy

[3] The process involves 1) The agents deducting from several vendors and paying to authorised bank accounts 2) Tax authorities issue a bulk tax receipt to the agent; and 3) Tax authorities issue individual credit notes to the beneficiaries who have suffered these deductions. In practice, the credit notes are the only admissible evidence to offset computed tax liabilities at year end.

10. Tax Holiday or Not: Tax holidays under the Industrial Development (Income Tax Relief) Act (IDITRA) are meant to encourage business expansion and ultimately generate employment. However, after the tax holiday, commencement rules set in subjecting profits earned in the first 3 years to tax twice. The increased effective tax rate of up to 64% is alarming when compared to the statutory rate of 32%! It begs one to wonder whether it is even worth taking a tax holiday.

Recommendations

Action 1: Implement the National Tax Policy

In the interest of the growth of the Nigerian tax practice, the government needs to adopt a streamlined approach to taxation, which will be adhered to by all tiers of government. We need to focus on the bigger picture when preparing bills and implementing them. Bills and budgets should be driven uniformly in the interest of the nation as a whole instead of sectionalized interests in states which only causes chaos. The implementation of the 2012 National Tax Policy just approved by the Federal Executive Council could be our starting point to ensuring good ideas are not trapped in paper.

Action 2: Legislative Process

The legislative process should actively include the annual review of all tax laws without fail. There should be a fixed time table for reviewing the bills and amending tax laws which should be adhered to. This should be incorporated in the budget process. It would assist in helping companies plan ahead and provide more certainty

Action 3: Tax Technology and Integrated Databases

Without the aid of technology, our efforts at developing our tax system and becoming one of the world's largest economies by 2020 would be nothing but a pipe dream. The unfortunate reality in Nigeria is that much of our tax processes are still carried out manually. There is no system of online filing of returns for taxpayers, neither is there any effective means of monitoring remittances, and verifying one's compliance status. The World Bank's Doing Business 2011 Report, ranked Nigeria 134 out of 183 countries on the ease of paying taxes, showing that Nigeria had slipped 3 rungs down the ladder between 2010 and 2011. This is largely due to the time it takes for Nigerian taxes to be remitted and filed in the relevant tax offices in relation to other countries of the world, as against the tax rates. In other countries of the world where there are facilities to support electronic remittances and filing, it takes a lot lesser time to remit and file taxes, which in turn reduces the burden on tax payers and makes doing business easier. Technology would simplify our tax processes, and bring with it a measure of organization and certainty that cannot otherwise be achieved.

A national database should also be created so that regulatory authorities can share information. The various structures which are required to work together to make tax evasion difficult should be properly coordinated by making the tax registration process dependent on information already captured by other agencies such as the Corporate Affairs Communication, the Land Registries and Immigration Departments.

Action 4: Training for Tax Officials and Sensitization of the Public:

Tax officials should be properly trained on professional conduct, due process and an entire change of mindset to addressing tax evasion. Tax returns should be risk profiled to determine cases for audit. Many tax officials focus too much on non value adding areas during tax audit resulting in unnecessary waste of taxpayers' time and inefficient use of the authority's resources. They should be bound by a standard code of ethics and training conducted annually to check that expectations of professional conduct are in order. There should be severe penalties for noncompliance. Tax payers must be properly enlightened on their roles and responsibilities to encourage tax paying and demand for accountability by Government officials. This would engender a system of checks and balances where the people carry out their civic duties, and the government in return provides infrastructure and social amenities as part of its duties to its citizens.

Action 5: Expand Treaty Networks

Identify countries where local business are expanding to and enter into Strategic Tax Treaties with the countries. Outbound investments are gradually on the rise now with local companies expanding their businesses beyond Nigerian shores. As a nation, we can also support the vision of such business to grow into widely acclaimed international brands originating from Nigeria. DTTs should be entered into strategically to eliminate double taxation of locally originating corporate groups and also encourage foreign investment.

CONCLUSION

The current Nigerian tax system leaves a lot to be desired in terms of the legal framework, administration and implementation. If not checked, Nigeria may be falling behind the rest of the world and indeed much of Africa in the area of tax administration. The need for an effective tax system is therefore imperative if we must attain the 2020 dream.

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She also has substantial experience in deal acquisitions as she led a team engaged to review the tax implications of obtaining a $275m reserve based term loan facility to finance the acquisition of a 45% stake in an oil block previously owned by four oil major companies.
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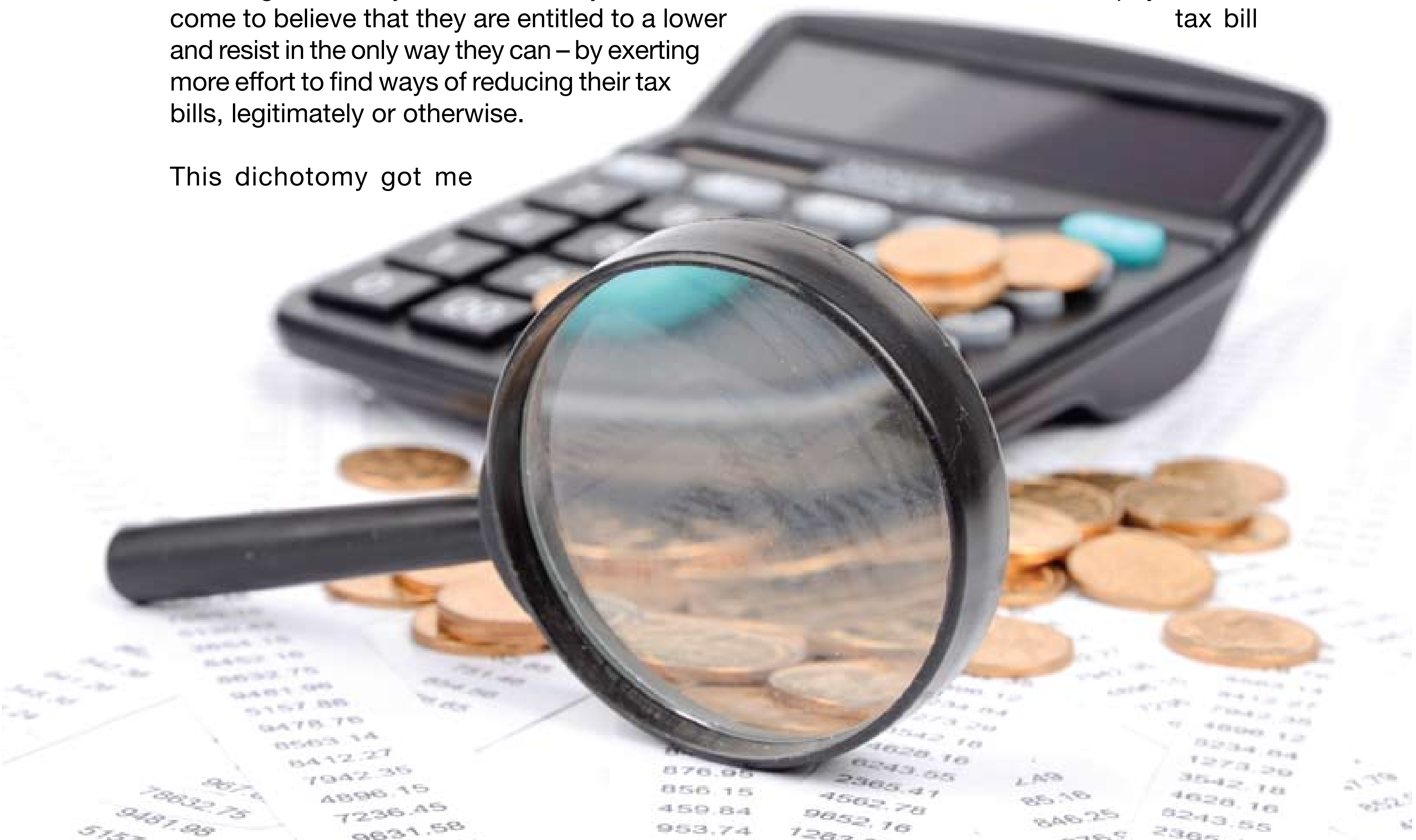
Abolade Kehinde

Tax Transparency in Nigeria

Why it is in the interest of all for government to be open about taxes and for individuals and businesses to imbibe a tax paying culture

If you ask the average Nigerian business owner/manager to express what the term "tax transparency" means to them, they would probably mention their mistrust of the handling of their hard earned tax Naira by various government agencies. Then if you asked the very same people whether they are 100% compliant with their tax affairs they may respond by pledging to be compliant only if they were sure those managing public finances were accountable for their handling of public finances. Therefore, if taxpayers cannot clearly understand their tax burdens and obligations, they view the entire system as unfair. Some taxpayers have come to believe that they are entitled to a lower tax bill and resist in the only way they can – by exerting more effort to find ways of reducing their tax bills, legitimately or otherwise.

This dichotomy got me



thinking about what my definition of what tax transparency would be. What sprung to mind was the idea that tax transparency is meant to be a contract between government and taxpayers. Both are under the same obligation to be open and honest about taxation and the purpose of taxation. Tax transparency implies openness, communication, and accountability. Transparency is operating in such a way that it is easy for others to see what actions are performed. Transparency in tax law should be measured by how easily taxpayers can determine whether and how any particular tax provision, and the tax statute as a whole, affects their tax burden.

In politics, transparency is used as a means of holding public officials accountable and fighting corruption. When a government's meetings are open to the press and the public, its budgets may be reviewed by anyone, and its laws and decisions are open to discussion, it is seen as transparent, and there is less opportunity for the authorities to abuse the system for their own interests.

So tax transparency is about the symmetry of information between the tax authorities and taxpayers. The availability of information affects accountability and in the context of taxation the relevance of information depends on the needs of the taxpayer and not just what the tax authorities are willing to provide.

Tax should be certain and not arbitrary and the uncertainty of taxation encourages corruption. By this logic, a clear and plain tax policy, instead of an uncertain and complex one, helps avoid corruption. Tax transparency, therefore, promotes good governance.
Tax transparency is a responsibility equally shared by the tax authority and the taxpayer and includes an open and participatory policy process and clear tax rules. The tax authorities, including policy makers, officials and administrators should pursue openness in their tax policymaking and in their provision of information later during tax administration. The goal should be to minimize the secrecy of decision-making. Occasionally, the need to prevent premature disclosure is necessary to avoid certain tax-driven transactions. However, too often in Nigeria, this withholding of information is a political strategy rather than a genuine attempt to prevent tax evasion. Tax transparency calls for the tax policymakers to make timely disclosure of all details to allow inquiry and debate during the remainder of the tax policy process. Disclosure should include the release of data and financial models upon which the proposed policies are premised. Only once such access to information is granted can the assumptions, methods and results of the tax policy be contested effectively by others.

Transparency also requires accurate and rational justifications for tax proposals including how the tax fits into an integrated revenue and expenditure policy so that the merits of the proposal can be evaluated in context. Expanding the number of participants and stakeholders in policymaking strengthens transparency and improves decision-making by providing tax authorities different perspectives. Furthermore, taxpayers should take advantage of an open policy process that could impose a tax burden. If only the elite exercise the option to participate, then the self-interest of those participants would influence policymakers to ignore the greater good.

Tax authorities should provide clear tax rules. Imprecision is not only contrary to transparency but can also make it difficult to assess and collect taxes. Taxpayer ignorance is no excuse but the tax authorities are also obliged to make the tax rules clear. Clarity requires precise rules on taxpayer rights and responsibilities. Taxpayers must be able to understand and meet their

responsibilities by being able to predict the tax consequences of their actions and transactions. It follows that if the tax rules demand voluntary compliance and disclosure, taxpayers must know how to meet their obligations. Retroactive tax rules such as the recent changes to personal income tax are contrary to predictable taxes.

Taxpayers at all education and economic levels must be able to understand their tax base (i.e the amount upon which a tax will be levied). For example the new Bill amending the Companies Income Tax Act, if passed into law, will grant a 10 year tax holiday to any new company established in an area with no electricity, water or tarred road. Where such facilities provided by government are located at least 10 kms away the company will be entitled to an investment allowance ranging from 20% to 100% of expenditure incurred in providing such facilities. It is not clear if the investment allowance will be in addition to the tax free period or they are mutually exclusive. Also it is not clear if tax free period will be based on the unavailability of at least one or all of the facilities.

Furthermore, taxpayers must be certain about the tax rate that will be imposed. For instance, the recent amendments to the Personal Income Tax Act meant different things to different people, possibly with some unintended consequences. Many were left with higher taxes while some will pay less. For example those with gross annual income of N345,000 will suffer a 100% increase in tax as a result of the increase in minimum tax from 0.5% to 1% of gross emoluments.

Efficient decision-making requires that tax advisers be able to reasonably approximate the relevant tax consequences as they encounter or plan transactions for clients. This is very difficult today, even in some of the most routine aspects of our economic lives. The difficulty of estimating tax effects is increasingly burdensome and a drag on economic activity and development. This can be seen with the new surprise property tax announced for the FCT.
The tax system's administrators must be able to understand the system sufficiently to provide timely, comprehensible guidance to taxpayers and their advisers and, be able to enforce the law and make the appropriate collections. The growing burden placed on tax administrators significantly reduces efficiency and impedes effective interactions with taxpayers and advisers.

In order to evaluate how fairly the tax burden is distributed, lawmakers and policy analysts must be able to see clearly how and to whom various taxes apply, how laws are complied with, and the revenue generated by various provisions in the law. For instance, Nigeria has a general anti-avoidance rule which should act as a bridge between the complexity of tax rules and uncertainty in their application but such an anti-avoidance rule creates its own transparency issues. By definition, an anti-avoidance rule prevents literal compliance with a tax rule from overruling the purpose of the tax law.

In the Nigerian context, the incidence of multiple state/local taxation where one can subject to Federal as well as state stamp duty on property transactions; unclear VAT rules, or in the case of Nigeria, a disguised sales tax; the inconsistent application of the taxation of non-residents and expatriates, are all examples of non-transparency. Furthermore, transparency is diminished when the application of certain tax rules are subject to negotiation for certain taxpayers as is often the case with Nigerian state payroll tax audits.

To conclude, non-transparency in the tax law may cause harm by:

- Creating significant inequities, both real and perceived.
- Impairing government's ability to administer the tax system.
- Allowing opportunities for tax evasion and aggressive tax avoidance techniques.
- Frustrating taxpayers and tax advisers when they attempt to plan transactions and comply with the law.
- Resulting in unintentional misstatements of income and deductions.
- Creating inefficiencies that impede taxpayer decision-making and undermine economic development.
- Imposing significant costs on taxpayers, tax advisers, and the government.

Increasing the transparency of the tax law should:

- Result in a system that both is and is perceived by taxpayers as being fairer.
- Enhance the efficiency of administering the tax system.
- Decrease tax evasion.
- Diminish the incentive to use overly aggressive tax avoidance techniques.
- Increase taxpayer and tax practitioner certainty in tax planning and compliance.
- Reduce tax return error rates.
- Provide a stimulus for growth by making economic decision-making more efficient.
- Reduce the direct and indirect costs of complying with and administering a complex and nontransparent tax system, freeing up resources for productive activities.

Improving the tax system's transparency will be the more difficult choice in the short run but by making transparency a priority in the legislative process and by developing procedures in legislative and regulatory processes to avoid obscuring the true tax burden, we can reverse the detrimental effects and provide long-term benefits for taxpayers and the economy. In short, transparency should strengthen the contract between state and citizen and should benefit the economy as a whole.

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Chike Anikwe

Introduction of the Taxation of E-Commerce in Nigeria

Electronic commerce is a form of commercial transaction. Commercial transaction can be described as the trading, or the buying and selling, of goods and services whereby the contracts of sale are typically concluded face to face or by other conventional means. The traditional buying and selling process is being gradually replaced by internet trading, especially in more advanced countries **(Bali, "Information Technology and the law")**. The internet has allowed for new ways of selling and buying goods and services whereby people from different parts of the world do business electronically.

Electronic commerce has been defined in several ways. It has been defined by **Chaffey** in **"E-Business"** as the buying and selling of goods and services through the internet. It has also been defined broadly to cover "…transactions that involve the exchange of goods and services by electronic means." **(Abiola O. Sanni, 'Taxation of E-Commerce – Issues and Challenges).** The United Kingdom Cabinet Office in 1999 described it as "the exchange of information across electronic networks at any stage in the supply chain, whether within an organisation, between businesses, between businesses and consumers, or between the public and private sectors, whether paid or unpaid."

E-commerce is generally considered to involve the use of electronic systems such as the internet and other computer networks to facilitate the production, distribution, sale, and delivery of goods and services **(Charles E. McLure, Jr., 'Taxation of Electronic Commerce in the European Union')**. The domain of e-commerce is therefore the internet otherwise known as the World Wide Web. Commerce conducted via the internet is not constrained by the geographical location of the parties as contracts of sale can be consummated between a seller and a buyer on the internet. The tendency of e-commerce is to eliminate geographical boundaries and according to **David R. Tillinghast in "Tax Treaty Issues",** *"to blur... the source and character of income".* Thus, with the advent of electronic commerce, consumers are now able to have access to goods and services in the remotest parts of the world without having to see the sellers.

The key features of e-commerce are that it is virtual, global and anonymous. The global and virtual nature of the e-commerce is rooted in the nature of the product, the transaction and the income derived therefrom. The decentralized and global nature of the internet makes it difficult to discover the identity or geographical location of economic participants especially in the business to consumer segment of e-commerce **(Arthur J. Cockfield "Balancing National Interests in Taxation of E-Commerce Business Profits").**

LEGAL AND REGULATORY FRAMEWORK OF E-COMMERCE IN NIGERIA

Electronic commerce is still emerging in most developing nations such as Nigeria. The distinguishing factor between e-commerce and other commercial transactions is the electronic feature. Most existing laws and regulations for traditional commercial transaction do not contemplate the electronic feature in commercial transactions.

The UNCITRAL Model Law on Electronic Commerce adopted in 1996 by Member States was the first major global recognition and regulation of electronic commerce. Article 11(1) of the UNCITRAL Model Law on Electronic Commerce provides that:

"In the context of contract formation, unless otherwise agreed by the parties, an offer and the acceptance of an offer may be expressed by means of data messages (i.e. information generated, sent, received). Where a data message is used in the formation of a contract, that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose or stored by electronic, optical or similar means, including electronic mail"

Consequently, Member States were enjoined to enact laws and institutions that conformed substantially to the provisions of the Model Law.

A key feature of e-commerce is that the supplier and the consumer do not conclude the contract face to face.

Nigeria currently does not have e-commerce legislation or a regulatory body which monitors commercial transactions conducted via the internet, or issues any regulations or codes of practice relating to e-commerce. It could be argued that since e-commerce is a form of commercial transaction, the same laws that apply to traditional commercial transactions may also be applicable to provision of electronic commerce with slight modifications taking into consideration the features of e-commerce.

However, Nigeria has formulated a National Policy on Information Technology which has as one of its general objectives the promotion of legislation for the protection of on-line business transactions, privacy and security. The National Information Technology Development Agency is responsibility for the implementation of this policy and is empowered to set up a National Electronic Commerce Council to govern all electronic commerce affairs in Nigeria and to facilitate international trade through an e-commerce infrastructure.

Draft legislation on regulating e-commerce related activities in Nigeria have been laid before the National Assembly to facilitate electronic commerce in Nigeria. The relevant bills include the following:

1. The Electronic Transactions Bill 2011 which is modeled on the UNCITRAL Model Law on E-commerce seeks to facilitate electronic transactions in Nigeria. The Bill provides for the validity of contracts, matters of evidence, electronic signatures and payment systems, amongst other issues.

2. The Electronic Commerce (Provision of Legal Recognition) Bill 2011 which seeks to provide legal recognition of electronic messages in commercial transactions, the use of the electronic messages to fulfill legal requirements and to enable and facilitate commercial transactions through the use of electronic means.

3. Cybersecurity Bill 2011 provides the legal and institutional framework for combating cybercrime in Nigeria and ensuring cyber security. Provisions are also made for payment of compensation to victims of cybercrimes. The Bill also makes provisions for the establishment of a Cyber Crime and Cyber Security Agency, which is given wide powers to investigate arrest and prosecute cybercrimes.

EXISTING TAX REGIME

Taxes in Nigeria may be classified generally into direct tax and indirect tax. Taxes on income and capital such as personal income tax, companies' income tax, petroleum profits tax, education tax, technology tax and capital gains tax are direct taxes while consumption taxes such as value added tax and import and excise duty are indirect taxes. A separate statute governs each type of tax.

Under the existing tax regime in Nigeria, taxation of commercial transactions comprises income taxes; withholding tax; sales tax or value added tax and are discussed below.

Income Tax

Individuals and companies resident in Nigeria are, pursuant to section 3(1) of the Personal Income Tax Act (Cap. P8 Laws of the Federation of Nigeria 2004 as amended) and section 11(1) of the Companies Income Tax Act (Cap. C21 Laws of the Federation of Nigeria 2004 as amended) respectively, liable to pay tax in Nigeria on their global income from any source whatsoever, whether inside or outside Nigeria; while non-resident individuals and companies are pursuant to section 2(1) of the Personal Income Tax Act and section 11(2) of the Companies Income Tax Act respectively liable to tax only on their profit or income deemed to be derived from Nigeria.

Under the Nigerian income tax laws, the profits or income of non-residents are deemed to be derived in Nigeria in any of the following instances: (a) if it is deemed to have a fixed base/permanent establishment/sales outlet in Nigeria, (b) if it carries on business through a dependent agent within Nigeria, (c) if it is executing a turnkey contract within Nigeria, and (d) if it is involved in any trade or business activity with a local entity controlled by it or which has controlling interest in it which imposes conditions perceived by the tax authorities to be artificial or fictitious.

Withholding Tax

Withholding tax is deducted from payments made to any person by a Nigerian company or resident. Nigerian income tax laws impose withholding tax on two broad categories of income, namely, investment income such as dividends, royalties, interests and rents and business income such as service contract and other forms of contracts save for contracts for outright sale of goods and services. Withholding tax on these payments is the final tax payable by a non-resident on such income.

The residence of the taxpayer is generally not relevant for the purpose of determining liability or application of withholding tax. What is important is the liability of the non-resident to Nigerian income tax. Thus, withholding tax is merely a tax collection mechanism that is triggered only where a foreign company is found to be liable to pay corporate tax in Nigeria. Where the business income of a foreign company is not liable to corporate tax in Nigeria, withholding tax will not apply. In the event that withholding tax applies to business income of a foreign company, it constitutes an advance payment of tax and the taxpayer will be required to file tax returns at the prescribed time and claim a credit for tax already withheld.

Value Added Tax

In Nigeria, Value Added Tax (VAT) is chargeable on the supply of all goods and services other than specifically exempted goods and services listed in the First Schedule to the Value Added Tax Act (Cap V1, Laws of the Federation of Nigeria, 2004 as amended (the "VAT Act")). Under the VAT Act, the supply of goods and services has to be made in Nigeria to be subject to VAT. Supplies made outside Nigeria are outside the scope of the VAT Act. The expression 'supplies' is defined in the VAT Act to mean any transaction, whether it is the sale of goods or the performance of a service for consideration, that is for money or money's worth.

A supplier of taxable goods and services is required in the course of normal business activities to charge and collect VAT from customers with respect to its sales transactions taxable under the VAT Act and to remit same to the tax authorities. The supplier is also required to furnish a tax invoice to their customers containing information such as: (i) tax payers identification number; (ii) name and address; (iii) date of supply; (iv) name of purchaser; (v) gross amount of transaction; (vi) tax charged and rate supplied.

The basis of the applicability of VAT in Nigeria is that the subject of the transaction must be goods and/or services. However, the word 'goods' is not defined under the VAT Act. The law governing sale of goods in Nigeria is the English Sale of Goods Act, 1893 (a statute of general application in force in Nigeria). It defines 'goods' to include "all chattels personal, other than things in action and money, and includes emblements, industrial growing crops, and things attached to and forming part of the land which are agreed to be severed before sale or under

the contract of sale”. Thus, the scope of the term “goods” for the purposes of the VAT Act is limited to tangible property.

International Tax Principles

The focus of taxation globally is on the residence of the taxpayer and the source of income. Consequently, there are two principal rules of international taxation of income namely: the principles of source-based and residence-based taxation. A source-based taxation enables a country to tax the income of non-residents originating within its territorial borders provided a permanent establishment is maintained by the non-resident in the source country. In contrast, under a residence-based system, a country asserts jurisdiction to tax the global income of its residents, wherever the income has arisen.

The concept of permanent establishment is an international principle of taxation applied in determining tax liability in respect of foreign businesses that maintain a significant physical presence within the territorial borders of a country. A permanent establishment has been described under Article 5(2) Nigerian Model Double Taxation Treaty to include a place of management, a branch, an office, a factory, a workshop, a mine, a gas or oil well etc.

REASONS FOR TAXATION OF E-COMMERCE

The manner of doing business globally has undergone a revolutionary change. Retail businesses are now going online i.e. internet based with little or no physical structure or facilities such as warehouses, factories, offices and employees that are dominant features associated with a traditional retail outfit in the same or similar business. Thus, the question is, should e-commerce be taxed or should everything sold on the internet be tax free?

The Wealth of Nations by Adam Smith was one of the earliest expositions of taxation. In Chapter II of Book V, Smith proposed four principles of proper taxation and a good tax system as equity, certainty, convenience and administrative efficiency. A key principle of taxation expounded by Adam Smith is equity or fairness in taxation. Would it be fair to the brick and mortar companies for internet based companies to offer their goods, products or services on the internet to their customers and not levy VAT on their invoices? According to Smith:

“the subjects of every state ought to contribute towards the support of the government, as nearly as possible ... in proportion to the revenue which they respectively enjoy under the protection of the state”.

Currently, e-commerce transactions are not subject to tax in Nigeria although their commercial transaction counterparts are subject to some form of tax. To impose tax on one type of supplier and not to extend the same tax to the other is not only unjust but could encourage evasion and even rebellion. The recipient of a payment or of a supply in respect of e-commerce

The main challenge of e-commerce to the Nigerian tax system is that the laws that govern direct taxes (income taxes) are presently premised on the concept of permanent establishment.

transactions should pay tax just like other suppliers or recipient of payments under traditional commercial transactions to create a level playing field as no particular form of trade should be favoured through the tax system.

Another reason for taxation of e-commerce is the potential revenue to be collected by government. Globally, taxation is the principal means by which a government generates revenue to fund its public service expenditure necessary for the social and economic wellbeing of the people of a given society. The Oxford English Dictionary defines the term "tax" as a compulsory contribution to the support of government levied on persons, property, income, commodities, transactions, etc. for public purposes.

Thus, it is indeed in the best interest of the nation to tax revenue from e-commerce in order to boost government's revenue drive.

LEGAL TAX AND OPERATIONAL CHALLENGES

Nigerian laws do not currently contemplate the regulation or taxation of e-commerce transactions. E-commerce poses significant challenges for existing legal and tax rules as these rules are premised on traditional conceptions of trade. Trade via e-commerce raises legal issues such as proof of identities of the contracting parties, the terms of their agreement and their intention to create legal relations as well as tax issues such as location of the taxpayer for direct taxes and as regards indirect taxes, how tax authorities will track e-commerce transactions for purposes of collection of the relevant tax.

Legal Challenges

A key feature of e-commerce is that the supplier and the consumer do not conclude the contract face to face. An understanding of the contract formation process is critical to on-line business; a contract that fails to satisfy any of the traditional requirements for contract formation may be unenforceable. It is pertinent to note that contracts are not required to be in writing unless statute or regulation specifically requires writing. In general, contracts may be formed under Nigerian law in any manner including orally and by written document or on the basis of the conduct of the parties. To constitute a valid online contract, the traditional requirements of offer, acceptance and consideration will apply as well as an intention to create legal relations.

The website contains contract terms in the form of terms and conditions for use and sales accessible on screen by the customer by a click of an icon. Acceptance of an internet contract creates a binding contract. The customer must affirmatively respond that he accepts to the contract terms. To ensure legal effectiveness and validity, such acceptance must be a prior condition to access the content, service or product and carryout a transaction with the vendor.

There is no specific requirement for a valid acceptance of e-commerce transactions in Nigeria, however, Nigerian law of contract requires acceptance of an offer as part of the elements of a valid contract. A requirement for a licensor or customer to confirm acceptance by clicking an

"I Accept" dialogue box should constitute sufficient acceptance of the terms of an electronic contract. Thus, the virtual or digital nature of the agreement would not present any difficulty. In spite of the challenges arising from the contracting medium for e-commerce, contracts made on-line would not be treated any differently than those made by conventional methods.

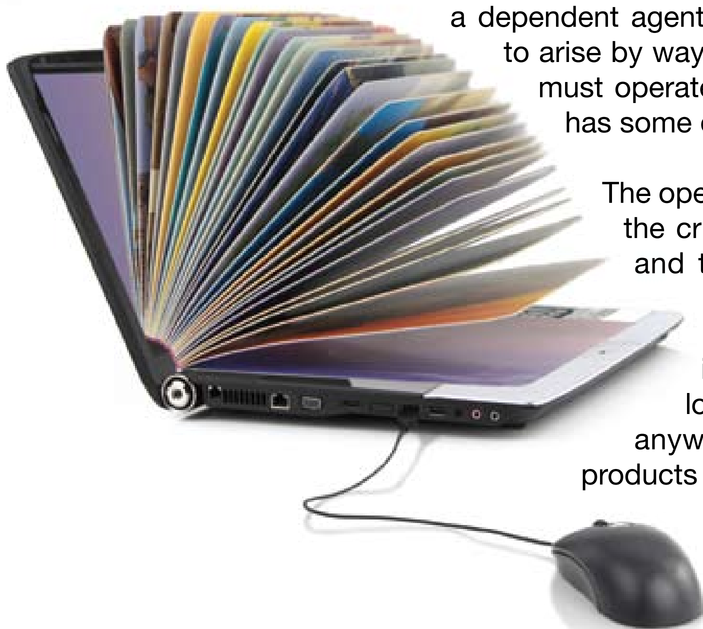
The proposed legislation in Nigeria on electronic transaction permits formation of contracts through electronic messages, so that a contract will not be invalidated by the mere fact that it was formed through an electronic medium. It also provides that the acceptance of an offer or a term of a contract may be expressed by an act such as touching or clicking an appropriate icon or other place on a computer screen which is intended to result in electronic communication.

Tax Challenges

Even before the advent of e-commerce it was not always easy to determine where income arose. Countries consistently differed over whether the presence of a facility, the location of customers, the passage of title or a number of other factors determine where the income arises (Doernberg, 1999). The determination of tax liability under existing tax is based on where the taxpayer is physically located. Liability to consumption taxes such as Sales Tax or VAT is determined where the goods or services are consumed or supplied while liability to income tax is determined based on the place where the income arises or the place of residence of the tax payer.

The main challenge of e-commerce to the Nigerian tax system is that the laws that govern direct taxes (income taxes) are presently premised on the concept of permanent establishment. The profit of a non-resident company or individual will be deemed to be derived from Nigeria where such profit is attributable to fixed base or any permanent establishment which it maintains in Nigeria.

Permanent establishment in Nigeria arises in two principal ways. The first is where a non-resident company maintains a fixed base of business in Nigeria i.e. Physical Presence PE and the second instance is where the non-resident company is represented in Nigeria by a dependent agent i.e. Agency PE. For permanent establishment to arise by way of physical presence, a non-resident company must operate by itself from an easily identifiable place that has some degree of permanence.



The operation of e-commerce does not fall under any of the criteria for establishing permanent establishment and thus will not be subject to corporate income tax in Nigeria. The concept of "permanent establishment" or "fixed place" is meaningless in e-commerce business because it can be located anywhere and business can be conducted anywhere. E-commerce enterprises can sell their products or services worldwide with very limited physical

presence in any particular consumer's country. They can operate without agents because they can directly, easily, and cheaply contact customers worldwide.

Operational or Administrative Challenges

Currently, e-commerce transactions are not subject to tax in Nigeria largely because of lack of adequate operational or administrative infrastructure for taxation of e-commerce. In a speech entitled, "Tax Administration in a Global Era," (former) Treasury Secretary Summers of the United Kingdom stated:

"The Internet provides new ways for tax administrations, such as the IRS, to improve the ease and transparency of tax collection. But new technology also raises certain problems. In a world where cyber-transactions are growing at a rapid pace, tax administrations face the challenge of adapting existing tax systems to an economy that increasingly ignores physical borders."

The internet allows for digital transactions and for payment for sales via electronic means by utilizing advanced technology. This gives rise to the difficulty of tracking and collection of online income as well as the issue of regulating or supervising e-commerce generally. The issue of effective policing of e-commerce has led to a call for self-regulation rather than establishing a body to supervise or monitor electronic commerce. There are administrative concerns for the tax authorities as to how and whether transactions were properly reported, whether an audit trail exists, and whether new reporting rules are needed. It also raises the issue of enforcement of tax by the tax authorities.

ACTION PLAN

1. Establishing a Legal Framework for E-Commerce

E-commerce related legislation should be enacted and a regulatory body or agency to supervise or monitor electronic commerce in Nigeria should be established. This is to ensure a robust legal framework for taxation of e-commerce and uniform regulatory rules on internet governance to ensure the homogeneity of the conditions under which transactions are made to suppliers or sellers and consumers of goods and services through the internet.

The legal framework should provide the following:

a) Stipulating Minimum Content for Websites

It should be made a condition for enforcement of the contract that certain information should be provided by the company selling via a web site including:

- The identity of the supplier and its address in case of advanced payments.
- A description of the main characteristics of the goods and services.
- The price of the goods or services including all taxes.
- The delivery cost, where appropriate or performance.
- The existence of a right of cancellation, except in certain cases where this right does not exist.
- Payment arrangements.
- Validity period of offer.

This information must be received before or at conclusion of contract as it forms the material terms of a contract of sale which the customer must accept. This will ensure use of well documented procedures that are fully auditable.

b) Establishment of Specialized Law Courts or Tax Tribunals
In order to adjudicate on e-commerce issues, one must be versed in the intricacies and technical details of communications and in particular, information technology and internet. Practitioners and Courts must be specialists if justice must be done in the event of disputes. Thus, specialized court divisions should be created for communications practice generally while a specialized tax tribunal should be set up for adjudication of taxation of e-commerce.

2. Revision of the Existing Tax Laws

Existing tax laws should be amended to take into cognizance the electronic form of commerce. In particular, the amendments to the tax laws should cover taxation of e-commerce income and sales by:

a) Designating Websites as Permanent Establishment for Electronic Enterprises.
The main challenge for effective taxation of e-commerce is to determine the residency of e-commerce corporations. These corporations usually lack fixed physical facilities. The current source rules are rooted in two premises: (1) that territorial borders separate countries and define their legal jurisdiction and (2) that each income is produced in a territory of a single country.

A change in focus is needed in relation to taxation of income on territorial basis or taxation of taxpayer on basis of geographical location for an effective taxation of e-commerce as e-commerce is trans-territorial. The rules of taxation under the Nigerian tax system must be broadened from the traditional physical and agency permanent establishment to include internet-based permanent establishment. To determine internet-based permanent establishment, the location or territorial base of the customer or final consumer at the time of the sale should be a key factor. Withholding tax principles may be applied to taxation of income from e-commerce by making the local recipient of goods and services the collector at the point of payment to the foreign supplier and making withheld taxes the final tax payable on the transaction for purposes of income tax. This will ensure the imposition of corporate income tax on internet based income.

b) Expanding the Description of Goods and Services
As currently defined under the VAT Act, the term “goods” is limited to tangible property and does not cover intangibles or digitalized products sold on the internet. The term “services” is not defined under the VAT Act but “supply of services” is defined as any services provided for consideration.

The definition of “goods” and “services” should be expanded to cover digitalized products, software and the different forms of media and other products sold on the internet. This is to ensure that e-commerce goods or products are categorized as taxable goods for the purposes of charging VAT.

3. Simplification and Modernization of the Tax system.

Former United States President Bill Clinton and his Vice, Albert Gore, on March 18, 1998, proposed a framework for global electronic commerce as follows:

"In some areas, government agreements may prove necessary to facilitate e-commerce and protect consumers. In these cases, governments should establish a predictable and simple legal environment based on a decentralized contractual model of law rather than one based on top-down regulation".

The tax law should be simple to enable taxpayers to better understand the tax consequences of their economic decisions. Simplification and modernization of the current tax system is necessary for the application of the current tax system to electronic commerce since the current system is unwieldy, overly complex and inefficient. This should cover simplification of the VAT tax system for all types of vendors including state-level administration of VAT collections and simplified tax returns.

4. Adoption of International Model Laws and Treaties.

Due to the global nature of e-commerce for any national tax system to effectively and efficiently regulate and tax e-commerce, it will require significant international cooperation. International model laws including the Organisation for Economic Co-operation and Development (OECD) model convention for taxation of e-commerce as well as international treaties on regulation and taxation of e-commerce between countries should be formulated and adopted.

5. Adoption of Latest Technology

Primary vehicle for e-commerce is the internet and information technology and the legal framework must not only address the commercial aspect of the transaction but also the technology issues and other issues facing the consumer. Technology contributes to the convenience of tax assessment, collection and payment. With the right technology, everyday taxpayers will be able to settle tax obligations with ease and convenience, thereby saving cost and time.

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Nigeria should embrace advanced technology tax administration to support electronic remittances and filing of returns which will reduce the burden on taxpayers and make tax payment more efficient. It will also help reduce human interaction between the taxpayers and the tax officials which could also help in checking sharp practices.

CONCLUSION

Electronic commerce is fast becoming a major prospective source of governmental revenue for nations around the globe including Nigeria. Revenue or tax authorities are reinventing new ways to collect the potentially significant revenues derived from taxing e-commerce profits and sales despite the constraint or challenges of existing tax regime which is structured to handle exchange of only physical goods and services. One of the most important effects of e-commerce has been to de-emphasize the significance of the place where economic activity is carried out, which makes it difficult to determine which jurisdiction has the right to tax. It has also blurred the traditional distinction between the form of delivery and the substance of what is delivered.

The application of the conventional or established methods or principles of taxation to electronic commerce is untenable. New rules of taxation specific to e-commerce should be developed. The current tax system in Nigeria is not designed to tax e-commerce and this has been compounded by the absence of the legal and regulatory framework for taxation of e-commerce. There is therefore a need for a complete restructuring of existing tax systems in Nigeria for an efficient taxation of e-commerce.

Kenneth Erikume

Tackling multiple taxation without compromising fiscal federalism

The American Heritage Dictionary of English Language defines federalism as a system of government in which power is divided between a central authority and constituent political units.

The phrase 'fiscal federalism' could be misleading as it does not apply to only federal systems of government. It could also apply to unitary and confederal systems of government.

Fiscal federalism is quite common with federal systems but the concept should not be restricted to only this form of government as other forms of government can apply fiscal federalism through proper allocation of revenue.

Fiscal federalism as a concept seeks to understand which revenue (instruments) and expenditure (functions) of government should be centralised or decentralised. It studies which revenue should be collected at a particular level of government and how the revenue is allocated across different layers of administration.

In the context of a Federal state, 'fiscal decentralisation' is quite important. Many economists believe that fiscal decentralisation is one of the most effective means of achieving effective fiscal federalism.

Nigerian case study

The important considerations with respect to fiscal federalism are the so-called 'horizontal and vertical relationships'.

Horizontal relationships

Horizontal interactions seeks to address regional imbalances with some states or localities potentially getting less allocation even though they may require more resources because of the projects they would like to undertake in order to improve the lives of the population within their jurisdiction. The disparities in tax bases available to each state produce large differences in internal revenue efforts across the states. Lagos State appears to be the only State government that is able to finance a significant part of its expenditure with internally generated revenue ("IGR"). In fact, the Lagos State was run without allocations from the Federal Government for several months. President Umaru Yar'Adua in 2007 ordered the release of the withheld funds of Lagos State government councils which was estimated in some media to have comprised Statutory Revenue Allocation of N7billion, Value Added Tax of N3billion, Excess Crude of N481 million and other revenue of aboutN42 million which was seized in April 2004 when the Lagos State government created additional local government councils. Other states appear to be struggling with meeting their commitments with IGR. In a report issued by the CBN for 2001 to 2004, results showed that IGR for Lagos covered 48.4% of its expenditure, 9 other states had IGR cover of 10% of expenditure and the others had less than 10% cover.

Vertical relationships

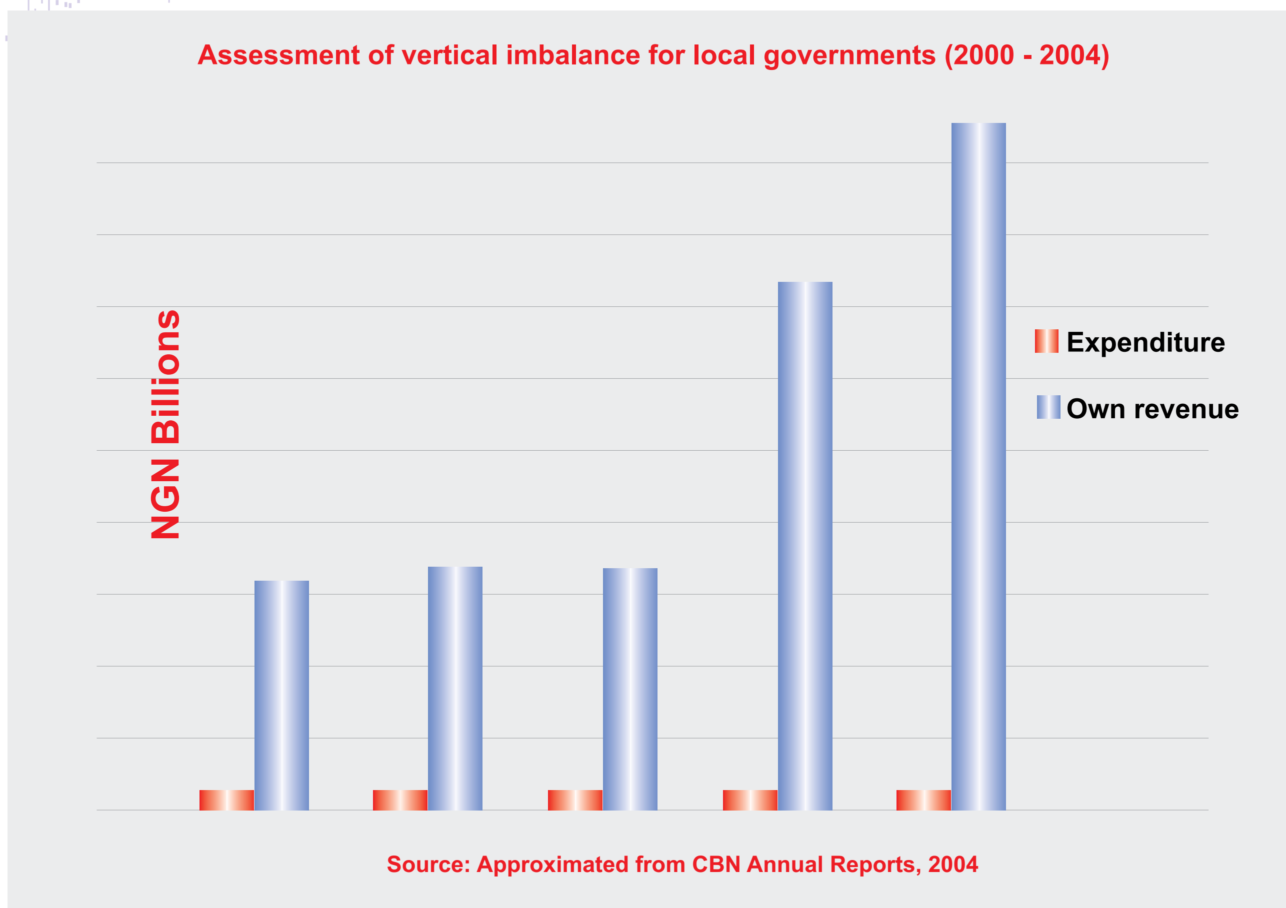
Vertical interactions seek to address imbalance between the various levels of government. There have been debates on the fairness of the revenue allocation formula and the vertical allocation of resources from the centre.

Studies have shown that the IGR of local governments are able to meet an insignificant portion of the total expenditures of 0.4% to 0.6%. When this is considered with the revenue allocation formulas, there is a huge imbalance in allocation to the State and Local governments.

Also, the bulk of the revenue that can be generated by all tiers of government in Nigeria is within the sharing and allocation regime adopted by Nigeria including oil revenue (profit oil, royalties and petroleum profits tax), companies income tax, value added tax and import duties. I have estimated this to be above 80% of all the revenue available to government as a whole. To put this in perspective, the Chairman of the FIRS at the time mentioned that national average of IGR to total revenue in 2008 and 2009 was about 14% in both years.

People have raised concerns that the sharing regime is lopsided and in favour of the Federal Government which does not have enough reach to implement projects that will be closer to the needs of the populace but concentrated on more general (so-called white elephant) projects. The local governments are therefore at a big disadvantage even though it is argued that their projects are supposed to be closer to the grassroots and have more positive impact on the

lives of people (see table below). This could be disputed based on the current scenario where the local government projects are substandard and irrelevant in many cases. But a contrary argument from the local governments would be that this is the case because of the amount of funds available to them for their projects.



General revenue allocation formula

Nigeria has 36 state governments and 774 local governments. The current revenue allocation formula specifies estimates of about 52% to the federal government, 26.72% to state governments and 20.60% to the local governments.

Nigeria's Revenue Mobilisation, Allocation and Fiscal Commission ("RMAFC") is proposing that the federal government allocates 19% from its current allocation to the state governments. The states can generate their own revenue which comes principally from personal income tax and pay as you earn ("PAYE") and property transfer taxes. The local governments have their own sources of revenue including fees and levies in addition to a compulsory allocation by the state government of 10% of all IGR by the states.
In my assessment, government at all tiers (including the Federal Government) is not very efficient with internally generated revenue (discussed more under double taxation) and there is

also a limit that state governments can generate their own revenue. For example, there are some states that have little or no natural resources, minimal economic activity and pervasive poverty and therefore cannot generate sufficient IGR because you cannot tax what you do not have. With limited allocation, it is difficult to see how these states can turn their fortunes around.

Derivation

State governments and local governments have been asking for more weight in allocations where transactions are carried on within their jurisdiction and also to be able to get some benefit for natural resources that are exploited within their jurisdiction. These all sound rational when considered in the context that businesses that generate revenue administered by the government utilise the infrastructure that have been put in place by State and local governments. Similarly, the exploitation of raw materials also impacts the livelihood and environment of the local people within the specific areas.

To this end, there have been requests from certain governments for taxes to be fully collectible and allocated to the state where they are generated. It is with this in mind that the revenue sharing structure envisages that a derivation allocation is provided to oil producing states. The 1999 Constitution provides that not less than 13% of mineral revenues should be transferred to the States on the basis of derivation.

The problem of double taxation and tax aggression

The scramble for tax revenue

Indices for transfers to the states and local governments have remained the same as in the 1981 Revenue Allocation Act. These include (in order of priority) equality of states, population and a combination of land mass/terrain, internal revenue generation efforts and social development indicators. States have therefore been in a race to justify high population in censuses and voting rather than increasing their revenue base.

People have said that state governments and local governments are lazy and should seek to generate income from sources outside of the shared revenue with the Federal government. This appears logical as the state governments can keep IGR from the management of the Federal Government. However, it should be mentioned for the sake of fairness that the states that are able to generate sufficient IGR have either benefited from past investments in the state such as Lagos that was the capital of the country for a very long time (and has an important port for economic activities) or are naturally endowed with resources such as Delta state.

In any case, it is my view that governments at all tiers in Nigeria are not very efficient with tax collection and relied significantly on oil revenues which is not sustainable in the long term. My view is informed by the narrow tax base of government's focus, usually targeted at multinationals who they have 'squeezed until the pips squeaked' while ignoring the informal sector which in many people's assessment generates as much as the formal sector with a potential to easily double IGR.

Similarly, the tax culture of the Nigerian population is very low. There is low appreciation for payment of taxes and generally people do not consider it to be part of their civic duties to be performed normally rather they consider it to be avoided or simply are not aware that they should pay taxes at all.

Irrespective of the challenges highlighted above, some tiers of governments have been more innovative in educating corporate organisations and individuals of their civic duties and also in devising ways of increasing the tax base while others have been clueless on steps to take to improve IGR. To be fair to the local governments, there is little innovation that can be done to improve IGR due to the scope limitation for local government tax administration and the difficulty in collecting such taxes. However, they need to take steps to optimise their position in respect of IGR. For example in South Africa, TV license fees are imposed at the point of purchasing the Television as a TV cannot be sold without providing a verifiable license to the seller. The seller in turn renders returns of the TV license fees collected on all TVs sold showing that they were sold to customers with valid TV licenses. This is a simple system of tax collection as people buy TV sets all the time for various purposes. Such a structure could be an innovation that could be adopted even though there could be practical challenges as there are no databases to monitor such approvals and licenses.

The table below depicts the various taxes that are administered at each level of government:

Federal Government	STATE Government	Local Government
Companies Income Tax	Personal income tax On state tax residents and withholding tax on individuals	Tenement rate
Petroleum profits	Capital Gains tax (on individuals only)	Shop and Kiosk Rates
Value Added Tax	Stamp duties (on individuals only)	Liquor license fees
Education Tax	Road taxes e.g. Vehicle licenses	Slaughter slab fees
Capital Gains Tax on corporate and Abuja resident	Betting and Gaming taxes	Marriage, Birth and Death registration fees
Stamp Duties (on corporate Bodies)	Business premises and registration levy	Street name registration fees (excluding state and capital)
Withholding Tax (on companies)	Development levy N100 per annum per individual	Market/Motor Park fees (excluding state owned marke
Personal income tax on personnel of the armed forces, Police, External Affairs Ministry and Residents of Abuja	Street name registration fees (state capital only)	Domestic Animal License fees
Mining rents and royalties Right of Occupancy	Fees (state capital only)	Bicycle, Trucks, Canoe, Wheelbarrow, Carts and Canc fees
Customs Duties	Market fees (where market is financed by state government)	Right of Occupancy fees (excluding state capital)
Excise Duties	Miscellaneous revenues e.g. rents on property	Cattle tax
Miscellaneous Revenues (e.g. Farming from oil states. rents on property etc - Largely independent Revenue of the Federal Government		Merriment fees
		Radio and TV license fees
		Vehicle Parking Fees and Wrong Parking Charges
		Public Convenience, Sewage and Refuse Disposal Fees
		Burial Ground and Religious Places Permit Fees
		Signboard and Billboard Advertisement permit fees

The vertical imbalance based on the national revenue sharing formula has consequently created to an extent 'tax aggression' from the different arms of government rather than inspiring voluntary tax compliance and innovation. The scramble for revenue to meet on-going capital and revenue commitments has made governments focus on charging more tax and collecting more tax rather than going back to the basics of increasing the tax revenue base by bringing more taxpayers into the tax net. This has created double taxation in the system. Double taxation could be economic double taxation (where an income is taxed twice especially when it changes hand or changes its nature) or juridical double taxation (where 2 different jurisdictions or territories impose tax on the same income e.g. 2 different states).

In certain instances, there is no stipulation of the amount that can be levied in respect of certain fees and the governments have taken liberty to charge as much as they can for these fees and levies.

I will provide examples of instances where double taxation has been imposed due to the vertical imbalance created by the national revenue sharing formula.

The first is the search for loopholes to impose similar taxes at different levels of government. An example of this is the imposition of sales tax in Lagos State which is more or less a duplication of VAT imposed by the Federal Government. This created a lot of controversy because both VAT and sales tax are levied on consumption of goods and services. In addition, the Lagos State controversially fixed the rate at 5% similar to the current VAT rate. Although, judgements were given in favour of Eko Hotel and Nigerian Bottling Company on this issue which has provided some comfort to taxpayers, the possibility of State governments imposing additional taxes creates a huge concern for businesses.

The second is stretching the interpretation of a word to impose tax where it was not initially envisaged. An example is where a local government authority in a particular state at some point issued assessments to companies for TV license fees in respect of the computer screens used by companies in the business offices. In my assessment, this attempt was a long shot because desk top computers and TV screens may utilise similar technology of the cathode ray tube (for older models) and LCD/LED (for newer models), there is nowhere in the world were a computer screen is considered to be a TV set.

The third is ignoring the intention of the law and establishing practices that are not in line with global best practices. The Federal Government is also not left out of this with regards to the scramble for tax revenue in order to meet their obligations. For example, the imposition of VAT deduction at source in the Oil and gas industry has resulted in a situation where oil and gas companies with valid input VAT claims have not been able to claim input VAT or obtain a refund for the input VAT because the government does not provide a budget for such claims. Similarly, withholding tax at the Federal and State level has been used as a means of taxing corporate and individuals twice. In this regard, withholding tax should be an advance payment of tax but where it is not deducted by a person, the tax authorities still collect the withholding tax from the person even though the taxpayer from whom the tax should have been deducted has gone ahead to pay its taxes in full.

Unreasonable double taxation in a system does not provide a fair environment for businesses to thrive and gives corporate and individual taxpayers more reasons to avoid being brought into the tax net as they expect to be treated unfairly or to be milked dry once they begin to comply voluntarily.

We therefore need to consider how best to optimise taxation in a federal system.

The US example on tax allocation and tier taxation

The US system (as is the case of all human systems) is not free of error. There are instances of tax aggression and competition for tax revenue by state governments. However, the US model of fiscal federalism appears to be more efficient than most.

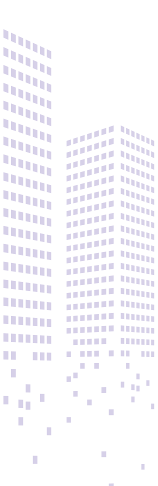
What is generally accepted is that:

Fact 1: The impact of the tax policy (collection) is largely dependent on the use to which the revenue is put

A study by Mckinsey in 1996 showed that although investment was higher in Japan and Germany, the net increment in national income was greater in the US due to the allocation of capital to more profitable ventures

Fact 2: The design of the tax system is just as important for economic growth as the absolute level of taxation

Countries that are able to mobilise tax revenue through broad-based tax structures with efficient administration and enforcement are more likely to enjoy faster growth rates in the long-term



Based on the above facts, the deduction is that broad-based tax administration and enforcement will produce the required revenue for government's obligation to complement oil revenue and fiscal decentralisation such that revenue gets to the state and local government is key because the monies can be utilised for more effective programs.

Innovation in taxation to increase IGR at State and Local Government levels

Innovation by state governments and local governments is important to raise IGR by bringing more people into the tax net and taxing them legally and appropriately.

Example of Nevada: At the beginning of the Depression, Nevada's mines were in decline, and its economy was in shambles. In March 1931, Nevada's state legislature responded to population flight by taking the drastic measure of legalizing gambling and, later in the year, divorce. Established in 1905, Las Vegas, Nevada, has since become the gambling and entertainment capital of the world, famous for its casinos, nightclubs, and sporting events. Today, state gambling taxes account for the lion's share of Nevada's overall tax revenues.

Allocation of tax revenue to State and Local Governments

Dwight R. Lee stated this in clear terms *"…political power has become too centralized, with the federal government taking over more and more functions that, if the responsibility of government at all, are the responsibility of local governments {state governments.}.*

Second, the federal tax system has become so complicated, and so subject to political churning, that it is imposing outrageous compliance costs on taxpayers and permeating the economy with tax-induced distortions."

In Nigeria, we continually witness instances where Federal Government projects are not effective. The reasons are that Federal Governments are too far away from the general population to understand fully what the important needs of the people are. Also, they do not have the machinery to effectively carry out grassroot programs that would touch the lives of the people. People have also argued that the mammoth Federal Government is too bureaucratic to work efficiently and sometimes could be hindered by corruption. But continually, we see that the Federal Government wants to maintain control on revenue's without trusting the State and Local Governments to utilise funds adequately. An example of this is the SURE-P and YouWin mechanisms which the Federal Government introduced to reinvest subsidy funds. In my view, these are programs that should be implemented at the local government level and I am not sure what impact these programs have had since they were initiated this year.

Example of the United States: A paper by Katherine Baicker et al in April 2011 titled *"The rise of the States: US fiscal decentralisation in the postwar period"* stated *"One of the most dramatic changes in the fiscal federalism landscape during the post-war period has been the rapid growth in state budgets, which almost tripled as a share of GDP and doubled as a share of government spending between 1952 and 2006... federal grants to states have increased, and federal policy and legal constraints have also mandated or heavily incentivized state own-source spending, particularly in the areas of education, health and public welfare."*

Conclusion

In conclusion, fiscal decentralisation at the local and state level should be increased through direct administration of certain taxes and through more allocations from the centre. Allowing States to administer certain taxes (especially indirect taxes) like VAT would be more appropriately administered at the State level rather than allocating from the central pool. This conclusion is because States would feel more comfortable that they can adequately tax for business activities within their jurisdiction. Also, the ability to vary the VAT rate would give more flexibility for States to be more competitive even if they are starting from a position of disadvantage. It would also reduce the impact of double taxation as States would reduce their efforts to impose their own novel taxes. Also more allocations from the Federal government would give room for States to implement programs that would improve the lives of the citizens.

I dare say that a lot of the aversion to paying taxes and imbibing a tax culture depends on how much the general population views that the government is providing public goods and social services. The perception of double taxation would significantly reduce and in the same vein, corporate and individuals would be happy to pay their taxes.

Until then, the question remains 'what is the government doing with our money?'

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VAT/.

Dipo Okuribido

Value Added Tax in Nigeria: Unitary To Federal System

This Paper analyses the subsisting Value Added Tax ("VAT") System in Nigeria based on principles of fiscal federalism. It examines the impact that the current "unitary" VAT system has had on funding and development of regional governments within Nigeria and compares the outcomes to other federal countries where more decentralised consumption tax systems have been adopted. It is the contention of the writers that a more decentralised VAT system would occasion significant improvement in the relative fiscal and developmental conditions of many States in Nigeria. The Paper seeks to recommend a decentralised VAT and to highlight possible benefits of a more decentralised approach to consumption taxes.

Introduction

A tax may generally be viewed as a public charge on private property; public in the sense that the charge is not necessarily connected to any direct benefit accruing to the payer. Taxation is generally employed as a means of generating public revenue.

Value Added Tax is a consumption tax assessed on the value added to goods and services. It is charged as a percentage of price, which means that the actual tax burden is visible at each stage in the production and distribution chain. The tax is collected fractionally, via a system of deductions whereby taxable persons can deduct from their VAT liability the amount of tax they have paid to other taxable persons on purchases for their business activities. This mechanism ensures that the tax is neutral regardless of how many transactions are involved. Put differently, VAT is a multi-stage tax, levied only on value added at each stage in the chain of production of goods and services with the provision of a set-off for the tax paid at earlier stages in the chain. The objective is to avoid 'cascading', which can have a snowballing effect on prices.

Value Added Tax in Nigeria

The idea of introducing a VAT system in Nigeria reportedly first arose in 1991. However, the VAT was only introduced in 1993, following the promulgation by the then subsisting military government of the "Value Added Tax Decree No. 102 of 1993 [5]. The VAT was meant to serve as a replacement of the existing sales tax which had been in operation under Federal Government Decree No.7 of 1986.

Under the Value Added Tax Act ("VATA") tax at the rate of five per cent (5%) is charged and payable on the supply of all goods and services (in the VATA referred to as "taxable goods and services") other than those goods and services which are specifically exempt under the VATA [6].

The VAT is collected and generally administered by the Federal Inland Revenue Service ("FIRS"). Pursuant to the VATA, VAT revenues collected by the FIRS are to be distributed amongst the federal, state and local governments in the following proportions:

(i) fifteen per cent (15%) to the Federal Government;

(ii) fifty per cent (50%) to the State Governments and the Federal Capital Territory, Abuja; and

(iii) thirty five per cent (35%) to the Local Governments,

with the principle of derivation of not less than twenty per cent (20%) reflected in the distribution at the allocation among States and Local Governments. [7]

Pursuant to the provisions of the VATA, states (and local governments) in Nigeria are entitled

[5] now the Value Added Tax Act Cap V1 Laws of the Federation of Nigeria 2004 as amended by the Value Added Tax (Amendment) Act No. 12 of 2007

[6] Exempted items consist mainly of basic food items, medical and pharmaceutical products, books and educational materials, baby products and certain categories of specialised items which have been introduced by the Federal Government over the years for strategic reasons.

[7] The provision for derivation principles to be taken into consideration in the distribution of VAT revenues is a recent amendment to the VATA only dating back as far as 2007.

to retain twenty per cent (20%) of generated VAT with the remainder gathered into a VAT Pool Account from which same will be shared amongst all of the levels of government in accordance with the prescribed portions. Although this derivation arrangement goes a long way to assuage concerns of fiscal federalism, however it arguably still leaves a lot to be desired. This is in view of the fact that under the current structure, states which contribute only a small portion of VAT revenues are still essentially being subsidised by states such as Lagos, which contribute a significant proportion of the revenues. For the smaller, less commercial states, there remains little incentive to improve fiscal discipline and efforts at internal revenue generation since expenditures will typically not be prohibitively high and, regardless of their efforts, such smaller states are guaranteed a portion of VAT revenues. On the other hand, the structure does not significantly alleviate the pressures on larger commercial states like Lagos, which have typically much higher expenditure bills and, under the current VAT system, will essentially be subsidising the Federal Government and other states. [8]

It is pertinent to note that in recent times the constitutional validity of the VATA has been called into question and there is presently before the Supreme Court of Nigeria, an action instituted by several state governments against the Federal Government and all other states of the Federation, challenging the validity of the VATA on the basis that consumption taxes are outside the purview of the taxing powers of the Federal Government and within the exclusive legislative purview of the States. The outcome of the case in the Supreme Court is directly related to this Paper as a judgement against the federal government will essentially imply the decentralisation of consumption taxes. The objective of this Paper is, whilst avoiding the legal issues to be considered by the Supreme Court, to analyse whether it is preferable from a strictly policy point of view, for consumption taxes to be decentralised and taken out of the purview of the Federal Government.

Fiscal Federalism

Fiscal federalism relates to the distribution of public finance powers amongst the different tiers of government within a federation. When a federation is established, there is a division of powers between the central and state governments in order to give each a relatively substantial degree of responsibility. Each level of government is delegated expenditure functions which are both appropriate and commensurate with its authority. To fund its operations each level of government must have a source of revenue to fund its expenditures.[9]

The debate will usually be over which sources of revenue to allocate to the different levels of government. A great deal of literature exists on this debate. The earlier general thinking was in favour of more restricted revenue-raising powers for states with a greater reliance on federal grants to fund state expenditures. This was on the basis that the differences and inequalities which would potentially result from diverse tax systems and tax rates being implemented across states were generally viewed negatively because of the likelihood that same would encourage inefficient distribution of labour as citizens and or transactions flocked to the more fiscally friendly states.

[8] Lagos reportedly contributes up to 60% of all VAT revenues in Nigeria
Fiscal Federalism Dimensions of Tax Reform in Developing Countries, World Bank Policy Research Working
[9] Paper 1385 (November 1994) Robin Boadway, Sandra Roberts and Anwar Shah.

The more modern thinking generally views such differences and inequalities in a different light. The argument is that differences and inequalities exist in fact and are not necessarily occasioned by tax and other fiscal structures. People's preferences for government services vary because of religion, language, ethnic mix, climate, economic base, or just because of their inclinations or those of the local political leadership. The preferences of Lagosians for government services differ from those of Oyo State residents. If state governments respond to these preferences in structuring their budgets, decentralization should result in variations in the package of services being delivered in different regions. [10] Accordingly, greater emphasis in decentralised governments should be on state revenue raising (taxing) powers. While the argument admits that if fiscal decentralization takes the path of heavy reliance on state taxes, a decided advantage will be given to subnational governments with a greater fiscal capacity such as large cities in which there is both a larger tax base that is easier to reach and a better chance of developing the administrative capacity to collect taxes. Decentralizing taxing power will thus likely increase regional inequality. However, the thinking is that the benefits of decentralising taxing powers far outweigh any problems which may be occasioned by the resulting inequality.

The thinking is that local residents are likely to hold officials more accountable if local public services are financed to a significant extent from locally imposed taxes and charges as opposed to central government transfers. To have this beneficial effect, local taxes must be both visible to local voters and large enough to impose a noticeable burden (one that should not be easily exported to non-residents). The minor levies and nuisance taxes found at the local level in many developing countries do not measure up to these requirements. [11]

An additional argument for greater emphasis on state taxes is that it has the important advantage of imposing fiscal discipline on subnational governments. A greater share of financing from own sources drives up the tax price of public services and reduces the upward pressure on subnational government expenditures. Heavy reliance on intergovernmental transfers has precisely the opposite effect.

Nigerian Fiscal Federalism

Issues of the length breadth and depth of the fiscal federalism in Nigeria are often part of the rhetoric of politicians at the state and federal levels. Presently, the subject is under consideration by the Supreme Court, as part of the action filed by some state governments challenging the VATA.

Whatever the legal position may be, the factual extent of the fiscal federalism in Nigeria may be distilled from the extent of the States' dependence on grants from the Federal Government and the taxes which state governments presently collect.

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[10] Subnational Taxes in Developing Countries: The Way Forward. Financial Publications Inc. (2008) ROY BAHL and RICHARD BIRD

[11] Ibid

Currently, all corporate income, petroleum profits, imports, excise and value added taxes are levied pursuant to Federal legislation and are collected by the Federal Government. The Federal government also levies and collects some capital gains tax and stamp duties (in respect of transactions involving companies). In addition to all of the foregoing, although the revenues realised therefrom accrue to the relevant states where the payers are resident, personal income taxes are also levied by the Federal Government with powers of state governments in relation thereto being limited to administration and collection of the personal income tax.

Against all of the foregoing, taxes collected by the State Governments are (i) personal income tax (which is levied by the Federal Government); (ii) capital gains tax and stamp duties in respect of individuals; (iii) pools, betting, lotteries, gaming and casino taxes, (iv) road taxes; (v) business registration fees; (vi) development levies; (vii) property taxes, and (viii) market taxes and levies where state finance is involved. Although this may seem like a long list of taxes however, in practice, save for the property taxes and the personal income taxes, the potential revenue raising power of the other categories of state taxes is generally limited.

Given the limited revenue raising potential of most of the state taxes, states in Nigeria are generally constrained to depend on grants and allocations from the Federal Government for a significant portion of the funding of their operations and activities. As a result of this dependence, there is therefore merit in statements which question the level and extent of the federalism in Nigeria.

True federalism presumes a significant level of independence and autonomy on the part of the state governments. Furthermore, one of the more important benefits from decentralization is the increased efficiency (and consequent welfare gain) that comes from moving governance closer to the people. Both this presumption and the attendant benefit are however eroded where state governments are dependent on the federal government for a significant portion of their financing. In such circumstances, state governments will not be truly autonomous. Furthermore, since funding will be allocated at a federal level, decisions as to what welfare and other benefits to prioritize will essentially be taken at the higher level, thus eroding the benefits of bringing the government closer to the people. For instance, the Benue State Government may be forced to prioritize an agricultural project over increased spending on education which may be required in Benue State because it is dependent on funding from the Federal Government and the Federal Government is prioritizing agricultural projects across the country.

In addition to the foregoing, a major disadvantage of the centralised VAT system is that states have no general incentive to be more fiscally disciplined. Poor states do not see any reason to be more prudent in their spending since they are able to rely on VAT revenues for more commercial states. Also, given that significant portions of expenditure may in fact be being funded by other states, citizens also do not have as great an incentive to hold their leaders accountable for government spending.

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[12] See Taxes and Levies (Approved List for Collection) Act Cap T2 Laws of the Federation of Nigeria 2004

Fiscal Federalism through Value Added Tax

The traditional theory of fiscal federalism prescribed a very limited tax base for subnational governments. The only good local taxes were thought to be those that are easy to administer locally, are imposed solely (or mainly) on local residents, and do not raise problems of harmonization or competition between subnational local or regional governments or between subnational and national governments. In line with this thinking, in most developing countries, central governments have been generally reluctant to release taxing powers to subnational governments. In 2008, the subnational tax share in total taxes in developing countries was only about 10 per cent by comparison to 20 per cent in industrialized countries.

The traditional thinking is however giving way to more modern ideas which identify the following principles for assigning taxing powers to state governments:

(i) subnational taxes should not unduly distort the allocation of resources;

(ii) (to the extent possible) governments at all levels should bear significant responsibility for financing the expenditures for which they are politically responsible;

(iii) internally generated revenues should be sufficient to enable, at least the richest state governments to finance, from their own resources, all locally provided services that primarily benefit local residents; and

(iv) (to the extent possible) subnational revenues should burden only local residents, preferably in relation to the perceived benefits they receive from local services.

Based on experience in industrial countries, the general thinking is that the prime form of regional taxation is the sales tax (in one form or the other). This is because there are few other major revenue options open to countries in which, expenditure responsibilities have been shifted to lower levels of government, if those governments are to behave in a fiscally responsible manner.

There are broadly five (5) ways in which some form of sales tax could be administered in a federal country. [15]
Firstly, sales tax may be collected only at the regional level, either as VAT or retail sales tax **("RST")**. Only the United States and a few Canadian provinces currently follow this path (with RSTs). Central governments will generally be unwilling to give up the revenue collected from VAT hence the relative unpopularity of this approach.

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[13] The classic tax assignment arguments are set out in Richard A. Musgrave, "Who Should Tax, Where and What?" in Tax Assignment in Federal Countries, ed. Charles McLure (Canberra: Centre for Research on Federal Financial Relations, Australian National University, 1983): 2–19

[14] Calculated from IMF, Government Finance Statistics Yearbook, various years, and from country studies; see Roy Bahl and Sally Wallace, "Public Financing in Developing and Transition Countries," Public Budgeting & Finance, Silver Anniversary Issue (2005): 83–98.

[15] See "VATs in Federal States: International Experience and Emerging Possibilities" Richard M. Bird and Pierre -Pascal Gendron (March 2001)

Secondly, sales taxes may be levied only at the central level. This is by far the most common system and is the system currently being adopted in Nigeria i.e. a single VAT levied at the national level, with a proportion of the VAT revenue shared on the basis of a formula with the states.

Thirdly, although the VAT may be the best of all possible sales taxes in some general sense, there may be something to be said for maintaining two distinct sales tax bases in a federal state in which both levels of government tax sales. Such a solution is obviously untidy and may be costly, but it may be argued that such costs should perhaps be viewed as part of the price paid for a federal system which presumably has offsetting virtues, such as respecting local preferences. Examples of this approach may be found in Brazil, India, and Argentina (as well as the Russian Federation) in all of which there are distinct taxes on sales at both state and federal levels.

Alternatively, both levels of government could maintain independent dual VATs, perhaps reducing compliance and administrative costs by harmonizing bases and to some extent rates. It has been argued that it should be possible to retain a substantial degree of state fiscal autonomy while still reducing substantially the economic and administrative costs of levying two independent and totally uncoordinated VATs at different levels of government.
Finally, the VAT could become in effect a joint or concurrent federal-state tax. Such a tax could be administered by either level of government and apply to a jointly determined base, but with each government setting its own tax rate.

The focus of this paper is on the last of the five options (5) mentioned above i.e. a situation where VAT is imposed concurrently by the federal and state governments, with states being able to set their own rates. Examples of countries in which this dual VAT structure has been adopted include Brazil, Canada and India. Given the complex nature of the VAT, implementation of “dual VAT/sales tax” structures have not been without challenges in the different jurisdictions, we have therefore detailed below, some recent thinking around the best option for the implementation of the structure.

The Compensating VAT

One option for implementing a federal and state VAT is the “Compensating VAT” (popularly known as the CVAT). [16]

Under the CVAT structure, in addition to the federal VAT, states can levy their own independent VAT rates with a CVAT imposed by the central government on interstate sales states at some appropriate rate such as the weighted average of state rates. State governments would zero-rate not only international but interstate sales, the latter being subject to the central CVAT (as well as the central VAT). Domestic (inter and intra state) sales would thus be subject to central VAT and either state VAT or central CVAT. Under this structure (as opposed to the fourth option above) there would be no need for any state to deal explicitly with any other state nor, generally, would there be any need for interstate clearing of tax credits. Buyers registered at destination

[16] See McLure, C. (2000): “Implementing Subnational Value Added Taxes on Internal Trade: The Compensating VAT (CVAT)”, International Tax and Public Finance, 6, 723-740.

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will have fiscal credit for the CVAT paid in origin for their imports, that will be taxed (with deferred payment) in the following stage the moment when the importer sales the goods in his or her own state. If sales go to registered buyers of the same state, they will be taxed with the local rate (and they will generate fiscal credit of the corresponding sub-national revenue service). If sales go to registered buyers of other states, the CVAT works again and will generate fiscal credit of the federal revenue service to those buyers of the other state. Finally, if sales go to non-registered buyers or final consumers, the CVAT levied on imports from other states will work as a final VAT. These sales generate a revenue surplus to federal government that should be later distributed among states.

Whichever option is eventually selected for the implementation of the "dual VAT/sales tax", the structure should ultimately deliver on the following:

(i) a relatively immobile tax base (consumption), which allows state authorities some leeway in varying rates without losing most of their tax base;

(ii) a tax yield which is relative to the population and business activities of the state and should therefore be adequate to meet local needs; and

(iii) a tax burden which is difficult to transfer to non-residents such that residents of the relevant state feel compelled to take ownership of the revenue stream and are more inclined to hold the state government accountable.

Conclusion

A more decentralised VAT system will assist with a more efficient distribution of tax revenue across states in Nigeria without significantly depriving the Federal Government of revenue. Granted, the system may initially result in reduced revenues for less commercial states where consumption is not as high and or as robust as other states, however such reduced revenues should eventually give way to greater fiscal discipline in such states and relevant reviews and revisions of tax rates and tax bases such that the state VAT can better focus on consumption with the state and ultimately generate adequate revenues to submit the state expenditure.

Etim Uso

Tax Administration in Nigeria: Broadening the Taxpayers Base with Information Technology Tools

The challenge we face has more to do with willingness to comply with tax regulations voluntarily; this paper provides options that involve the use of special incentives and intelligent IT solution to enforce compliance and broaden the taxpayers' base.

"Give to Caesar what is Caesar's." And Benjamin Franklin (1706–90), a US scientist and statesman, in a letter to a colleague, Jean-Baptiste Leroy on the 13th of November 1789, wrote: "In this world nothing is certain but death and taxes." I have no better way of introducing tax.

Tax is as old as man. It has been one of the primary motives for feudal wars, historic quest for conquests and expansion of empires and kingdoms. It was (and still remains) the insignia of authority and power as a state cannot qualify as such without drawing some form of tax from the people within its domain. Again, this is how Adam Smith (1723-90), the great economist in his The Wealth of Nations, put it: “There is no art which one government sooner learns of another than that of draining money from the pockets of the people.”

Total Revenue Collection By Tax Types 2011

Tax Types	% Contribution
Oil Taxes	67.27
Non-Oil Taxes	
Company Income Tax	14.35
Stamp Duty	0.14
Capital Gains Tax	0.02
Value-Added Tax	14.27
Personal Income Tax	0.94
Education Tax	2.83
Others	0.18

Source: Extracted from FIRS Planning, Reporting and Statistics Dept.

So tax is not new; it is normal, and a legitimate instrument for raising money by the state in order to pay for the services it provides. Tax is as important today as it was centuries ago; it is a major campaign issue in the politics of modern democracies as governments have been brought down and others propelled to power because of tax.

But the situation in Nigeria today is not exactly in line with the normal pattern with regard to tax. Our total dependent on oil wealth has atrophied other sources of revenue, especially the internally-generated non-oil revenue which includes tax (see Charts). Even with the ongoing reforms designed to “reposition the Nigerian tax system by making taxation the pivot for the nation’s sustainable development” a yawning gap still exists between what ought to be and the actual, especially at the States level.

This paper is not about the dialectic of tax or our over-dependent on oil revenue; it is about how we can harness the power of information technology to broaden our taxpayers' base and increase tax revenue in Nigeria. But before I proffer any solution, it is better to, first of all, find out and understand where our problem lies.

WHO SHOULD PAY TAX

It is a known fact that the yield from our tax revenue both at the State and Federal levels are below expectations. The non-oil revenue accounts for just about 30% of our total revenue. I will approach the issue by first identifying those who are paying tax and those that are supposed to pay but are not paying in order to design the right solution. A look at the various categories of taxes that exist in the country will provide a clue.

The following categories of taxes exist at both the federal, state and local government levels, each backed with appropriate legislation:

States Internally Generated Revenue (IGR) as a Percentage Total Budgeted Revenue (2011)

State	% IGR
Lagos	58
Akwa Ibom	7
Osun	11
Imo	19
Kaduna	9
Cross River	17
Kano	10
Anambra	18
Edo	17
Rivers	19
Delta	10

This is a typical trend, except Lagos: marginal contribution from internally generated revenue
Source: States annual budget report

Personal Income Tax

The personal income tax applies to all “profits arising from a trade, business, profession or vocation from any source inside or outside Nigeria” by all persons resident in Nigeria (including foreigners). The tax is paid to the government of the state where the individual resides, except those from members of the armed forces and members of the Foreign Service, which are paid to the federal government.

Company Income Tax

Company income tax applies to all incorporated companies operating in Nigeria. Apart from tax imposed on their profit, companies are also required to pay a certain percentage of their profit into some form of special tax funds such as Education Tax.

Petroleum Profits Tax

This applies to oil companies engaged in the exploration and exploitation of crude oil. Petroleum Tax profit is exempted from companies’ income tax.

Capital Gains Tax

This is the tax imposed on profits arising from the sale of assets.

Value Added Tax (VAT)

This is a consumption tax imposed on some goods and services, currently 5%. Proceeds from VAT is shared among the Federal, State and Local Governments, but administered by the Federal Inland Revenue Service on behalf of the three tiers of government.

Stamp Duty

This is the tax paid for some transactions that involve obtaining certain documents at both the Federal and State levels.

There are, probably, other forms of taxes and quasi taxes especially at the state and local government levels, but I will restrict my list to the ones stated above.

Looking at the above list it is clear that every Nigerian who is gainfully employed and every profit-making entity in Nigeria form the population of prospective taxpayers. However, from the tables we can also see that our non-oil revenue contributes just about 30% with Income Tax (personal and corporate) playing less significant role. At the State level where Personal Income Tax is applicable, the result is abysmal (even if we have to assume that tax constitute 70% of all internally-generated revenue). Now the next question is: who are those not paying taxes?

One thing is clear: the contribution of Company and Personal Income Tax fall far below expectation when compared to other countries, and in view of Nigeria's population (see chart). Most developed countries derive the bulk of their revenue from Income Tax.

Tax as a Percentage of Total Revenue for Selected Countries (2011) Country % Tax

Country	% Tax
Nigeria (Non-Oil Tax)	33
USA	60
Namibia	39
Indonesia	70
India	86

Nigeria and Namibia fall within
the same category-almost: the bane of oil.

THE CHALLENEGE OF TAX ADMINISTRATION IN NIGERIA

The challenge of tax administration in Nigeria has already been outlined by the Chartered Institute of Taxation of Nigeria (CITN):

"There can be no doubt that personal and company income tax administration in Nigeria today does not measure up to appropriate standards. Even if we apply the good and old tests of equity, certainty, convenience and administrative efficiency, Nigeria will score less than a pass mark. The bulk of personal income tax yield comes from employees whose taxes are deducted at source, whereas the self-employed make the most money. Due to inadequate monitoring, persons in the latter group manage to evade tax... We must admit that tax administration is particularly hard here because the literacy level is low and record keeping is not yet a popular culture."

The issues can be summarized as follows: inability of the authority to enforce broad tax compliance due to administrative constraints, illiteracy and poor record keeping culture. Another important fact that emerges from this is that the rich are not paying tax. And I will also add: majority of the SMEs are not paying or remitting the relevant taxes.

We have said so much about our dependent on oil revenue, but permit me to add here that availability of easy fund from the federation account has killed most states desires and determination to go after tax revenue (Lagos State being the only exception) which requires administrative planning and strategy.

THE INFORMATION SYSTEM APPROACH

What roles can information technology play in tax administration beyond what we already know in view of the fact that there are computer systems everywhere running expensive and sophisticated software? The problem we have in Nigeria is that of going abroad to shop for software solutions that work in other countries without understanding our own local requirements and constraints. The result has been a moribund system that solves little or no problem. There is nothing wrong in copying from other countries, but we have to consider local factors when implementing any IT solution.

Many countries have successfully deployed integrated tax administration portal to handle on-line processing of all categories of tax transactions. A system like this provides a very cost-effective and efficient way of managing tax in a system where people are already willing to comply voluntarily with tax regulations, but our immediate problem here is tax compliance. How do we get more people, more entities to comply wholly with the relevant tax laws?

Education and Provision of Standard Tool

Apart from legislation, let me also recount the efforts of the UK Inland Revenue in enforcing, encouraging and persuading the people to pay tax. In 1997, the British Inland Revenue undertook the supply of Electronic Version Return (EVR) program free of charge to taxpayers. The program which was supplied in a set of disks allowed the users to fill in, edit and save tax returns onscreen and thereafter print, sign and send it to designated Inland Revenue offices. The Inland Revenue also authorized software houses to replicate both the EVR form and the computation in their software packages.

In 1999, Microsoft released TaxSaver99, purposely built to compute tax and file returns based on the Inland Revenue specifications. The Inland Revenue readily adopted the software as TaxSaver2000 Lite and makes it available to taxpayers free. One interesting thing about this software is that, it does not only compute tax and allow the filing of returns, it also contains informative articles about tax, history of tax, tax statistics and tax basics for beginners.

Numerous other applications that meet the UK Inland Revenue approved tax specifications have been developed. Some of them have been tested and those that pass the Inland Revenue test have been given official stamp of approval.

To improve on the speed of filing tax returns and payment of tax, the Inland Revenue has also implemented the Filing By Internet (FBI) service which allows individual and organizations to complete tax form and pay their taxes on-line. It is also hoped that this will bring about cost saving for the Inland Revenue as well. Today, UK's Inland Revenue has an e-services unit overseeing Internet filing headed by a director.

Nigeria can borrow a leaf from UK and bring a great improvement to her tax administration, not only for P.A.Y.E. but all other form of taxes. However, there are some differences that must be

taken into consideration. For instance, in the UK, majority of the citizens recognize the need to pay tax as at when due, but the same cannot be said of Nigeria. Let me therefore re-iterate what is already known as contained in the CITN Nigerian Tax Guide Statutes that “taxation is a forceful imposition and not allowed to be voluntary.” Thus there is that need not only for rigorous enforcement, but also for enlightenment, persuasion and provision of special tools.

It is a known fact that most SMEs in Nigeria have poor bookkeeping culture and some have no knowledge of their tax obligations. Hence one of my recommendations was that the federal government (through FIRS) should undertake the development/delivery of a standard application software with just the basic features that will enable small business owners carry out rudimentary bookkeeping and compute all the relevant taxes automatically. Such a tool should be made available as a free download for all small business owners who may not be able to afford full-featured software. This will, perhaps, remove any excuses and force the SMEs to cultivate basic bookkeeping habit in addition to making it possible for them to render accounts of taxes.

Knowledge-based System: The TaxNet Project

We are most familiar with the operational transactions-based processing systems, which involve data entry, update and retrieval. But today the key to survival and outstanding performance is shifting more to the ability to analyze critical business data and making intelligent decision based on the information obtained. While the operational system, commonly referred to as Online Transaction Processing (OLTP), will keep the business running efficiently every day, sound planning and ability to forecast or predict with accuracy and take pro-active actions rest more on the capacity to analyze enormous amount of critical data to obtain hidden information and intelligent feedback. This capability falls within the realm of Data Warehouse and Online Analytical Processing (OLAP).

In 2003, FIRS initiated a project for the design and development of a special system for The Intelligence and Monitoring Unit (IMU) of FIRS. The project was conceived out of the need to broaden the tax base and enforce mandatory tax compliance through the deployment of intelligent data analyses solution. The solution, named TaxNet, called for the creation of a Data Warehouse with Online Analytical Processing (OLAP) tools for data analyses and reporting. The primary goal of the system could be summarized as follows:

1. Create a comprehensive database of all companies/corporate taxpayers
2. Capture the financial transactions of these companies with data extracted from various sources viz:

- Forex Transactions (from CBN)
- Importation (from Customs)
- Contract Awards (from Government agencies, Oil companies and sundry sources)
- VAT/Withholding tax payments (from FIRS Area Tax offices)
- Company Income Tax (from FIRS)
- Education Tax (from FIRS)
- Monthly returns on interest paid and withholding tax on call/fixed deposits (from Banks).

- Stock Exchange transactions (from NSE).
- Any other source that may become available and necessary in future

3. Create a data warehouse for all the companies in the country and the captured their financial transactions via any or all the sources listed above.
4. Provide tools for data extraction and for maintaining the data warehouse.
5. Provide analysis/reporting front-end tool (including Executive Information System) to produce standard queries and reports, including (but not limited to):
   - List of companies grouped by Status (LIVE, NRC, DORMANT), Sectors, Type (LTD, PLC, Enterprises), Turnover, etc.
   - Turnover Estimate Analysis/Comparison
   - Operating Status analysis to determine whether a given company is DORMANT or NRC as claimed
   - List of probable Tax defaulters

A system like this has the capability to force companies to comply faithfully with their declaration of tax assets/liabilities knowing that most of their transactions are being tracked.
We can also use this type of system as a basis for evaluating the rich who are not on any payroll but are paying little or no tax. Knowing that their transactions are being tracked legally, the rich will be forced to comply with tax regulations. We often cite the absence of a central identification system as a reason for our inability to keep track of the various transactions going on in the system, but government can make the possession of Taxpayer Identification Number (TIN) a mandatory perquisite for most transactions such as opening a bank account, obtaining driver's license, passport, etc.

CONCLUSION

Let me conclude by saying that whatever I have proposed here requires a strong will and determination to carry through. Most people will always consider paying tax an irritant, especially when the government is insensitive and not transparent and accountable, so the first line of attack in dealing with the issue of tax is to ensure that governments at all levels are responsive and transparently accountable to the people. Next, education and persuasion must follow – and not threats. Today wearing of seat belts while driving has almost become a habit not so much because of draconian enforcements, but largely because people have come to realize that wearing of seat belts saves life. When people are able to see clearly that government

policies are meant to make their lives and the system better (and not to enrich a few to the detriment of the majority), they will be willing to coopeorate with the government. That is the basis of voluntary tax compliance by citizens of developed societies.

Let us understand one thing: taxation goes beyond the raising of money from individuals and organisations by the state in order to pay for the services it provides; collection and payment of tax establish a binding term for social contract between the government and the people. Where tax laws are not enforced and the people become complacent about payment of tax, the basis for that contract does not exist and the result is a system where neither party has the moral right to hold each other accountable for anything. Often we are told that Nigerians are a very resilient people and can adjust to any condition. We should not be too happy about this, because it is a symptom of disillusionment arising from a breakdown of social contract between the government and the people. My hope is that with Nigeria's adoption of the International Public Sector Accounting Standards (IPSAS), governments at all levels will demonstrate their willingness and capacity to be transparently accountable by rendering the accounts faithfully in accordance with the provisions of IPSAS.

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This White Paper addresses issues of taxation in Nigeria. It gives an insight on the current status of the tax systems in Nigeria and proffers pragmatic approaches to improve the system and to achieve accountability and transparency which translates into good governance and transformative developmental changes in the nation.

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