

**TOWARDS A MORE VIBRANT LEGAL FRAMEWORK FOR TAXATION OF NON-GOVERNMENT ORGANIZATION IN NIGERIA\*\***

**Abstract**

*Tax is a compulsory contribution to support the government which is levied on persons, property, income, commodities, transactions at a fixed rate most proportionate to the amount on which the contribution is levied. Non-governmental Organization (NGO) is a voluntary group of individuals or organization, usually not affiliated with any government, that is formed to provide charitable, religious, cultural and other incidental services to the people. The aim and objective of this paper is to examine the extant legal framework on the taxation of income of non-governmental organizations in Nigeria. With the evolution of the modern society and governance built on social contract as against the pre-social contract primitive era where life was nasty, brutish and short, came laws and regulations that ordered the behaviour of man in the society; defining his rights, duties and obligations. These laws encompassed taxation which serves as a means of generating funding for use by the people's legitimate government for the common good of all. Over time, it would appear that the objects of government viz: security and provision of basic amenities and services to aid all round better living condition of people have become so enormous for government to solely accomplish, hence the emergence of friendly organizations such as Non-Governmental Organizations (NGOs) which are basically and generally perceived as non-profit organizations that are, among other things, charity-oriented with the central goal of also providing aids and services that improve upon the living condition of people. However, considering that the NGOs enjoy legal personality status which ordinarily designates them as taxable persons and at the same time are, by their very nature, people-oriented both in their objects and activities, it is often wondered whether these organizations are indeed subjected to taxation. If yes, to what extent are they liable to taxes in Nigeria, hence the paper. The authors adopted a doctrinal research methodology in carrying out this study and the approach adopted was analytical with the use of tax statutes, case laws on taxation, textbooks, journal articles, newspaper publications and Internet materials in dealing with the topic. This study identifies possible challenges militating against effective, efficient and proactive NGO taxing system in Nigeria which include lack of legal framework for a clear cut tax for non-governmental organizations, lack of accurate data, non-multiplicity of taxes, discouragement of tax evasion, zero tolerance for tax touting, etc. In conclusion, we proposed measures considered very effective to move the legal framework for taxation of NGOs in Nigeria forward.*

**Keywords:-** tax, non-governmental organization, legislation, vibrant tax dispute resolution.

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## 1. Introduction

### 1.1 Meaning and Definition of Tax

Tax is defined as a monetary charge imposed by the government on persons, corporate bodies, transactions or property to yield public revenue.<sup>1</sup> It is obligatory fee payable by members of a state from his income, property and or business, to the government of the state for various state uses. It is mandatory, it is based on residency and not citizenship.<sup>2</sup> In *Mathews v Chicory Marketing Board*,<sup>3</sup> the Australian Supreme Court defined tax to be a compulsory exaction of money by a public authority for the public purposes or taxation is raising money for the purposes of government by means of contributions from individual persons. In *Michigan Employment Sec Commission v Platt*,<sup>4</sup> tax was defined as a compulsory contribution towards a country's expenses raised by the government from people's salaries, property and from the sale of goods and services. It is also a strain, burden or heavy demand.<sup>5</sup> It is the money that you have to pay to the government which they use for public services. People pay tax according to their income, and businessmen pay tax according to their profits.<sup>6</sup> It is a compulsory contribution to support the government which is levied on persons, property, income, commodities, transactions and so on, now at a fixed rate most proportionate to the amount on which the contribution is levied.<sup>7</sup>

Taxation is the process of collecting taxes within a particular location and in this regard, tax can be defined as a pecuniary burden laid upon individuals or property to support government expenditure. It is therefore not a voluntary payment or donation, but an enforced and compulsory contribution exacted with legislative authority.<sup>8</sup> Taxation is the means through which a government imposes or levies tax on its citizens and corporate entities as a way of raising revenue which is then used to meet their budgetary demands. Through payment of tax, governments finance their expenditure by levying charges on citizens and corporate bodies.<sup>9</sup> Taxes are imposed under the authority of the legislature, and they are levied by a public body and that they are intended for public purposes.<sup>10</sup> Akanle<sup>11</sup> defines taxation as a compulsory levy imposed on a subject or upon his property by the government having authority over him. This definition also reflects a wider base of taxation, as tax may be charged not only upon persons but also upon properties and transactions in order to raise money for public purposes.<sup>12</sup> Tax is not an optional payment or voluntary donation to the government, it is rather, an enforceable contribution exacted in accordance with the legislative

<sup>1</sup> IU Ibe, An Appraisal of the Legal and Institutional Framework for Tax Administration in Nigeria, a Phd dissertation presented in the Faculty of Law Azikiwe University Awka on July, 2021.

<sup>2</sup> *ibid.*

<sup>3</sup> I1938)60 C.L.rR. 263 at 276.

<sup>4</sup> Mich App; 224; 14N.W 2<sup>nd</sup>663.

<sup>5</sup> MN Umenweke, Tax Law and Its Implications for Foreign Investments in Nigeria, (1<sup>st</sup> edn; Enugul: Nolix, Educational Publications, 2008), p.5.

<sup>6</sup> *ibid.*

<sup>7</sup> IA Ayua, the Nigerian Tax Law, (1<sup>st</sup> edn; Spectrum Law Publishing, 1996) p.3

<sup>8</sup> JAA Agbonika; Topical Issues on Nigerian Tax Laws and Related Areas, (1<sup>st</sup> edn, Ibadan; Ababa Press Ltd, 2015) p.365.

<sup>9</sup> 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.

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

<sup>11</sup> O Akanle, Tax Law and Tax Administration in Nigeria, (1<sup>st</sup> edn, Lagos: Nigeria Institute of Advanced Legal Studies, 1991) p.1.

<sup>12</sup> A Paye, Nigeria Tax Law & Administration: A Critical Review (1<sup>st</sup> edn, London: ASCO prime Publication Ltd, 2014) p.2.

provision by constituted authorities. Therefore, tax, in modern times takes the form of pecuniary burden laid down upon individuals or property to support government usually imposed upon by statute.<sup>13</sup>

Tax is either imposed directly or indirectly. Direct taxes are purposely collected from individuals or corporate bodies out of their income or profits. An example is the Personal Income Tax and Companies Income Tax. On the other hand, indirect tax is subtly obtained, especially from persons through cost of consumption of goods and services. An example is the Value Added Tax. By virtue of the compulsive nature of tax, it is imperative that any law imposing tax should state clearly without ambiguity what the tax is, who the taxpayer is, and the relevant taxing authority. This conforms to the underlining qualities of efficient tax system, which Adman Smith listed to include equity, certainty, neutrality, flexibility, simplicity, transparency and accountability.<sup>14</sup> Payment of tax is a civic responsibility owned by citizens to the government to enable the government generate revenue and to carry out its responsibilities. Payment of tax helps the government fund public utilities and also perform other social responsibilities.<sup>15</sup>

## **1.2 Taxation of Non-governmental Organizations (NGOs)**

Non-governmental Organizations (NGO) on the other hand, is a voluntary group of individuals or organizations, usually not affiliated with any government that is formed to provide charitable, religious, cultural and other incidental services to the people.<sup>16</sup> They are independent from government and are typically non-profit entities, and many of them are active in humanitarian service.<sup>17</sup> Non-governmental Organization (NGO) also known as civil society organizations is the collection of social organizations, formed voluntarily by citizens to advance shared goals or interest. They included independent public policy research organizations, advocacy organizations, organizations that defend human rights and promote democracy, humanitarian organizations, private foundations, charitable organizations and religious organizations, excluding political parties.<sup>18</sup> The diversity of NOGs strains any simple definition. They include many groups and institutions that are entirely or largely independent of government and they have their primary objectives. These objectives include creating awareness in order to influence government policies,<sup>19</sup> representing persons who have been marginalized, oppressed or under represented. Some of them are formed from where some group of persons are experiencing inequalities. They create a voice for the people who are less privileged and they also speak and act on behalf of parties with no voice, such as the poor.<sup>20</sup> They play a role in shaping a sustainable society. From the above

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<sup>13</sup> YS Uthman, Review of some effects of Nigerian Corporate Tax Regime on Investment promotion (2010) (1)(1) Abuja Journal of Public and International Law p.33.

<sup>14</sup> Eti Herbert "An Overview of the Assessment and Determination Employee Tax in Nigeria", (2019) (10) (1) The Gravitas Review of Business & Property Law, p.108.

<sup>15</sup> *ibid.*

<sup>16</sup> MP Karns, Non-governmental Organization, available at governmental-organization assessed on the 8<sup>th</sup> March 2023 at 10:28pm.

<sup>17</sup> A Blinken, Non-Governmental Organization (NGOs) in the United States available at government-organizations-ngos in the-united states, assessed on the 9<sup>th</sup> March, 2023 at 09:02am.

<sup>18</sup> *ibid.*

<sup>19</sup> N Srinivas, Definition of an NGO, available at [www.gdrc.org/ngo/wb-define.html](http://www.gdrc.org/ngo/wb-define.html) assessed on the 12th June, 2022.

<sup>20</sup> MI Anushiem, HO Obi and UMJ Anushiem, The Role of Civil Society Organizations in the Nigerian Electoral process: A Legal Appraisal, (2021) (2) *Awka Capital Bar Journal (ACBJ)* 54.

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.

The impact of taxation on economic growth of any country or society cannot be overemphasized. In most countries around the world, taxes have proven to be a major source of revenue generation. In Nigeria, oil has been a major source of its revenue over the past years. However, with the dwindling oil prices in the global oil market, that has truly led to a huge decrease in the funds available to the government for infrastructural development, distribution to states and use for national and economic activities. Based on this fact, there is need for a paradigm shift in the source of revenue generation from oil sources to non-oil sources through taxation. Hence, there is need for the Federal, State and Local Government to start generating adequate revenue through tax revenue. In Nigeria, although NGOs are seen as no-profit organizations but in reality, a lot of them engage in trading and business activities thereby deviating from the object of the organization and thus making a lot of profit from those business activities.

### **1.3 Finance Act and the Taxation of NGOs**

Section 7 of the Finance Act 2021 (as amended)<sup>21</sup> 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-government organizations (NGOs) are exempted from tax under the law, however, when these non-governmental organizations engage in any form of trade or business, any profit made from such trade or business will be subjected to tax. Most trustees, running these NGOs are unaware that they are not totally exempted from paying taxes. A lot of them hide under the fact that they are non-profit making organizations and as such they are totally exempted from paying taxes. That is why they engage in all manner of trades and businesses and derive huge profits but do not remit that portion of profit made from the trading and business activities. These trustees buy expensive houses, landed properties, expensive cars and also, private jets. There is need for government to monitor the activities of these NGOs, in order to tax the profit or income that is taxable. For the purposes of payment of tax, all NGOs are expected to register with the Federal Inland Revenue Service (FIRS) and obtain Taxpayers Identification Number (TIN). It is also mandatory that these NGOs file their annual returns to Federal Inland Revenue Service (FIRS) every year. They are required to file their annual returns at FIRS designated tax offices covering their locations. The essence is to enable the FIRS monitor the activities of these NGOs to know when they have engaged in any trade or business transactions warranting them to pay tax.

## **2. Legal Framework for Taxation of NGOs in Nigeria**

### **2.1 Constitution of the Federal Republic of Nigeria 1999 (As Amended)**

The Constitution of the Federal Republic of Nigeria, 1999 (As Amended) is the *grund norm* from which all other statutes in Nigeria draw their legitimacy. Much of the impact of the Constitution on taxation of non-governmental organizations is as regards the division or allocation of taxing

<sup>21</sup> Finance Act 2021 s.7; Companies Income Tax (Amended) Act 2011 s.23.

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powers<sup>22</sup> among the different tiers of Nigerian Government. Nigeria as presently constituted practises a federal structure of government with different layers of legislative and administrative authorities.<sup>23</sup>

### **2.2 Companies and Allied Matters Act 2020 (As Amended)**

Companies and Allied Matters Act, 2020 (As Amended) (CAMA) regulates the existence of all non-human persons in Nigeria including NGOs. It was passed into law to establish the Corporate Affairs Commission (CAC), provides for the incorporation of companies and incidental matters, registration of business names and the incorporation of Trustees of certain Communities, Bodies and Associations. Part F of the CAMA which comprises 27 sections<sup>24</sup> made elaborate provisions as to the legal status of NGOs. It provides legitimacy for its existence and accords it a corporate status.

Despite the elaborate provisions made under CAMA as to the existence and legal statuses and regulation of NGOs, no specific mention is made of NGOs in the said statute as to clothe it with any other special status as is obtainable in other Common Wealth jurisdictions<sup>25</sup> other than an association registered as a corporate legal person *simpliciter*. This point was canvassed in the unreported case of *Board of Incorporated Trustees of Malcolm Omirhobo Foundation v The National Judicial Council of Nigeria & 6 Ors*<sup>26</sup> wherein Justice I. E. Ekwo of the Federal High Court, Abuja held that the Plaintiff misconceived the provisions of S.590 (1) (now S.823)(1) of CAMA relied upon, in arguing that by virtue of having been registered as a corporate person, it is clothed with the status of an NGO. The court went on to argue that it is unable to see how Part C (now Part F) of the CAMA makes provisions for the registration of NGOs as claimed by the Plaintiff.

It suffices to mention that NGOs are associated with the CAMA only because of their characteristic objectives which are very similar to those of the associations registrable under Part F of the CAMA.<sup>27</sup> As such, the operational guidelines as provided under CAMA for such associations registered under Part F of CAMA to which category NGOs belong are, therefore, applicable to NGOs. Interestingly, CAMA in trying to provide a suitable regulatory guideline for the operation of these associations registered under Part F which included NGOs made far reaching and definitive provisions regarding the property and incomes of these associations because of the special nature of their objectives.

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<sup>22</sup> Taxing power within the context of this subhead means the power of a tier of government to impose a tax by its own law and prescribe conditions for the collection and due administration of the tax either by its own agency or that of another tier of government. This must be distinguished from the power to merely collect taxes or levies which is executive or administrative in character.

<sup>23</sup> The Federal Structure of the Nigeria Government constitutes of the Federal (Central), State and Local Governments with exclusive, concurrent and residual powers respectively.

<sup>24</sup> The Sections are: Ss. 823 to 850 of the CAMA.

<sup>25</sup> Such as Belize (Non-governmental Organizations Act, Chapter 315 of Belize), Uganda (The Non-governmental Organization Act, 2016, Uganda) and Zimbabwe (Non-governmental Organizations Act, Zimbabwe). These countries apart from having enactments that are similar to Part C (now Part F) of the CAMA do have separate enactments for NGOs.

<sup>26</sup> Suit No: FHC/ABJ/CS/420/2019.

<sup>27</sup> Part F covers associations whose objectives are for religious, educational, literary, scientific, development, cultural, sporting or charitable purpose.

### 2.3 Personal Income Tax (Amendment) Act, 2011

The Income Tax Management Act 1961<sup>28</sup> (ITMA) was the first enactment that was promulgated with a view to regulating the taxation of personal income exclusively and also provide a uniform system of personal income taxation across the Nigerian federation. The Personal Income Tax Act<sup>29</sup> (PITA) is the current law regulating the administration of personal income tax in Nigeria. Its provisions are similar to previous income tax laws in all material respects except that it contains in addition other provisions that are completely novel in the administration of Personal Income Tax in Nigeria. While the provisions on persons and incomes chargeable, deductions allowed, incomes exempted, assessment, returns, offences and double taxation arrangements are similar in substance to that under the ITMA and other erstwhile income tax legislation, such other provisions relating to the establishment of tax authorities,<sup>30</sup> the introduction of the Tax clearance certificate and the pay-As-You-Earn (P.A.Y.E) Scheme are entirely novel to all the erstwhile legislation.

### 2.4 Companies Income Tax Act, 2007 (As Amended) CITA

The current enabling law that governs the collection of taxes on profits made by companies operating in Nigeria excluding companies engaged in Petroleum exploration activities is *Companies Income Tax Act, 1990*. It was introduced in Nigeria in 1961 and administered by the Federal Inland Revenue Services. Since enactment, the law has passed through series of amendments, with the latest being the 2007 amendment. The rate of CIT varies according to operation and size of turnover per annum and the tax is payable for each year of assessment (based on actual year) of the profits of any company at a rate of 30 cent.

Companies Income Tax Act, 2007 (As Amended) CITA imposes taxes generally on the profits of corporate legal persons not being corporate soles<sup>31</sup> and NGOs come under this category of corporate legal person by virtue of its registration as such under CAMA.<sup>32</sup> The CITA makes a blanket provision on persons subjects to CITA and what profits of these persons that are subject to taxation imposed by the Act.

### 2.5 Capital Gains Tax Act CILFN 2004

The Capital Gains Tax (CGTA) is the tax a person is mandated to pay on the profit such person receives when such person disposes an asset or investment. Capital Gains Tax Act was established to provide for the taxation of capital gains accruing on disposal of assets.<sup>33</sup> It was enacted by Act No. 44 of April 1, 1967, and last amended by Act No. 45 of 1999. According to *Section 2 Subsection 1 of this Act*, the rate of capital gains tax is set at ten percent of the profit made from assets disposal. The Act expands the chargeable assets to included: options, debts and incorporeal property generally, any currency other than Nigerian currency and, any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired.<sup>34</sup>

<sup>28</sup> No. 21 of 1961.

<sup>29</sup> Cap P. 8 laws of Federation of Nigeria 2004 (as amended in 2011).

<sup>30</sup> *ibid* sections 86-93.

<sup>31</sup> PITA imposes tax on the profits of individuals and corporation sole. ie s. 2(1)(a) of the Personal Income Tax (Amendment) Act, 2011.

<sup>32</sup> Part F of the CAMA, 2020.

<sup>33</sup> Capital Gains Tax Act section 1(1).

<sup>34</sup> *ibid* s 3.

## **2.6 Value Added Tax Act, Cap. V1 LFN 2007 (As Amended)**

Value Added Tax (VAT) is one of the many taxes adopted by and levied in many countries of the world. It is a tax payable on the supply of all goods and services at different stages of product supply and service delivery value chain, other than the goods and services exempted in the enabling VAT laws of the countries, which burden is ultimately borne by the final consumer.<sup>35</sup> VAT in Nigeria is governed by the Value Added Tax Act (VATA) and collected through registered persons who are known as “taxable persons”. A taxable person is, under the VAT Act, obliged to register with the FIRS for VAT collection “upon commencement of business.” Failure to register attracts a penalty of N50,000.00 for the first month in which the failure occurs; and N25,000.00 for each subsequent month. A taxable person who permanently ceases to carry on a trade or business is required to notify FIRS of his intention to deregister for tax purposes within 90 days of such cessation of business.<sup>36</sup> If the charging provisions were to be strictly construed, VAT will be chargeable on international, inter-State and intra-State supplies of goods and services.<sup>37</sup> It would seem, however, that in recognition of the need for territorial limitation of the tax to goods and services supplied in Nigeria, the FIRS Information Circular clarified that “supplies made outside Nigeria are outside the scope of Nigerian VAT.”<sup>38</sup> We hold the view that even without making the above clarification, it is difficult to see how the tax can be administered extra-territorially considering the principle in *Boucher v Lawson*<sup>39</sup> that no nation will take account of the revenue law of another nation.

## **2.7 Value Added Tax Act (Modification Order), 2020**

The VAT Act (Modification Order), 2020 is a child of necessity issued by the Ministry of Finance pursuant to power vested in it under S. 38 of VAT Act, V1, LFN, 2004 to provide clarity to the VAT Act. The Order modified the First Schedule of the Act, extended the list of items exempted from VAT under Part I and Part II of the schedule and also offered interpretations in relation to Part I & II of the said First Schedule of the VAT Act.<sup>40</sup> Part I, II and Part II of the First Schedule to the VAT Act barely listed categories of exempt goods and services.

## **2.8 Federal Inland Revenue Service (Establishment) Act, 2007**

The Federal Inland Revenue Service (Establishment) Act, 2007 is an Act enacted by the National Assembly of Nigeria to make provisions for the establishment of the Federal Inland Revenue Service which is a government organ laced with the responsibility of administering<sup>41</sup> certain taxes and attending to sundry issues as assigned to it under the Act.

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<sup>35</sup> AA Tait, *Value Added Tax, National*, (International Monetary Fund, 1984), p.494; Value Added Tax Act. 2007 s 2.

<sup>36</sup> Finance Act, 2019 s 8.

<sup>37</sup> Ss. 6 & 15 (2) *ibid*. These provisions appear to have same purport as section 1(1) of the Value Added Tax Act, 1994 of the United Kingdom which provides that “Value Added Tax shall be charged in accordance with the provisions of this Act – (a) on the supply of goods and services within the United Kingdom (including anything treated as such a supply, (b) on the acquisition in the United Kingdom from other member states of any goods; and (c) on the importation of goods from places outside the members State.

<sup>38</sup> FIRS Information Circular No. 9304 of 20th August, 1993 on Value Added Tax (VAT) item 6(ii).

<sup>39</sup> Cas. T. Hardw. 84, 89, 191 and *Holman v. Johnson*, Cowp. 341.

<sup>40</sup> Sections 1, 2 and 3 of The VAT Act (Modification Order), 2020 as well the schedule to the Order.

<sup>41</sup> Tax administration entails the administration, management, conduct, direction, and supervision of the execution and application of a government, country or state’s taxation laws and related statutes.

## 2.9 Finance Act 2019 and other Subsequent Amendments of the Act

Finance Act, 2019 made very significant changes in a number of the Nigerian Tax laws<sup>42</sup> but our interest shall be channeled more towards the amended Acts discussed in this work that directly or indirectly impact on the taxation of Non-Governmental Organizations.<sup>43</sup> The Act generally changed the words “Federal Board of Inland Revenue” to “Federal Inland Revenue Service” as the tax authority in appropriate circumstances.<sup>44</sup> Under the Companies Income Tax Act, incomes of companies and business are liable to taxation under S. 9(1) of CITA without qualifications as to avoid double taxation. However, such was amended by the Finance Act, 2019<sup>45</sup> to exempt incomes liable to Capital Gains tax, Petroleum Profit tax and Personal Income Tax among other provisions.

Section 3 of the Finance Act, 2019 mandates all companies to, in addition to being registered under CAMA, register with the relevant tax authority and obtain Tax Identification Number (TIN) which shall be displayed on every document of companies and in every transaction including opening and operation of bank accounts as a valid mode of identification of companies. This is a very significant departure from the provision of *section 10 of CITA* that only paid attention only to the registration of companies under the CAMA as the only valid identification parameter thus:

The incorporation number of a company, to which the provisions of section 8 apply, shall serve as the identification number of the company and 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, including the Federal Inland Revenue Service, Ministries and all Government agencies.<sup>46</sup>

## 3. Challenges of Taxation of NGOs in Nigeria

### 3.1 Absence of Express Provisions on Taxation of NGOs

Nigeria as at today has no dedicated statute providing exclusively and comprehensively for supervision and control of the operation of NGOs in the country. What we find are piece meal provisions on NGOs littered in very many legislation which do not satisfactorily attend to the nature of NGOs and sundry matters that would make the taxation of NGOs and the extent of these taxes certain and less ambiguous. The most important legislation in Nigeria on NGOs, their status and control, is the Companies and Allied Matters Act (CAMA) as amended in 2020. This piece of legislation, though made provision for the establishment and control of NGOs, made no express mention of NGO nor did it explicitly recognize or define its scope. The best that was done by the CAMA was to make blanket provisions, lumping all Non-Profit Organizations together in one category under Part F of the CAMA.

Part F of the CAMA which comprise 27 sections<sup>47</sup> provides in S.823 of the Act as follows:

<sup>42</sup> The Act amended The Companies Income Tax Act, Petroleum Profit Tax Act, Personal Income Tax Act, Value Added Tax Act, Custom & Excise Tarrif Etc (Consolidation) Act, Capital Gains Tax Act and Stamp Duties Act, etc.

<sup>43</sup> They include: The Companies Income Tax Act, Personal Income Tax Act, Value Added Tax Act, Capital Gains Tax Act, etc.

<sup>44</sup> Finance Act, 2019. sections 22-25.

<sup>45</sup> Ibid section 2(a).

<sup>46</sup> This provision was amended by section 3 of the Finance Act, 2019 in favour of Tax Identification Number.

<sup>47</sup> CAMA sections 823 – 850.



(1) Where two or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, they may, if so authorized by the community, body or association (in this Act referred to as “the association”) apply to the Commission in the manner provided for registration under this Act as a corporate body.

(2) Upon being so registered by the Commission, the trustees shall become a corporate body in accordance with the provisions of section 830 of this Part.

With no mention of NGO made in the most important piece of legislation that ought to provide for its formation, one wonders if it does not raise ambiguity when FIRS Guidelines on the Tax Treatment of Non-Governmental Organizations NGOs, 2021 mentioned NGO for the first time in the entire Nigerian legal system for the purposes of tax by defining NGO as:

Not-for-profit association of persons incorporated as a company limited by guarantee under PART A of the Companies and Allied Matters Act (CAMA) 2004<sup>48</sup> or registered under PART C of the Act.<sup>49</sup> or under any other law in force in Nigeria, or registered under the laws of a foreign jurisdiction and approved as such in Nigeria.

The consequence is that it becomes impracticable for anyone to set out and register an NGO with full knowledge of its statutory scope and control in Nigeria. This is because there is no law expressly providing for its formation or scope of its operation.

There is no category of organizations, strictly speaking, known as NGOs under the Nigeria Law. This most definitely, breeds confusion and uncertainty in the treatment of NGOs to tax. In 2016, an attempt was made to enact a dedicated statute for NGOs in Nigeria. The Bill was titled “Non-Governmental Organizations Regulatory Commission of Nigeria (Establishment) Bill, 2016”.<sup>50</sup> The bill was met with stiff resistance from civil societies in Nigeria who believed the bill was aimed at gagging civil movements in Nigeria<sup>51</sup> because of the failed and corrupt leadership that is rife in the polity and which was not to be trusted.

### **3.2 Lack of Accurate Data**

Lack of accurate data of these non-governmental organizations is one of the major challenges facing the Federal Inland Revenue Service in Nigeria. The Companies and Allied Matters Act (CAMA) 2020 makes it mandatory for every company having the intention of carrying on business in Nigeria shall take all steps necessary to obtain incorporation as a separate entity in Nigeria, but until so incorporated, the company shall not carry on business in Nigeria or exercise any of the powers of a registered company and shall not have a place of business or address for service or

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<sup>48</sup> Now Part B of the CAMA, 2020.

<sup>49</sup> Now Part F of the CAMA, 2020.

<sup>50</sup> The objective of the Bill was to establish a body (The Commission) responsible for the supervision, coordination and monitoring of Non-Governmental Organizations and Civil Society Organizations in Nigeria, with the aim of enabling them accomplish their various missions in a transparent manner and be accountable for their operations.

<sup>51</sup> B Majeed, “Controversial NGO regulations bill back in House of Reps”. *Premium Times* (July 27, 2022), also at Accessed 14 September, 2023.

documents or processes in Nigeria. If a company fails to comply with the requirements of registration, the company has committed an offence and liable to prosecution.

Moreso, for purposes of payment of tax, non-governmental organizations are required to register with the Federal Inland Revenue Service (FIRS). They (NGOs) are also mandated to file its annual returns with its audited account showing the profits of the company and also to obtain a Tax Identification Number (TIN) for purposes of paying tax. In practice, a lot of non-governmental organizations in Nigeria are yet to register with the Federal Inland Revenue Service (FIRS) and also, a good number of them do not file annual returns with the Federal Inland Revenue Service (FIRS).

#### **4. Conclusion and Recommendations**

Taxation of NGOs in Nigeria is indeed surrounded with uncertainties ranging from non-direct recognition of NGOs by the relevant corporate and tax laws to a plethora of other tax challenges discussed in this paper. Much as these uncertainties and challenges abound, there seems to be an obvious contemplation of the existence and taxation of NGOs by the relevant provisions of the Nigerian laws namely, the CAMA,<sup>52</sup> the CITA<sup>53</sup> and the PITA.<sup>54</sup> These provisions, when diligently construed, present a position that considers NGOs pretty much like every other organization subject to tax laws in much the same manner with only one significant difference which is the income tax exemptions granted to NGOs in respect of their incomes not derived from transactions of a business nature. In other words, only incomes accruing to NGOs from donations, grants and gifts are exempted from taxation. There is no doubt that such other taxes as VAT, Stamp Duties, Capital Gains Tax, etc, have exemptions too that could benefit NGOs. However, these exemptions are not exclusive to NGOs as they also apply to every other taxpayer that qualifies for the incentives either by purchasing the exempted goods and services, exporting zero rated goods or meeting any criteria as may have been prescribed by the relevant tax laws for such exemptions. In the final analysis, we believe, and firmly too, that considering the relevance of NGOs in nation building, more needs to be done to adequately incentivize NGOs in Nigeria as to encourage their proliferation for better developmental impact.

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<sup>52</sup> CAMA Sections 823, 830 and 838

<sup>53</sup> Companies Income Tax Act (Amended), 2007. s.23 (1)(a&c)

<sup>54</sup> PITA (Amended) Third Schedule, Paragraph 13