GOOD GOVERNANCE: PANACEA FOR VOLUNTARY COMPLIANCE WITH TAX LAWS IN NIGERIA

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Abstract

Taxation being the major source of government revenue is generally an involuntary fee levied by government on individuals and or corporations in order to finance government activities. It is usually a mandatory financial charge or levy backed by law and imposed on persons, corporations or institutions, transactions, or property. Over the years, the Nigerian tax situation has experienced difficulties both in its compliance and enforcement as it has not benefited the required voluntary compliance. This could be based on several factors ranging from insufficient information or awareness available to taxpayers, multiple taxation imposed on taxpayers, lack of accountability on the part of government, lack of clarity on the taxing powers of each tiers of government and the encroachment on the power of one level of government on the other, lack of skilled manpower in the various tax administrative bodies leading to the delegation of powers of revenue officers to third parties thereby creating uncertainty in the tax system, amongst others. The above, and with the increasing rate of tax evasion and avoidance, the government has a major role to play to boost the confidence of the taxpayers and encourage voluntary compliance by showing accountability through good governance. This work is drawn mainly from secondary sources such as textbooks, the Constitution of the Federal Republic of Nigeria, 1999; as well as other statutes and journals, in the attempt to properly address how good governance could influence voluntary tax compliance with tax laws. It founds inter alia, that provision of the basic societal need by the government such as stable electricity supply, good roads, portable water, healthcare facilities and other amenities, as well as show compliance with the rule of law, transparency and accountability, effectiveness, efficiency and responsiveness of government, will no doubt, foster voluntary compliance with tax laws in Nigeria.

Introduction

Taxation remains one of the major sources and a tool used by every government to generate revenue to run its activities and provide welfare services for the citizens. The taxing power of any state though inherent, is usually backed by law. In Nigeria, the Constitution of the Federal Republic of Nigeria[1], has made it a duty on every citizen to declare his income honestly to appropriate and lawful government agencies and pay his tax promptly. This means that the citizen must not only pay tax but must do so promptly.[2]

Tax has been defined as a compulsory levy imposed by the government or any of the recognized authority of a state on the property, goods, services and people living in a given geographical area for the purpose of generating revenue to defray the expenses incurred by the government on behalf of the people.[3] In the case of *Shell v. F.B.I.R*,[4] Tax was classified as a debt due to the government.

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[1] Section 24(f) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

[2] *Uganda Project Implementation and Management Centre v Uganda Revenue Authority* (2013) A.T.L.R, 67.

[3] Obatola O.S, *The Rudiments of Nigerian Taxation*. (Lagos: ASCO Publishers, 2013) 1.

The Black's Law Dictionary has also defined Tax to mean a monetary charge imposed by the government on persons, entities, transactions or property to yield public revenue. The term embraces all government impositions on the person, property, privileges, occupation and enjoyment of the people and includes duties, import and excises.[5]

From the foregoing, it is clear that tax is not a voluntary levy but rather, a mandatory imposition backed by all sense of force and compulsion even in its enforcement or implementation. This also means that total voluntary compliance by citizens should not be envisaged. C.N. Nwoye[6] rightly put it that taxation is a weapon of government to share from the wealth of an individual, communities, families and corporate bodies. It is a forceful imposition and not allowed to be voluntary.

Good governance on the other hand has been defined as an approach to government that is committed to creating a system founded in justice and peace that protects individual's human rights and civil liberties.[7] Good governance is an indeterminate term used to describe how public institutions conduct public affairs and manage public resources. Governance is "the process of decision-making and the process by which decisions are implemented (or not implemented)".[8] The term *governance* can apply to corporate, international, national, local governance or to the interactions between other sectors of society. The concept of "good governance" often emerges as a model to compare ineffective economies or political bodies with viable ones. The concept centers on the responsibility of governments and governing bodies to meet the needs of the masses.

An Overview of the Nigerian Tax System.

Consistent with international practice, the Nigerian tax law is purely statutory[9]. The tax system features a wide and mixed range of statutes by which the federal and state governments in the country seek to charge and collect public revenues[10]. Local government councils have also constitutional authority to collect various levies and rates, but the enabling law must be that of the relevant House of Assembly.

The Personal Income Tax Act[11], provides for the taxation of individuals, families, trustees, estate and communities throughout the country. For income taxation, the domicile or nationality of the taxpayer is not the decisive factor. Profits arising from a trade, business, profession or vocation, from any source inside or outside Nigeria are chargeable locally if the taxpayer happens to be

[4] (2004) FWLR (Pt.859) 46.
[5] B.A. Garner, *Black's Law Dictionary* (8th Ed. United States of America: Thompson West, 2004), p.1496.
[6] C.N. Nwoye in SAM Ekwenze ed., *Contemporary issues in Taxation Law in Nigeria* (Enugu: Snapp Press Ltd, 2014) p.1
[7] Agere, Sam, *Promoting Good Governance,* available at www.amazon.com (accessed on August 20, 2019)
[8] Eaton, Tim V., and Michael D. Akers. *"Whistleblowing and Good Governance"*, available at www.epublications.marquette.edu, (accessed on August 20,2019)
[9] See Sections 4 and 59(1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), Ade Ipaye, *Nigerian Tax Law and Administration : A Critical Review* (London, ASCO Publications Ltd, 2014) P.25
[10] Section 4(7) and Item D(9) of Part II of the Second Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (as amended).
[11] Cap P.8 Laws of the Federation of Nigeria, 2004.

resident in Nigeria. Foreign residents are also taxable in Nigeria if they have income arising from a Nigerian source.

Incorporated companies are legal entities recognized by Nigerian law as artificial persons separate and distinct from their shareholders[12]. The profits of corporate bodies are therefore chargeable to tax under the Companies Income Tax Act[13]. While Nigerian companies are taxed on their worldwide income, foreign companies are liable only as regards the portion of their profits which is attributable to their business operations carried on in Nigeria.

Nigeria ranks among the major oil producing countries of the world and much of its public revenue is generated from the sale of crude oil and natural gas. All petroleum resources belong to the federal government, hence companies engaged in petroleum operations are charged to tax under a special legislation. This is called the Petroleum Profits Tax Act[14].

By virtue of the Value Added Tax Act[15], all purchases of chargeable goods and services are expected to pay 5% of the purchase price as tax. The Value Added Tax Act is a federal statute originally promulgated as decree of the Federal Military Government, but the tax is administered by the Federal Inland Revenue Service on behalf of the federal, state and local governments. The proceeds are shared among the three tiers of government in accordance with the formula determined from time to time by the Federal Government. under the formula applicable with effect from the 1st day of January, 1999 the Federal Government gets 15%, State Governments share 50% while Local Government Councils share 35%[16].

The Stamp Duties Act[17] imposes tax on a wide range of documents and transactions. The tax is payable to the Federal Inland Revenue Service where the documents or transaction is executed between a company and an individual, group or body of individuals[18]. The State Government is empowered to collect the duties in respect of instruments executed between individuals[19] through the various State Board of Internal Revenue.

Another major source of revenue for the Federal Government is customs duty[20], which is payable by importers of specified goods. This tax is charged solely by the Federal Government and collected through the Nigeria Customs Service.

Nigerian statutes also feature an array of tax reliefs, holidays and exemptions, which are intended to boost investment. For instance, the Industrial Development (Income Tax Relief) Act[21] makes

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[12] See Section 37 of the Companies and Allied Matters Act, Cap C20 Laws of the Federation of Nigeria, 2004.
[13] Cap C21 Laws of the Federation of Nigeria, 2004.
[14] Cap P13 Laws of the Federation of Nigeria, 2004.
[15] Cap V1 Laws of the Federation of Nigeria, 2004.
[16] Section 11 of the Value Added Tax (Amendment) Act, No. 12 of 2007. However, the principle of derivation (not less than 20%) is required to be reflected in the distribution among States and Local Governments.
[17] Cap S8 Laws of the Federation of Nigeria, 2004.
[18] Section 4(1)
[19] Section 4(2)
[20] This is imposed by virtue of Section 37 of the Customs and Excise Management Act, Cap C45 Laws of the Federation of Nigeria, 2004.
[21] Cap I7 Laws of the Federation of Nigeria, 2004.

provisions for the grant of relief to pioneer companies. Also, a company which has incurred expenditure in its qualifying building and plant equipment in an approved manufacturing activity in an Export Processing Zone is granted 100% capital allowance in any year of assessment[22].
Apart from those outlined above, there are sundry levies and rates which Local Government Councils are authorized to collect. Notable here is the tenement rate payable annually on buildings situated within a particular Local Government Area[23].

Features/Characteristics of Good Governance.
Good governance in the context of a national government is a broad term, and poses difficulty in finding a unique definition. According to Fukuyama,[24] there are two dimensions to qualify governance as good or bad: the capacity of the state and the leader´s autonomy. They both complement, in the sense that when the state is more capable, for instance through the collection of taxes, there should be more autonomy because the leaders are able to conduct things well without being instructed with a lot of details. In less capable states, however, less discretion and more rules setting are desirable.

Another way to think about good governance is through outcomes. Since governments carry out with goals like the provision of public goods to its citizens, there is no better way to think about good governance other than through deliverables, which are precisely the one demanded by citizens, like security, health, education, water, the enforcement of contracts, protection to property, protection to the environment and their ability to vote and get paid fair wages.[25]
Similarly, good governance might be approximated with provision of public services in an efficient manner, higher participation given to certain groups in the population like the poor and the minorities, the guarantee that citizens have the opportunity of checks and balances on the government, the establishment and enforcement of norms for the protection of the citizens and their property and the existence of independent judicial system.[26] Good governance could also be related to the concept of impartiality, which is basically when the leaders perform their tasks following the public interest rather than their self-interest.

The United Nations Development Programme UNDP (1997)[27] gave a summary of the features of good governance to include the following:

1. **Participation** : Participation requires that all groups, particularly those most vulnerable, have direct or representative access to the systems of government. This manifests as a strong civil society and citizens with the freedom of association and expression. In other words, all men and women should have a voice in decision-making, either directly or through legitimate intermediate institutions that represent their interests. Such broad

[22] Section 35 of Companies Income Tax Act.
[23] See Part III of the Schedule to the Taxes and Levies (Approved List for Collection) Act, Cap T2 Laws of the Federation of Nigeria, 2004.
[24] Fukuyama Francis, *"What Is Governance*?", available at www.tsengcollege.csun.edu, (accessed on August 20, 2019)
[25] Rotberg Robert, "*Good Governance Means Performance and Results*", available at www.researchgate.net (accessed on August 20, 2019).
[26] Grindle Merilee, "*Good Enough Governance: Poverty Reduction and Reform in Developing Countries"*, available at www.onlinelibrary.wiley.com, (accessed on August 21, 2019)
[27] *Governance for Sustainable Human Development*. United Nations Development Programme, 1997

participation is built on freedom of association and speech, as well as capacities to participate constructively.

2. **Rule of law**: Rule of law is exemplified by impartial legal systems that protect the human rights and civil liberties of all citizens, particularly minorities. This is indicated by an independent judicial branch and a police force free from corruption. Legal frameworks should be fair and enforced impartially, particularly the laws on human rights.
3. **Transparency**: means that citizens understand and have access to the means and manner in which decisions are made, especially if they are directly affected by such decisions. This information must be provided in an understandable and accessible format, typically translated through the media. Transparency is built on the free flow of information. Processes, institutions and information are directly accessible to those concerned with them, and enough information is provided to understand and monitor them.
4. **Consensus orientation**: consensus orientation is demonstrated by an agenda that seeks to mediate between the many different needs, perspectives, and expectations of a diverse citizenry. Decisions needs to be made in a manner that reflects a deep understanding of the historical, cultural, and social context of the community. Good governance mediates differing interests to reach a broad consensus on what is in the best interests of the group and where possible, on policies and procedures.
5. **Equity:** Equity and Inclusiveness depends on ensuring that all the members of a community feel included and empowered to improve or maintain their well being, especially those individuals and groups that are the most vulnerable. All men and women have opportunities to improve or maintain their well-being.
6. **Effectiveness and efficiency:** Effectiveness and Efficiency is developed through the sustainable use of resources to meet the needs of a society. Sustainability refers to both ensuring social investments carry through and natural resources are maintained for future generations. Processes and institutions produce results that meet needs while making the best use of resources.
7. **Accountability:** Accountability refers to institutions being ultimately accountable to the people and one another. This includes government agencies, civil society, and the private sector all being accountable to one another as well. Decision-makers in government, the private sector and civil society organizations are accountable to the public, as well as to institutional stakeholders. This accountability differs depending on the organizations and whether the decision is internal or external to an organization.

The Positive Impact of Good Governance on Voluntary Compliance With Tax Laws

There are several factors that affect voluntary compliance with tax laws in Nigeria ranging from enforcement problems, complex nature of tax legislations, the general orientation and perception of non-payment of tax by tax defaulters, effectiveness of the available sanctions and penalties for defaulters, corruption, the emergence of new technologies, illiteracy, amongst others. This work shall restrict itself to good governance as it influences voluntary tax compliance by both individuals groups and an organization. Virtually all aspects of economic life in Nigeria are subject to one form of tax or the other and such taxes are statutorily backed and with prescribed sanctions for non compliance[28]. Both persons and corporate bodies liable to taxes in Nigeria pay

[28] Personal Income Tax Act, Companies Income Tax Act, Stamp Duties Act, Petroleum Profits Tax Act, Capital Gains Tax Act etc.

such taxes out of compulsion rather than a genuine voluntary payment, and as such, they employ various strategies of evading or avoiding tax payment. The reasons for this could be traceable to the fact that successive governments have failed in their state responsibilities of providing the basic amenities and services for which the taxes are paid.[29]

In *Eti-Osa Local Government* v. *Rufus Jegede*[30], the Court of Appeal, Per Dongban-Mensem J.C.A., stated as follows:

> …taxation should be a tool of social engineering, of societal class structural adjustment in the hands of a responsive and sensitive government. This method can however be effective only in an economy where good records are kept, where the government is truly, responsible and answerable for the welfare of the people. In a situation where the constitution of the Federal Republic of Nigeria renders basic social services non-justifiable (Chapter Two of the Constitution), the Government must be weary of over burdening the citizens with all manner of levies and taxes…

According to the Vice President of the Federal Republic of Nigeria Prof. Yemi Osinbajo "great economies and great nations, prosperity and abundance of nations and communities are created by men not spirits. Tax compliance and good governance should exist side-by-side as the head and tail of the social contract that binds or should bind citizens and governments anywhere in the world."[31]

In Nigeria, tax evasion and tax avoidance has remained a significant challenge to government and governance. Some of the ways in which it is perpetrated are through manipulation of accounting records, use of complex structures for transactions, non registration for Value Added Tax and non remittance after charging, non payment of Capital Gain Tax on assets disposal, escaping detection of income due to lack of machinery for tracing such, amongst others. According to the Joint Tax Board, there were only 14 million taxpayers in Nigeria as at May 2017, compared to an estimated 69.9 million economically active people while the country's tax to GDP ratio is rather poor at 6%. In spite of the fact that Nigeria has some of the most profitable and well capitalized companies in Africa, the tax remittance rate is still low. Nigeria's low tax revenues are inconsistent with the lifestyles and spending habits of a large number of citizens. Many are engaged in transfer of assets overseas, use of offshore companies in tax havens and registration of assets in nominee names, amongst others.[32]

The number of Nigerians who pay more than N10million in self-assessed taxes is even more astonishing. As at December 2017, only 943 Nigerians pay self-assessed taxes of over N10 million and of that number 941 live in Lagos State, the other two live in Ogun State.[33]Admittedly, tax is not an issue that excites citizens anywhere around the world. It is a

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[29] J.A.A., Agbonika, "*Problems of Personal Income Tax in Nigeria"* (Ababa Press Ltd. Ibadan, 2012) P.53
[30] (2007) 10 NWLR (Pt. 1043) 537
[31] Prof. Yemi Osibanjo, in his Speech on "*Achieving Voluntary Tax Compliance: The VAIDS Option*. Monday, February 26, 2018.
[32] CITN 20th Annual Tax Conference, held at the NAF Conference Center and Suites, Abuja, on Wednesday May 9, 2018.
[33] *Ibid*.

favorite of those who love the 'chicken-and-egg' arguments: which should come first - paying taxes or enjoying the dividends of good governance?

Governments generally have been nonchalant about fulfilling their own part of the social contract as provided in Chapter II of the Constitution of the Federal Republic of Nigeria, 1999(as amended), but it is also a fact, that when people pay taxes they are more inclined to hold their governments to account. It is now almost 300 years since 'No Taxation without Representation' became the rallying cry for American colonists and one of the main triggers for the revolution that earned those 13 colonies their independence from Great Britain.[34] In Nigeria, we have had the Aba and Abeokuta tax revolts, incidentally both championed by women. The moral is a simple one: that when citizens pay their full share of taxes they take more than a passing interest in how they are governed and in how public funds are utilized and accounted for. The point here is that a taxpayer is less tolerant of corruption than a citizen who does not pay tax.

Conclusion

In a well-cited quote, the former UN Secretary-General Kofi Annan noted that "good governance is perhaps the single most important factor in eradicating poverty and promoting development". Until government demonstrates a strong political will to change the existing degenerating social and economic lives of its citizens, Nigerians will continue to view taxation as a drain pipe, rather than a social responsibility and contribution to national development and this will continue to have a negative effect on the level of compliance with tax laws. To ensure voluntary compliance with tax laws in Nigeria, government must ensure that everyone, citizens, businesses, investors, tax professionals, governments, all derive maximum benefit from the system. This is good governance that can encourage voluntary tax compliance in Nigeria. To achieve voluntary compliance with tax laws in Nigeria, the government while ensuring that every naira due to the public coffers in taxes is promptly and efficiently collected, government should also ensure that every naira of public money is put to use for the maximum good of the Nigerian people. The government should show more commitment to accountability on how the funds generated from taxes are utilized for the common good of the citizens by improving on the provision of infrastructures (roads, rail, power) and human capital development (education, health, poverty reduction) amongst other basic needs of the common man. Our tax system should also be reviewed, to make it easier for citizens to fulfill their own end of the social contract.

[34] Good Governance, available at www.https://en.wikipedia.org (accessed on June 25, 2019)