

APPRAISAL OF TAX OBLIGATIONS OF NON-GOVERNMENTAL ORGANIZATIONS (NGOS) IN NIGERIA*****

Abstract

Tax obligations of NGO presupposes the relevant legal responsibility imposed on NGO for effective implementation of tax from the NGO in Nigeria. Nigerian government has before now relied heavily on oil as a major source of revenue with which it finances its capital and non-capital projects. Oil as a major source of revenue is failing the country and there is need to resort to other sources of revenue. One vital source is the revenue derivable from taxation of non-governmental organisation. To be able to levy and enforce taxes from NGO, there has to be a clear-cut legislation spelling out the obligations of NGO in the taxation processes. The tax obligations of NGO are not spelt out in a single legislation but scattered in different tax legislations. These tax obligations of NGO are mostly ascertained by inference of the fact that NGO are registered as a corporate body like a company and with the same features as a company, therefore liable to observe those tax obligations when they carry out activities that will render them liable to pay tax usually imposed on a company. The aim of this paper is to appraise the relevant tax obligations of NGO in Nigeria and also make necessary recommendation for effective observance of tax obligations of NGO in Nigeria. The researchers adopted doctrinal legal research methodology with analytical approach using statutes, case law, textbooks, journal articles and Internet materials. The researchers concluded that, there is no dedicated status providing exclusively and with certainty for the operation of NGO in Nigeria other than the piecemeal provisions on not-for-profit organizations littered in CAMA, CITA and PITA which at best made blanket provisions, lumping all Non-profit making Organizations such as churches, educational institutions, sports institutions, cultural organizations and charity organizations together in one category. This arrangement breeds ambiguity especially with NGO being mentioned and defined only in the FIRS Guidelines on the Tax Treatment of Non-Governmental Organizations (NGO), 2021 but not in any other tax law. The researchers therefore recommended that a statute be enacted by the legislature to provide for the formation, operation and regulation of NGO in Nigeria. The statute when enacted will define in clear terms what organizations qualify as NGO, the scope of their operations, the kind of incentives available to such NGO, the extent of the incentives as well as the tax obligations of the NGO clearly spelt out. With this sort of legislation in place, the very many tax laws could then be amended to reflect and achieve the intent of the revenue drive of the government from the income of NGO. This we believe would introduce certainty in the Nigeria taxing system as it relates to NGO; eschewing the system of all manner of ambiguity.

Keywords: taxation, tax obligations, non-governmental organization, Nigeria

1. Introduction

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UBANYIONWU, EZEUDU & ANUSHIEM: *Appraisal of Tax Obligations of Non-Governmental Organizations (NGOs) in Nigeria*

Taxation is a means through which a government imposes levies on its citizens and corporate entities as a way of raising revenue which is then used to meet their budgetary demands.¹ An NGO is said to be an organization made up of group of persons who work to achieve their desired goal and independent of the government. They are bound by cultural, religious, social, educational etc objectives. The Companies Income Tax Act² amended by the Finance Act³ exempts non-governmental organizations from paying tax, however when they derive profits from any trade or business such profit will be subjected to tax in Nigeria. The aim and objectives of this paper is to highlight the legal tax obligations of NGO in Nigeria.

NGO are mandated under the Act⁴ to register with the Federal Inland Revenue Service (FIRS) as part of their tax obligations for purposes of payment of tax. Upon registration, the tax authority will issue a Tax Identification Number (TIN)⁵. NGO are also required to file their annual tax returns with the FIRS. Although, NGO are exempted from paying tax in Nigeria, in so far as profits are not derived from a trade or business carried on by such NGO. However, when they derive profits or gains from activities of a commercial nature, such profits or gains will be subjected to Companies Income Tax. However, there is also a tax obligation on the NGO to deduct tax at source from salaries and other emoluments of its promoters, employees and remit the tax to the relevant tax authorities in the currency of payment of the emoluments⁶. Withholding tax also applies whenever an NGO pays an organization, individual or an unincorporated entity any fee such as rent, royalty, management fees, consultancy fees, supplies and contracts, appropriate withholding tax must be deducted and remitted to the Federal Inland Revenue Service (FIRS)⁷.

Under the Capital Gains Tax, gains from the disposal of chargeable assets of NGO are liable to Capital Gains Tax (CGT) where the gains are derived from the disposal of assets acquired in connection with any trade or business carried on by the institution or where the gains are not applied purely for the organisation. Furthermore, NGO are mandated by law to keep accurate books of accounts as part of their tax obligations in addition to paying taxes. It is obvious from the above that NGO in Nigeria are not entirely exempt from paying taxes in Nigeria after looking at the tax liabilities of these NGO. Any profits made by NGO from commercial activity will be subject to income tax in Nigeria.

2. Meaning of Tax

Taxation is a means through which a government imposes levies on its citizens and corporate entities as a way of raising revenue which is then used to meet their budgetary demands.⁸ Through payment of tax, governments finance their expenditure by levying charges on citizens and corporate

¹ MT Abdulrazaq, *Taxation System in Nigeria*, (1st edn, Ikeja Lagos, Graritas Legal & Business Resources Ltd, 2016) p.342.

² Companies Income Tax Amendment Act 2007, S. 23.

³ Finance Act 2021 S.7 (1) (a)-(e).

⁴ Companies Income Tax Act; op. cit Finance Act 2019 S. 35.

⁵ Federal Inland Revenue Service Act 2007 S.8 (a); Finance Act 2020 S.43.

⁶ Solomon Vendaga, *Tax Obligations of Ngos in Nigeria*, available at <http://www.sabilaw.org>. accessed on the 7th September 2023 at 11:43pm.

⁷ *ibid*

⁸ *Op cit*.

bodies.⁹ Taxes are imposed under the authority of the legislature. That they are levied by a public body and that they are intended for public purposes.¹⁰ Tax can also be defined as an amount of money that a government requires people to pay according to their income, the value of their property, etc., and that is used to pay for the things done by the government¹¹. It is an amount of money that you have to pay to government so that it can pay for public services¹². What it means is that when a person or company is taxed, they have to pay a part of their income or profits to the government. When goods are taxed, a percentage of their price has to be paid to the government¹³. Without taxes, governments would be unable to meet the demands of their societies. Taxes are crucial because governments collect these funds to finance social projects.

3. Meaning of Non –Governmental Organizations

An NGO is a non-for-profit association of persons incorporated as a body corporate registered under the Companies and Allied Matters Act CAMA 2020¹⁴ as incorporated trustees. An incorporated trustee is to be registered under section 590 of CAMA for the advancement of any religious, educational, literary, scientific, social development, cultural, sporting or charitable purpose. Meanwhile, under section 26 of CAMA, a company with similar nature and objective as an NGO can be registered as a company limited by guarantee for promoting commerce, art, science, religion, sports, culture, education, research, charity or other similar object¹⁵.

Non-governmental Organization (NGO) can also operate in form of civil society organizations, which is a collection of social organizations, formed voluntarily by citizens to advance shared goals or interest. NGO include independent public policy research organizations, advocacy organizations; organizations that defend human rights and promote democracy, humanitarian organizations, private foundations, charitable organizations, religious organizations, and non-profit organizations of any nature. It does not include political parties¹⁶.

A Non-Governmental Organization (NGO) is a non-profit group that functions independent of any government. NGO, in an organized society serve as an intermediate between the people and the government¹⁸. They play a role in shaping a sustainable society. NGO have in general a single-issue viewpoint and they always target to achieve a common goal. In most cases, they try to influence the government and businesses¹⁷. From the above definitions, an NGO can be said to be an organization made up of group of persons who work to achieve their desired goal and independent of the government. However, in Nigeria, NGO are seen as non-profit making

⁹ UMJ Anushiem, *Invention of Finance Act, 2019, As Amended on Taxation of Dividends in Nigeria: A legal Appraisal*, (2022) (9)(1) *Nnamdi Azikiwe University Journal of Commercial and Property Law* p. 19.

¹⁰ MT Abdulrazaq, *Taxation System in Nigeria*, (1st edn, Ikeja-Lagos, Gravitas Legal & Business Resources Ltd, 2016) p. 342.

¹¹ The Britannica Dictionary, *Definition of Tax*, available at <https://www.britannica.com/dictionary/tax> accessed on the 1st September 2023 at 3:00 pm

¹² Collins Dictionary, *Definition of Tax*, <https://www.collinsdictionary.com/dictionary/english/tax> accessed on the 1st September, 2023 at 3:15pm

¹³ *ibid*

¹⁴ *ibid* s 590

¹⁵ *ibid* ss 590 & 26

¹⁶ *ibid*.

¹⁸ *ibid*

¹⁷ S Raju, 'Non-governmental organization', available at www.science-direct.com/non-governmental-organizations assessed on the 5th September 2023 at 8:08pm.

UBANYIONWU, EZEUDU & ANUSHIEM: *Appraisal of Tax Obligations of Non-Governmental Organizations (NGOs) in Nigeria*

organization, but in reality a lot of them engage in trading and business activities thereby deviating from the object of the organization and also make a lot of profit from those business activities.

1.1 Tax Obligations of Non –Governmental Organizations in Nigeria

There are some legal tax obligations on non-governmental organisations in Nigeria. These obligations imposed on non-governmental organisation by law are to enable the government actualize the tax expectations from these non-governmental organizations. The tax obligations will be appraised hereunder.

1.2 Registration with FIRS for Tax Purposes

Every taxable persons or corporate organizations including Non-governmental Organizations are mandated to register for taxes in Nigeria. All Non-governmental Organizations (NGO) are expected to register with the Federal Inland Revenue Service (FIRS) for purposes of payment of tax with the following documents:

- 1) A copy of registration certificate issued by Corporate Affairs Commission(CAC) in Nigeria or other instruments of incorporation issued to foreign NGO;
- 2) Certified copy of the Memorandum or Constitution, rules and regulations governing the NGO;
- 3) List and profiles of the Trustees/ Board members nominated;
- 4) Other relevant documents (to be specified at registration point, if any)¹⁸.

NGOs are required to register for tax at the designated FIRS tax offices in their respective geo-political zones.

3.2 NGOs are to Obtain Tax Identification Numbers (TIN)

Tax Identification Numbers (TIN) is a unique number issued to individuals and organizations to track tax obligations and payments they make to the tax authority¹⁹. Upon registration with the Federal Inland Revenue Service (FIRS), the service will issue a Tax Identification Number to taxable persons or corporate organizations including Non-governmental organizations (NGO). The Act²⁰ empowers the FIRS to issue tax Identification Number to every taxable person in Nigeria in collaboration with State

Internal Revenue Service.

The Companies Income Tax Act²¹ also makes it mandatory for every company to have a tax Identification Number (TIN) which shall be displayed by the company on all business transactions with other companies and individuals and on every document, statement, returns, audited account and correspondence with revenue authorities.²²

More so, every person engaged in banking or other financial services in Nigeria shall require all companies to provide their TIN as a precondition for opening a bank account or, in the case of an

¹⁸ Federal Inland Revenue Service, ‘Guideline on the Tax Treatment of the Non-Governmental Organizations’ (NGO), FIRS Information Circular published on the 31st of March 2021.

¹⁹ S staff, what is a Tax Identification Number (TIN)?Definition and guide, available at www.shopify.com accessed on the 7th September 2022 at 9:50pm.

²⁰ Federal Inland Revenue Service Act 2007 S.8 (v).

²¹ Companies Income Tax Act S.10(1).

²² ⁴ *ibid*; Finance Act 2019 S. 3(1).

account already opened within three months of the passage of this Act. The bank shall require such TIN to be provided by all companies as a precondition for the continued operation of their bank accounts²³. From the above provisions of the law, the Act mandates every company doing business in Nigeria including non-governmental organisations to obtain a Tax Identification Number as part of its tax obligations. Companies and NGO are also mandated to provide their TIN as a precondition for opening a current account in the banks.

3.3 NGOs are Obligated to File Tax Returns

In line with the provision of the Companies Income Tax Act²⁴, it is mandatory for every Non-Governmental Organizations (NGO) to file its tax return to the Federal Inland Revenue Service (FIRS). They are required to file their annual tax returns at FIRS designated tax office covering their locations²⁵.

The tax return filed by the NGO shall contain:

- i. The audited accounts, tax and capital allowances computations and a true and correct statement in writing containing the amounts of its surplus from each and every source computed in accordance with the provisions of CITA;
- ii. such particulars as may be required in such form for the purpose of the Act with respect to such profits, allowances, relief, deduction required;
- iii. a declaration to be signed by a trustee, director, secretary or any authorized person of the organization that the information contained in the return is “true and correct;
- iv. the period for filing returns shall be as stipulated in the relevant tax laws²⁶;
- v. it is penitent to state here that a company is defined in section 105 7 of the Companies Income Tax Act,²⁷ to mean a company or corporation other than a corporation sole. NGO are registered as corporate body with all the feature of a corporation and therefore caught by the obligation to file tax returns.

3.4 Liability to Pay Taxes

The Companies Income Tax Act²⁸, exempt the profits of any statutory charitable, ecclesiastical, educational or other similar associations from Companies Income Tax, provided that such profits are not derived from any trade or business carried on by such organisation or association.²⁹ Examples of income covered under the exemption includes subscription fees by members, donations, grants, zakat, offerings, tithes, funds realized from launchings e.t.c. However, where an NGO engages in any trade or business, or invests its assets in any institution, the profit or income derived is liable to tax appropriately³⁰. As such, income or profits liable to Companies

²³ *ibid*; Finance Act 2019 S3(2).

²⁴ Companies Income Tax Act S. 55(1).

²⁵ *ibid*; Federal Inland Revenue Service (FIRS), Guidelines on the Tax treatment of Non-Governmental Organizations, FIRS Information Circular published in the 31st March 2021.

²⁶ Companies Income Tax Act S.55(1)(a)-(c).

²⁷ 2007

²⁸ Companies Income Tax (Amendment) Act 2011 S.23(1)(c)

³⁰ Federal Inland Revenue Service, Guideline on the Tax Treatment of NGOs, FIRS Information Circular, published on the 31st March 2021, available online on www.firs.gov.ng/wp-content/uploads/2021/04/circular-on-Taxation-of-Ngos.pdf.

UBANYIONWU, EZEUDU & ANUSHIEM: *Appraisal of Tax Obligations of Non-Governmental Organizations (NGOs) in Nigeria*

Income Tax include the following:

- i. Profits derived from trade or business carried on by the organisation/ institution such as proceeds from sale of goods or merchandise, provision of consultancy, professional or other services for a fee;
- ii. Investment income such interest, rent, royalty, dividend or similar income³¹.

Accordingly, the payer of these income to the NGO has the obligation to deduct withholding tax (WHT) from the payments as stipulated in the WHT Regulations³². The Finance Act 2021 as amended,³³ exempted from tax the profits of any company being a statutory or registered friendly society, profits of any company being a co-operative society registered under any enactment or law relating to co-operative societies and profit of any company engaged in ecclesiastical or charitable activities of a public character in so far as such profits are not derived from a trade or business carried on by such company. From the above provision of the law, it is clear that although the profits made by these non-governmental organizations (NGO) are exempted from tax under the law, but however when a non-governmental organizations engage in any form of trade or business, any profit made from such trade or business will be subjected to Companies' Income Tax.

However, where a trustee of an NGO carries on a trade or business that comprises the furnishing of technical, management, consultancy or professional services, the gains or profits of the trade or business shall be subjected to Personal Income Tax. Furthermore, the income of individual promoters or employees of NGO are not exempted from tax. As such, the following incomes are liable to personal income tax:

- i. Emoluments of promoters (from all sources – including the NGO)
- ii. Fees, other remuneration or benefits-in-kinds paid to trustees and guarantors; and
- iii. Salaries or other remuneration of employees.

NGO are required, under the PAYE obligation, to deduct tax at source from salaries, and other emoluments of employees, directors, officers etc and to remit same to the relevant tax authorities in the currency of payment of the emoluments.³⁴ For purposes of paying Personal Income Tax by the NGO, the NGO are expected to file Personal Income Tax (PIT) returns accordingly on or before the due dates. In order words, their trustees or are expected to deduct personal income tax under Pay-As-You-Earn (PAYE) scheme from their employees' salaries and remit same monthly to the appropriate tax authority.³⁵

More so, there is also tax obligations on the non-governmental organizations (NGO) to pay Value Added Tax (VAT), except where goods are purchased by NGO for use in humanitarian donor funded projects. NGO are required to pay VAT on services procured or consumed by them, except where such services are exempted under the VAT Act. NGO are also required to self-account for the VAT on taxable goods and services supplied by non-resident vendors or person not liable to

³¹ *ibid*

³² *ibid*

³³ Finance Act 2021 S.7; Companies Income Tax (Amendment) Act 2011 S.23.

³⁴ M.L Abubakar, Guidelines on the Tax Treatment of Non-Governmental Organizations (NGOs) available at www.FIRS.com.ng. assessed on the 10th September, 2023 at 9:52pm.

³⁵ *ibid*.

charge VAT under the VAT Act.³⁶ NGO are required to charge VAT on all supply of taxable goods and services and to remit the VAT to the FIRS, in line with the provisions of the VAT Act.³⁷ NGOs are also required to file their VAT returns on or before the 21st day of every month or in the month of transaction in line with the provisions of the VAT Act.³⁸

Under the Capital Gains Tax Act,³⁹ gains from the disposal of chargeable assets made by NGO that will be exempted from tax, must fulfill these two conditions jointly;

1. That gains are not derived from the disposal of any assets acquired in connection with any trade or business carried on by the organization; and
2. That gains are applied purely for the purpose of the organization⁴⁰

However, gains from disposal of chargeable assets of NGO are liable to capital gains tax where the gains are derived from disposal of assets acquired in connection with any trade or business carried on by the institution or where the gains are not applied purely for the purpose of the organization.

3.5 NGOs are to Maintain proper books of Accounts

In addition to its obligation to register with FIRS, and to file tax returns to the appropriate tax office as well as to pay taxes on non-exempt income, NGO are statutorily required to maintain proper books of accounts. The Act provides that every company, including a company granted exemption from incorporation, shall whether or not the company is liable to pay tax under this Act, maintain books or records of account, containing sufficient information or data of all transactions.⁴¹ The books and records required to be maintained under this section shall be in the English language and shall for the purposes of tax account, be consistent with the format that maybe prescribed by the service⁴² where a record of a company is maintained in a language other than English language, the company shall, on demand by the service produce, at its own expense, a translation in English language, which shall be certified by a sworn translator.⁴³

More so, where in the opinion of the service, a company fails or refuses to maintain books or records of accounts that are consistent with the provisions of the Act for the purpose of tax, the service may, by notice in writing require it to maintain such records, books, and accounts as the service considers adequate in such form and language as maybe specified in the notice.⁴⁴ Any company that fails to provide any record or book prescribed under the Act, shall be liable to pay penalty of ₦100,000 in the first month in which the failure occurs and ₦50,000 for each subsequent month in which the failure continues.⁴⁵ And any book or record required to be kept under this section shall be kept for a period of at least six years after the year of assessment in which the income relates.⁴⁶

³⁶ Value Added Tax (Amendment) Act 2007.

³⁷ *ibid.*

³⁸ Value Added Tax (Amendment) Act 2007 s. 15.

³⁹ Capital gains Tax Act Cap CI LFN 2004 (as amended) s. 26.

⁴⁰ *ibid.*

⁴¹ Companies Income Tax (Amendment) Act 2007 s. 63(1)

⁴² *ibid.*, s. 63(2); Finance Act 2020 s. 17.

⁴³ *ibid.*, s. 63(3); Finance Act 2020 s. 17

⁴⁴ *ibid.*, s. 63(5); Finance Act 2020 s. 17

⁴⁵ *ibid.*, s. 63(4); Finance Act 2020 s. 17

⁴⁶ *ibid.*, s. 63(7); *ibid.*

UBANYIONWU, EZEUDU & ANUSHIEM: *Appraisal of Tax Obligations of Non-Governmental Organizations (NGOs) in Nigeria*

From the above provision, the Act clearly stated that every company whether exempted from incorporation or not, including NGO are to maintain an adequate books and records of accounts containing sufficient information on all the transactions carried out by the company. This books and records of account must be written in English language and when written in any other language it is expected that the company translate in English language which shall be certified by a sworn translator of the language and failure to maintain books and records of account attracts a penalty for the company. The reason for mandating companies including the NGO to keep and maintain books and records of account is to enable the FIRS to monitor the transactions been carried out by these NGO. These records will help the FIRS monitor the activities of NGO to know if these NGO are carrying out trade or business activities that would make them liable to pay tax.

3.6 NGOs are to Maintain accurate record of employees

In addition to keeping and maintaining books and records of accounts, NGO are required to keep accurate record of its employees. From the above, it follows that NGO have a duty to keep proper books and records of accounts, and maintain accurate record of employees. NGO have other statutory obligation to deduct Pay-As-You Earn (PAYE) from employee's salary and remit same to the appropriate tax authority. They also have statutory obligation to pay Value Added Tax (VAT) on goods and services consumed except those purchased exclusively for its humanitarian donor funded projects or activities to deduct withholding tax (WHT) on payments made to its contractors/suppliers and remit same to appropriate tax authority in accordance with the laws, such remittance is to be accompanied with schedule of deduction and to pay tax as at when due on non-exempted activities.

4.0 Conclusion

Having seen the statutory tax obligations of the NGO, which include registration with the tax authorities, getting a tax identification number (TIN), filing an annual tax return, maintaining accurate books of account, including those of its staff and paying taxes due. Most NGO operating in Nigeria conceal their activities under the pretense that they are completely exempt from paying tax. Although, the law exempts NGO from paying tax in Nigeria, in so far as profits are not derived from any trade or business carried out by such Ngo. They will, however, be subject to companies income tax if they make profit or gain from actions that are of a commercial nature. NGO are required to withhold tax from employee's wages at the source, also to withhold taxes from consultancy fees, supplies and contracts payments and remit the tax to the Federal Inland Revenue Service (FIRS).

NGO are exempted from paying value Added Tax (VAT) where the goods are purchased by NGO for use in humanitarian donor funded projects, however, where an NGO purchase goods that are not directly used for humanitarian projects, VAT will apply on such purchases. Considering the NGO tax obligations, it is important to stress that the tax authorities must ensure the fulfillment of these obligations in order to achieve effective collection of taxes due for the government. There is no doubt that this will generate adequate revenue for the government.

4.1 Recommendations

There is no dedicated statute providing exclusively and with certainty for the operation of NGOs in Nigeria other than the piece meal provisions on not-for –profit organizations littered in the

CAMA, the CITA and the PITA which at best made blank provisions, lumping all Non-Profit Organizations such as churches, educational institutions, sports institutions, cultural organizations and charity organizations together in one category. It is opined that this arrangement breeds ambiguity especially with NGOs being mentioned and defined only in the FIRS Guidelines on the Tax Treatment of Non-Governmental Organizations (NGOs), 2021 but not in any other tax law.

A statute should be enacted by the legislature to provide for the formation, operation and as well tax obligations regulation of NGOs in Nigeria. The statute when enacted will define in clear terms what organizations qualify as NGOs, the scope of their operations, the kind of incentives available to such NGOs, the extent of the incentives as well as the tax obligations of the NGOs clearly spelt out. With this sort of legislation in place, the very many tax laws could then be amended to reflect and achieve the intendment of the revenue drive of the government from the income of NGOs. This we believe would introduce certainty in the Nigerian taxing system as it relates to NGOs; eschewing the system of all manner of ambiguity.