

AN EXAMINATION OF THE LEGAL REGIME FOR TAXATION UNDER THE NIGERIAN JURISPRUDENCE

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Abstract

The law of taxation envisages raising of revenue for the use of government in providing the basic public utilities needed to better the lives of the citizens. The significant position occupied by taxation can never be overemphasized. It thus calls for the examination of the available legal framework for taxation in Nigeria. A close scrutiny of the frontline legislations will be carried out to ascertain whether the provisions as they are will if effectively implemented meet the primary essence of taxation. In doing so, the setbacks embedded in these provisions which impede the raising of revenue through taxation will be highlighted. Lastly, the paper will attempt to proffer the way out of these setbacks to ensure effective revenue generation through taxation.

1.1 Introduction

Tax is one of the major sources of revenue to all governments worldwide, including Nigeria. It is levied by governments to raise revenue that will help in the administration of governmental policies. The role of each government is, first, to provide good governance. Good governance, on the other hand, simply means provision of basic infrastructures, to meet the basic needs of citizens in an atmosphere where peace and security are guaranteed. Revenues generated through income tax enable government to maintain law and order and other socio-economic, political and cultural activities. Over the years, the Nigerian tax system has undergone significant changes. The tax laws have been reviewed with the aim of repealing the obsolete taxing laws to enhance effective means for procedures of enforcing the payment of income tax to meet up with the current demands of the Nigerian fiscal programmes and to reduce tax evasion and tax avoidance in the Nigerian tax system. Nigerian tax system is basically and purely statutory. The tax system, therefore, featured wide range of statutes by which the Nigerian government, as a whole, seeks to charge and collect taxes for public expenditures¹. The aim of this paper is to examine the frontline tax laws, their objectives and highlight their problems and prospects.

1.2 Conceptual Clarifications

For us to better understand this paper, we shall look at the various key words which are the bedrock of this topic. Such terms as taxation, jurisprudence and legal regime need to be defined.

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¹ M.A. Musa, *An Appraisal of Income Tax Enforcement Procedures Under The Nigerian Tax System*, a thesis submitted to the School of Post Graduate Studies, Ahmadu Bello University, Zaria, May 2014, P.1

Jurisprudence

This is the theoretical study of law. Scholars of jurisprudence seek to explain the nature of law in its most general form and provide a deeper understanding of legal reasoning, legal systems, legal institutions and the role of law in the society². The black's law dictionary defined jurisprudence as the study of legal systems in general³. Drawing from these meanings ascribed to the word, we explain jurisprudence as meaning the branch of law entailing the study of the structure of legal systems⁴. This paper views it as the study of the legal structure of the law of taxation as provided for in the Nigerian legal system.

Legal Regime

This is set of rules, policies and norms of behavior that covers any legal issue and facilitate substantive or procedural arrangements for deciding that issue⁵. A legal regime is a system of principles and rules governing something, and which is created by law. It is framework of legal rules⁶. Legal regimes are created by societies and states depending on how easy or difficult it is for social groups or individual or organized interests to gain political influence or power and how readily and in what manner nonjudicial state institutions or empowered actors intervene in legal institutions' handling of specific cases⁷. It follows that the legal regime for taxation in Nigeria has to do with the various statutes and administrative agencies put in place for the purpose of achieving the primary essence of taxation which is raising revenue for use by the government.

Tax

All over the world taxation is a common phenomenon. There is no country that can do without the imposition of tax to boost its revenue generation⁸. Typical of all legal concepts, tax cannot be boxed into any definition. However, there are several attempts in that light which if aggregated may offer a window into the meaning of tax⁹. The word to tax is derived from the Latin word *taxo*, which literally means "I estimate" is to impose a financial charge or other levy upon a taxpayer (an individual or legal entity) by a state or the functional equivalent of a state such that failure to pay is punishable by law¹⁰. The Black's Law Dictionary defined the term as a monetary charge imposed by the government on persons, entitles, transactions or property to yield public revenue. Most broadly the term embraces all government impositions on the person, property, privileges, occupation and enjoyment of the people and includes duties, imposts and excises¹¹. Section 69 of Federal Inland Revenue Service (Establishment) Act¹², define tax for the purposes of the Act as including any duty, levy, or revenue accruable to the government in full or part under this Act or any other enactment or law.

²Jurisprudence, available at www.en.m.wikipedia.org, (accessed on May 23, 2019).

³B.A. Garner, *Black's Law Dictionary* (8th ed., United States of America, Thomson West, 2004) P. 871.

⁴N.J. Obumneme-Okafor, *The Legal Regime for Consumer Protection under the Nigerian Jurisprudence: An Examination* (AJEST, Vol.1, No.1, Sept/Oct 2013) P.191.

⁵B.A. Garner, *Black's Law Dictionary* (8th ed., United States of America, Thomson West, 2004) P. 1308.

⁶Legal Regime Law and Legal Definition, available at www.uslegal.com (accessed on June 05, 2019)

⁷Understanding Legal Regimes, available at www.cambridge.org (accessed on June 20, 2019)

⁸CITN – Nigerian Tax Guide and Statutes, 1st ed, P. 36

⁹Dominic Asada, *The Problem of Taxation of Internet Transactions*, (University of Jos, Law Journal, Vol. 10, No. 1 January 2015) P. 26.

¹⁰Tax, available at <http://en.wikipedia.org/wiki/Taxation> (accessed on June 05, 2018).

¹¹B.A. Garner, *Black's Law Dictionary* (8th ed; United States of America, Thomson West, 2004) P. 1496.

¹²Cap F36 Laws of the Federation of Nigeria, 2007.

In *Fargo v. Wetz*¹³, the court stated that tax is any payment exacted by the state or its municipal subdivisions as a contribution towards the cost of maintaining governmental functions where the special benefit derived from their performance is merged in the general benefits.

It could also be seen from the above that it is an enforceable monetary contribution backed by legislative authority. As a result of the essential and obligatory nature of tax, tax is also seen as a responsibility which every taxable person is obliged to render. The issue of tax is not a matter of choice, whether one is to pay or not. It is a legislative demand by government and mandatory for a citizen who has attained taxable age to pay. Therefore for a charge to qualify as a tax, it must have the following characteristics;

1. It is an imposition by government
2. It is compulsory
3. It must have legislative backing and
4. It is for the support of government¹⁴.

1.3 Brief History of Taxation in Nigeria.

The first known system of taxation was in ancient Egypt around 3000 BC – 2800 BC in the first dynasty of the old kingdom.¹⁵

Early taxation was also described in the Bible in Genesis, chapter 47 verses 24,¹⁶ it states:

But when the crop comes in, give a fifth of it to pharaoh, the other four-fifth you may keep as seed for the fields and as food for yourselves and your households and your children.

In Britain, Income Tax was first introduced in 1799 by Pitt as a temporary tax to finance the Napoleonic wars. The British progressive system, whereby limited companies are used as a conduct pipe for taxing individuals.¹⁷ The history of taxation in Nigeria predated the colonial era. At that time, tax was an affair between the local chiefs and his subject and taxes were paid in kind of security and common services.¹⁸

In the North, the history of taxation dates back to the era of the Sahara trade and the introduction of Islamic religion in Northern Nigeria between 800 A.D and 1400 A.D. The rulers in Northern Nigeria were known as “SAFAWA” Kings who grew rich due to gifts and levies paid to them by their subordinates as taxes on cattle and agricultural crops.¹⁹ The Islamic religion later on introduced various forms of taxes namely:

¹³ 5 ALR 731.

¹⁴ Re Mytringer D.C Tex, 31 F, *Tax Law Analytical Approach on Double Taxation in Nigeria*, available at www.lawprojectfameuk.blogspot.com (accessed on June 05, 2018), see also N.B. Okeke, *Taxation Laws and Accounts Principle and Practice* (Enugu: Computer Edge Publishers, 2002) P. 1, I.U. Ibe, *An Appraisal of The Taxing Powers of the Three Tiers of Government in Nigeria* (PBJ, Vol. 1, No. 1, 2013) P. 73.

¹⁵ *Taxes in the Ancient World*, available at [http://www.upenn.edu/almanac/v48/n28/Ancient Taxes html](http://www.upenn.edu/almanac/v48/n28/Ancient%20Taxes.html), University of Pennsylvania Almanac, Vol. 48, No 28, April, 2008, accessed on December, 12, 2016; see also, **Tax**, available at <http://en.wikipedia.org/wiki/Taxation> , accessed on December 12, 2016.

¹⁶ Holy Bible, *New International Version*, (The Zondervan Corporation, Michigan, 2001) P. 28.

¹⁷ C.S. Ola, *Income Tax Law and Practice in Nigeria*, (Ibadan, Heinemann Educational Books Plc, 1999) P.I.

¹⁸ C.S Ola, *Income Tax Law for Coporate and Unincorporated Bodies in Nigeria*, (Ibadan, Heinemann Educational Books Plc, 1974) P.1.

¹⁹ *Historical and Legal Development of Taxation in Nigeria*, available at <http://www.nigerianobservernews.com>,

(a) *Zakat*: - A tax levied on Moslems for charitable and educational purposes, (b) *KurdinKasa*:- Agricultural tax(c) *Jangali*:- A cattle tax levied on livestock, (d) *Shukka Shukka*:- Another tax paid on all crops not liable to *zakat*,(e) *Kharaj*:- Land tax, (f)*Ghanimah*:- Booty tax, (g) *Jiz yah*:- Security levy

As a matter of fact, payment of taxes in Islam is considered as a sacred duty. In the South, the Obas and Ezes relied on tributes, arbitrary levies, special contributions at special festivals or events, fees, presents, all collected through the head of families, as its system of taxation. But the system of taxation was not as developed and acceptable by the people as compared to that of the North. When the British colonial masters came to Nigeria, they were attracted by the organized tax system in Northern Nigeria. The first legal backing of taxation in Nigeria was the Land Revenue Proclamation Law of 1904 introduced by Sir Fredrick Lugard to consolidate all the various traditional taxes. There was no such law in southern Nigeria until after the amalgamation of the northern provinces with the colony and protectorate of southern Nigeria in 1914 when the Native Revenue Ordinance of 1917 was enacted, to cover the areas of the western region of Nigeria. In 1927, the first Personal Income Tax Law was introduced into the Eastern Region. This led to the Aba tax riot of 1929. In 1939, the Companies Income Tax Ordinance was introduced to take care of the taxation of companies.

Nigeria income taxation in modern form, however, began in 1940, with the enactment of the Direct Ordinance No.3 of 1940 and the Income Tax Ordinance No. 3 of 1940 which repealed all previous Ordinances. It should be noted that the Northern Nigeria was the first of the regions to levy direct personal taxation under the Fulani emirs, prior to the advent of the British.²⁰

Nigeria became a federation in 1954, and then the question of sharing taxing powers between the Regions and the Federal Government arose. The question was discussed at the Nigeria constitutional conference in London in 1957, where it was decided to refer it to a commission. Consequently, the Raisman Commission was appointed to look into the matter and make recommendations that would ensure *inter alia* ...”the maximum possible proportion of the income the regional governments should levy and collect”.²¹

The Raisman Commission recommended the introduction of general principles for taxing individual incomes to be applicable to the whole country. In 1961 the Income Tax Management Act of 1961 was enacted and was based essentially on the recommendations of the Raisman commission. The pay-as-you-earn system of taxation was introduced in 1956. This empowered employers to make deductions at source and hand over to the relevant tax authorities.

Prior, to the enactment of the Income Tax Management Act of 1961, the Western Region had in 1957 enacted the Income Tax Law No. 16 of 1957. It was later amended in 1961 by the Income Tax (Amendment) Law 1961, also known as Income Tax Development Contribution Law to bring it in line with the Income Tax Management Act. The East equally had their own tax law

accessed on March 7, 2017.

²⁰ This was stated by J.F. Due in, *Income Taxation in Tropical Africa*, (*British Tax Review*, July – August 1962) P.226.

²¹ Report of the Nigerian Constitutional Conference, 1957, (cmnd. 207), Para. 57.

known as Eastern Region Finance Law, 1962 while in the North they enacted the Northern Nigeria Personal Tax Law, 1962.

The division of taxing powers under the 1963 constitution favoured the Federal Government more as they had important sources of revenue than the regions (now states). Between 1970 and 1979, it was widened making the states to be financially dependent on the Federal Government. The states were left with the residuary matters. In other words, the states under the 1979 constitution have taxing power to legislate on any taxing matter, which has not been specifically allocated to the federal government, they include taxes on the sale or purchase of goods, vehicle licenses and registration fees, betting and gambling etc.

The local governments which was for the first time recognized under the 1979 Constitution enjoyed taxation of issues found in the fourth schedule to the constitution and they include, property taxes and market rates etc.

The federal government has the powers to legislate on the taxation of individuals, but the proceeds from that goes to the states, this is aimed at uniformity. In line with the above the federal government has since enacted the Personal Income Tax Decree (now Act) of 1993²², Companies Income Tax Act of 1979²³, the Taxes and Levies (Approved list for collection) Act of 1998 and the Constitution of the Federal Republic of Nigeria, 1999(as amended). Under the 1999 Constitution the Federal Government still maintained its stronghold as it has the power to legislate on the taxation of many juicy areas, as in the 1979 Constitution(as amended).

1.4 Legal Regime for Taxation in Nigeria

The legal regime for taxation in Nigeria is made up of both the legislations and the various administrative and enforcement agencies that see to the implementation of these laws. Nigerian legislations on taxation are many and diverse aimed at covering the various areas of commercial endeavors and with the primary purpose of generating revenue. This paper will therefore dwell on some of the frontline legislations on taxation in Nigeria.

Personal Income Tax

This is the oldest tax in the country. It was first introduced as a community tax in Nigeria in 1904, before the unification of the country in 1914. With the unification of the country there were various state laws in regard to taxation of personal income in the country, and since all these laws were invalidated by the 1979 constitution, there was a need for a uniform law to be promulgated to apply throughout the federation in respect of personal income tax. In line with this, the then Federal Military Government in 1993 promulgated the Personal Income Tax Decree No. 104 of 1993, which repealed and replaced the Income Tax Act (as amended). The Personal Income Tax Act is now found in cap. P8 Laws of the Federation of Nigeria, 2011.(As amended)

²² Now contained in Cap. P.8 LFN, 2004.

²³ Now contained in Cap. C.21, LFN, 2004.

Company Income Tax

Company income tax was first introduced by Jim Callaghan, the Chancellor of the Exchequer, is a tax levied on the financial income of legal persons.²⁴ A Comprehensive Companies Income Tax Act in Nigeria was enacted in 1961. This Act did not introduce any new principle of significance, only that it replaced the independence the companies income tax lost in 1940. The Companies Income Tax Act of 1961 (as amended) has been replaced by the Companies Income Tax Act of 1990 which is a consolidating Act, that is, it has simply consolidated the Companies Income Tax Act 1961 and a welter of amending legislation. Thus, the 1990 Act has been repealed and re-enacted with sundry amendments. Presently, the Act is found in cap C21 Laws of the Federation of Nigeria, 2004 (As amended)

Capital Gains Tax

Although a 20 percent rate for capital gains tax was introduced at its inception in 1967 (Decree No. 44 of 1967), it is currently at 10 percent²⁵. The tax is imposed on any gain accruing to any person in connection with the disposal of assets during the assessment year whether situated in Nigeria or not. It is a concurrent tax. It is an amount taxed on the chargeable gains accruable to a person on the sale, lease or transfer of interest or right on a property. Presently, it is found in Cap C1, Laws of the Federation of Nigeria, 2004.

Value Added Tax

An important landmark in tax reform in Nigeria was the adoption of the value added tax through the Value Added Tax Decree No. 2 of 1993 (now Act). It is a tax on goods and services replacing the sales tax. The value added tax is charged at every level of the distribution chain. Presently it is charged at 5 percent. The Value Added Tax Act provides that a taxable person shall, within six months of the commencement of the Act or within six months of the commencement of business, whichever is earlier, register with the Federal Inland Revenue Service for the purpose of the tax²⁶. Failure to comply is visited with a penalty of ₦10,000 for the first month in which the failure occurs and ₦5,000 for each subsequent month in which the failure continues. Although enforced by a federal legislation its benefits accrue to the states. It is presently contained in Cap VI Laws of the Federation of Nigeria, 2004(As Updated in 2007).

Taxes and Levies (Approved List for Collection) Act.

Prior to 1998, there was a confusion as to what tier of government should collect what taxes. The position was not very clear, especially in areas like market levies and taxes, and personal income taxes. The Federal Government came out with an enactment known as the Taxes and Levies (Approved List for Collection) Decree No. 21 of 1998 (now Act) to harmonize, define and delineate the taxes and levies each tier of government was permitted to collect, thereby bringing sanity and clarity to tax collection in Nigeria. This Decree (now Act) was the then Federal Government's solution to multiplicity of taxes, as there was imposition of arbitrary and similar taxes on the same tax payer by different states and local governments. Before then, taxpayers were subjected to all manners of taxes and levies by states and local governments. It was to stop this undue harassment and burden to taxpayers that the then Federal Government promulgated

²⁴Salomon v. Salomon (1897) A.C. 22; Y. Adam, "The Origin of the Income, Tax" available at www.oecd.org (accessed on March 13, 2019).

²⁵ See Section 2 of Capital Gains Tax Act, Cap C.1 Laws of the Federation of Nigeria, 2004.

²⁶ Section 8(1) & (2), Value Added Tax Act, Cap. VI, Laws of the Federation of Nigeria, 2004.

this Decree (now Act)²⁷. This Decree specifically states the taxes each tier of government should collect. The enactment is presently found in Cap. T2 Laws of the Federation of Nigeria, 2004.

Stamp Duties

Stamp tax is applied to documents, for example, conveyance documents concerning land transfer, bonds, debentures, warrants etc. The law was introduced during the colonial period in 1939. Although, stamp duties are regulated by Federal Law, their administration is a mutual operation. While the federal government is responsible for the administration of the tax on companies through the Federal Inland Revenue Services, the State Board of Internal Revenue handles its administration with regard to individuals. Presently, contained in Cap. S8, Laws of the Federation of Nigeria, 2004.

Federal Inland Revenue Service (Establishment) Act, 2007

This Act was passed into Law in May, 2007. The Act provides for the establishment of the Federal Inland Revenue Service with the power to assess, collect, account and enforce payment of taxes as may be due to the federal government or any of its agencies as well as the power to collect, recover and pay to the designated account any tax under the provisions of the Act²⁸. The board can equally adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud or evasion²⁹

1.5 The Constitution

The 1999 constitution (as amended) distributes taxing powers among the three tiers of government and empowers the National Assembly and States House of Assembly to enact laws on taxation as it affects their domain. The Constitution guaranteed the existence of fiscal federalism, as well as, the taxing powers of each federating unit in Nigeria. The Constitution recognizes the fiscal jurisdiction of those three levels of government, ie. Federal, States and Local Government³⁰. The functions and powers of the Federal Government are listed in the Exclusive Legislative List³¹, while those of the states are in the concurrent list³²

Industrial Development (Income Tax Relief) Act

This is a tax relief as against revenue generating Law but is treated here because it is a Law on tax. The pioneer status is granted mainly to companies in any industry which in the opinion of the National Council of Ministers is not being carried on in Nigeria on a scale suitable to the economic requirements of the country. Section 1 of the Industrial Development (Income Tax Relief) Act makes provision for the publication of list of pioneer industries and products and issuing pioneer certificates under the direction of the president via a publication in the gazette. Section 10 makes provision for the tax relief period of three years commencing from the production date of the company and may be extended by the president for one year and a

²⁷ C.H. Orji; *Juriscope, You and the Law Series* (Law quest Ltd, 2008)P. 66

²⁸ Section 8(1) (g), Federal Inland Revenue Service (Establishment) Act, 2007, Cap F.36 Laws of the Federation of Nigeria, 2007.

²⁹ Section 6, Constitution of the Federal Republic of Nigeria 1999, T.Q Elias, *Judicial Process in the Newer Common Wealth*, (University of Lagos Press, Lagos, 1990), P.179, see also J.N. Egwummuo, *Dynamics in Nigerian Legal System*, (Academic Publishing Company, Enugu, 2003), P. 30.

³⁰ M.T. Abdurrazaq, *Nigerian Revenue Law*, (Malthouse Ltd., Ibadan, 1999), P.37

³¹ Item 59 of Part I, Second Schedule to the 1999 Constitution (as amended).

³² Items 1, 2, 7 and 9 of Part II, Second Schedule to the 1999 Constitution (as amended).

subsequent one year or for one period of two years. Section 21 states that any false information to acquire a pioneer certificate is punishable with a fine of ₦1,000.00 or imprisonment for five years or both. The executive chairman, Federal Inland Revenue Services in a lecture³³ on acquiring pioneer status stated *inter alia* that companies are freed from tax obligations in this period. The Industrial Development (Income Tax Relief) Act is presently found in Cap I 7 Law of the Federation of Nigeria, 2004.

1.6 Challenges to Taxation and its Administration in Nigeria.

The purpose of every piece of legislation is to make adequate provision for the subject matter intended to be dealt with by the legislation which in this case is taxation. How effectively the subject matter is dealt with largely depends on how adequately the legislation has made provision to that effect. the object of the mischief rule of statutory interpretation is to find out the mischief which was in existence before the legislation and which necessitated the legislative process. The intention is always to deal with the mischief. Where adequate provision has been made by the legislature which are well implemented then the problem is solved. But where the legislation fails to adequately cover the subject matter, then the object of the legislation is either totally defeated or not adequately dealt with³⁴. Therefore we shall hereunder examine some of the pitfalls in some of the legislations in this work and proffer a workable solution to take care of them.

Personal Income Tax Act

The Personal Income Tax Act No. 104 of 1993 imposes income tax on individuals, communities and families and on executors and trustees; and to provide for assessment and collection and administration of the tax. The Act defines the following terms: Personal Emolument as “wages and salaries and includes allowances, gratuities, superannuation or pension schemes and any other income derived solely by reason of employment as other rank” and Employment, include any service rendered by any person in return for any gains or profit. From the foregoing, it means that independent contractors are employees. They are regarded as self-employed. They are also entitled to capital allowance just like companies. They make claims for capital allowances and loss relief. But these allowances are not available to ordinary employees who are employed and make use of their vehicles in earning income. They are only entitled to reliefs and usually pay more tax than the so called self-employed. The latter pays whatever he wants to pay as tax .This is an issue that needs to be properly addressed by amending the relevant portion of the law. BENEFIT-IN –KIND (B-I-K): These are expenses that are incurred by the employer on behalf of the employee such as gardeners, cooks, official vehicle drivers, free accommodation etc. The employee pays 5% tax on benefit-in-kind based on ratable value. This is harsh to say the least. There is need for a review of these obnoxious laws that subject employees to excessive taxes while other tax payers pay little or no tax³⁵.

³³ Ifueko Omogiui, *How Corporate Nigerians can maximize on the provisions of Tax Incentives for Private Sector Contribution to Sports Development in Nigeria*, Congress Hall, Transcorp Hilton Hotel, Abuja, 26th January, 2009.

³⁴ N.J. Obumneme-Okafor, *The Legal Regime for Consumer Protection under the Nigerian Jurisprudence: An Examination* (AJEST, Vol.1, No.1, Sept/Oct 2013) P.199.

³⁵ G.N.Ogbonna, *Burning Issues and Challenges of the Nigerian Tax Systems with Analytical Emphasis on Petroleum Profits Tax*, available at www.sapub.org (accessed on June 22, 2019)

1.7 Attempt to Centralize of Tax Administration by the Federal Inland Revenue Service (Establishment) Act, 2007.

Section 1(1) of the FIRS Act established the body now known as the Federal Inland Revenue Service. The body by that law was empowered to be a body corporate, with powers to sue and be sued, with perpetual succession and a common seal. It may also acquire, hold or dispose of any property, moveable or immovable for the purposes of carrying out any of its functions under this Act³⁶. The Service shall have such powers and duties as are conferred on it by the FIRS Act or by any other enactment or law on such matters on which the National Assembly has power to make law³⁷.

The problematic provision in the FIRS Act is the provision as contained in section 2 of the FIRS Act. The provisions of section 2 of the FIRS Act are reproduced hereunder:

The object of the service shall be to control and administer the taxes and laws specified in the first schedule or other laws made or to be made from time to time, by the National Assembly or other regulations made thereto by the Government of the Federation and to account for all taxes collected.

For a comprehensive appraisal of the issue and problems arising therefrom, it is necessary to reproduce the provisions of the First Schedule of the FIRS Act:

Legislations Administered by the Service

1. Companies Income Tax Act, Cap 60 LFN, 1990
2. Petroleum Profits Tax Act, Cap 354 LFN, 1990
3. Personal Income Tax Act No. 104, 1993
4. Capital Gains Tax Act, Cap C1, LFN 2004
5. Value Added Tax Act, Cap VI, LFN 2004
6. Stamp Duty Act Cap.S8 LFN 2004
7. Taxes and Levies (Approved List of Collection) Act 1998, No.2
8. All regulations, proclamations, Government notices or rules issued in terms of this legislation
9. Any other law for the assessment, collection and accounting of revenue accruable to the Government of the Federation as may be made by the National Assembly from time to time or regulation incidental to those laws, conferring any power, duty and obligation on the service.
10. Enactment or laws imposing Taxes and Levies within the Federal Capital Territory.
11. Enactment or laws imposing collection of taxes, fees and levies collected by other Government agencies and companies including signature bonuses, pipeline fees, penalty for gas flared, depot levies and licenses, fees for Oil Exploration License (OEL), Oil Mining License (OML), Oil Production License (OPC), royalties, rents (productive and non-productive), fees for licenses to operate drilling rigs, fee for oil pipeline licenses, haulage fees and all such fees prevalent in the oil industry but not limited to the above listed.

Section 25 of the FIRS Act reiterates the position of the Act in section 2 but now comes with the proviso that: 45 Section 1(2)(a)(b) &(c) of the FIRS Act, 2007 46 Section 1 (3) of the FIRS Act, 2007

³⁶ Section 1(2)(a)(b) &(c) of the FIRS Act, 2007, M.N. Umenweke and K.K. Ezeibe, *The Relevance of Residency in the Assessment of Tax Liability in Nigeria*, JILI 2010, 21-22

³⁷ Section 1 (3) of the FIRS Act, 2007

The service may with the approval of the minister by instrument published in the Federal Gazette, appoint any Government agency to collect revenue³⁸.

1.8 The Impact of the FIRS Act on the Nigerian Tax Regime

The first issue here is to ascertain the effect of section 2 and 25 of the FIRS Act on the one hand and the afore-mentioned provisions of the Personal Income Tax Act and the Taxes and Levies Act on the other hand, which are obviously in conflict with each other. They are in conflict because the said section 2 and 88 and 91 of PITA empower the various State Boards of Internal Revenue and Revenue Committee of the Local Government³⁹ to collect taxes that are within their domain. Again, section 1 (1) of the Taxes and Levies Act specifically breaks down those taxes, collectable by the three tiers of Government in Nigeria. The obvious implications of section 2 and 25 of the FIRS Act is that assessment and collection of these taxes now lies within the exclusive purview of the Federal Inland Revenue Service. Section 68 of the FIRS Act apparently clarified the issue beyond any doubts when it stated in its subsection 2 that; (2) If the provisions of any law, including the enactments in the first schedule are inconsistent with the provisions of this Act, the provisions of this Act shall prevail and the provisions of that other law shall to the extent of the inconsistency be void⁴⁰. By virtue of section 68 of the FIRS Act therefore, the provisions of sections 2,88 and 91 of the PITA are void. The Taxes and Levies Act, along with the Schedule to the Act are also void⁴¹ and this constitutes a serious challenge to effective tax administration in Nigeria.

1.9 The Way Forward

We have been able in this work to examine the various tax laws in Nigeria and identified some of the problems particularly as it relates to the provisions of the Personal Income Tax Act and the Federal Inland Revenue Service (Establishment) Act. To solve some of the problems identified in the course of this work we advocate for immediate amendment of the Federal Inland Revenue Service (Establishment) Act, especially the problematic areas and bring it in line with the provisions of the Taxes and Levies (Approved List for Collection) Act which duly streamlined the areas of jurisdiction of the various tiers of government on issues relating to tax. The government at various level should live up to expectation by making judicious use of the revenue raised through taxation to better the lives of the citizens and not diverting same to private pockets which in turn discourages the citizens from payment of taxes.

³⁸ Section 25 (2) FIRS ACT, 2007

³⁹ S. 7 (5) and the Fourth Schedule, CFRN 1999, even makes collection of Revenue by Local Government a Constitutional matter and therefore *ultra vires* the FIRS Act

⁴⁰ Section 68 (2) FIRS Act *Lakanmi v AG(West) & Others* (1971) IUILR,201, *AG Ogun State v AG Federation* (1982) 3 NCLR, *Peenok Investment Ltd v Hotel Presidential Ltd* (1982) 12 SC,1

⁴¹ The provision which is saved from this nullity effect is part 1 of the schedule which provides for the collection of certain taxes by the Federal Inland Revenue service. This is not in conflict with the FIRS Act of 2007. *NPASF v FASEL Service Ltd* (2002) FWLR (Pt. 97) 719 at 736, paras A-B, *Abacha v. Fawehinmi* (2000) FWLR(Pt 4)533 at 600: Even though section 68 of the FIRS Act did not expressly repeal sections 2, 88,91 of the PITA, there is a repeal of those sections by implication. In *Chairman Moro LG v Lawal* (2008) All FWLR (pt 440)684 at 727 para C-E) the court said: “generally, a statute is definite as to what it repeals by its enactment; and a schedule may recite the existing law repealed. The courts in the performance of their functions as interpreters of the law usually lean against implying the repeal of law by implication. However, where the provisions of the two Acts are so plainly repugnant, one to the other provision, and demand inconsistent conclusion that effect cannot be given to both at the same time, a repeal of the earlier provision of the law by implication is inevitable”. This is the situation in this case

1.10 Conclusion

In this paper we examined some of the key tax statutes. In the statutes we highlighted the main provisions of the statutes. We also went down memory lane to trace the historical development of tax laws in Nigeria. Some of the challenges facing tax administration were also discussed in this paper and workable solutions proffered. It is our belief that if the solutions are considered and implemented it will help to better tax administration in Nigeria and same will in turn impact positively on the revenue yield through taxation.