

## AN IN-DEPTH EVALUATION OF TAX AS A VERITABLE FISCAL TOOL FOR ECONOMIC GROWTH IN NIGERIA\*

### Abstract

*The crux of the present article is to evaluate the impact of tax as a veritable fiscal stimulus for ignition of economic growth in Nigeria. The article examines, in the main, the objectives and functions of tax, by highlighting the imperatives of a good tax system for Nigeria. To prosecute the current assignment, the present article focuses on four aspects of tax, namely; petroleum profit tax, companies income tax, personal income tax, and also, value added tax, in evaluating the impact of tax in Nigeria. The article adopts doctrinal research method in the present study. Also, the article relies on primary and secondary data in the execution of the present task. The article, in its bid to arrive at a firm view of the relevance of tax in the nation's economy, adopted a comparative study of tax developments in some foreign jurisdictions, namely; Ghana, India and lastly, the United Kingdom. The article contends that, whereas tax is envisioned to play a significant impact in the economic growth of any given nation, its impact, however, appears short of the envisaged optimal level in terms of the current volume of economic activities together with its corresponding value of total output in Nigeria. Also, the article shall examine the philosophy behind the current Finance Bill 2019 as presented by the Buhari-led government, which has just been passed into law, and also assented to by the President. The article therefore concludes that Nigeria appears to lag behind most other nations by abandoning her quantum of untapped non-oil driven revenue potentials for enhanced economic growth. The article therefore recommends that, government shall institute an appropriate tax system with an emphasis on broadening the tax base. Also, the article further calls on the government to justify its imposition of tax on the citizenry through provision of utility goods and services for the generality.*

**Keywords:** Evaluation, Fiscal, Comparative, Gross Domestic Product, Macroeconomics

### 1. Introduction

The authors examine the functions of tax in any given economy, and anchor the discourse by highlighting the ideals of a good tax system for Nigeria. Taxation in the Nigeria economy has objective and functions. They are as set out as follows; Taxation has always been employed to raise revenue to satisfy the needs of the people by government such as the provision of services like defence, maintenance of law and order, health services and education. Revenue from taxation can also be spent on capital projects, creation of social and economic infrastructure which will improve the social life of the people and also enable the economy of the country to grow now and in future. Indeed the most important objective of any tax reform in Nigeria today should be to raise more revenue<sup>1</sup>. Taxation is for redistribution of wealth This aspect has two dimensions. The first is the doctrine that taxation should be based on the ability to pay, so that the taxation the burden of taxation ought to be heavier for rich men than for the poor, with taxes being used to pay for social services for the less fortunate. This is achieved by the graduation or 'progressiveness' of the rates at which taxes are levied. The idea is that, the tax system ought to reduce inequality<sup>2</sup>. The second dimension sees the present distribution of wealth as being unjust and so attempts to reverse the situation by fixing taxes at confiscatory rates in favour of the poor. However, high taxes on the income and wealth of the well-to-do can produce either incentive or disincentive effect<sup>3</sup>. Taxation is an important consideration in the planning of savings and investments. The government can use taxation as a powerful fiscal weapon to plan and direct the economy. By doing so, steep booms and deep recessions can be avoided. Taxation can be used in shaping the economic growth and development of a country. A tax system can also provide the government with effective and flexible instruments for the day-to-day management of the economy, hence taxation can be used to achieve specific economic objectives of a nation. Finally, the tax system can be used to regulate or discourage particular activities of citizens which are thought to be undesirable on health and social grounds, such as drinking alcohol, smoking or gambling<sup>4</sup>. Accordingly, high taxes could be placed on these types of commodities to discourage their consumption by the people.

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<sup>1</sup> I. A Ayna, *Nigerian Tax*, Spectrum Publishing Company, Ibadan, 1999, p.5.

<sup>2</sup> *Ibid*

<sup>3</sup>M.N. Umenweke, *Tax Law & its Implications for Foreign Investments in Nigeria*, Nolix Educational Publications (Nig) Uwani-Enugu, 2008, p.2.

<sup>4</sup> *Ibid*.

## 2. Expectations of A Good Tax system

### Equity

This is traditionally divided into two sorts; (a) Horizontal equity; which means that those in equal circumstances should pay an equal amount of tax and, (b) Vertical equality; which means that those in unequal circumstance should pay different amount of tax. Equity in tax classification is considered to be very important. It is right and proper in the same way that equality before the law is right and proper. If a system is believed to be fair and equal, taxpayers will be more willing to co-operate with it. Equity may be satisfied by a proportional system just as much as by a progressive system of taxation and benefits<sup>5</sup>

### Neutrality

A tax is neutral if it avoids distortions of the market. The tax system is 'neutral' if it does not discriminate between different activities in the economy. The Nigerian tax system has many rules, which break the principle of neutrality; worse there are many technical rules which make significant tax differences according to which two or more methods are adopted to achieve a given result<sup>6</sup>. The effect is harmful since it encourages the expenditure of money on expert advice, expenditure, which in economic terms is unproductive, and on schemes which may make a trade less efficient.

### Administrative Efficiency

The administrative costs of collecting and managing taxes should not be higher than the revenue to be raised. In other words, there must be an efficient administration of the tax system by trained tax personnel. Only those who regard the duty of the tax systems as confiscation of wealth in order to provide employment would be happy with a tax whose administrative costs exceeded the tax yield. There is the further problem of compliance cost<sup>7</sup>.

### Certainty

The tax must be such that the payer can ascertain with minimum difficulty what is due from him to the State. The law must be simple and clear and couched in a language that is devoid of ambiguity both in understanding and interpretation.

## 3. Tax Reforms in Nigeria

### Policy, Legal and Institutional Reforms

Policy, legislative and administrative reforms of the Nigeria tax system predate independence and therefore, can be traced back to early twentieth century when the then High Commissioner of the [then] Northern Protectorate issued the Stamp Duties Proclamation in 1903, followed immediately thereafter in 1906 by the Native Revenue Proclamation<sup>8</sup>. This latter Proclamation systematised all the pre-colonial taxes by defining taxable rates; and procedures for assessment and collection, as well as penalties for default thus eliminating arbitrariness that had hitherto characterized the Nigerian tax system. It introduced the four certainties essential in tax practice: what to pay, when to pay, where to pay and who to pay to. The same Proclamation was re-issued<sup>9</sup> as the Native Revenue Ordinance in 1917 to cover the Southern territories and by 1927, was applicable to the whole country. Other major reforms to the tax system were effected in 1982 with the establishment of the Chartered Institute of Taxation of Nigeria and 1993 with a review of the composition of the Federal Board of Internal Revenue (FBIR) and establishment of the present day Federal Inland Revenue Service (FIRS) as the operational arm of the FBIR<sup>10</sup>; as well as a review of the functions of the Joint Tax Board (JTB.) Further changes were effected in 2007 with the granting of financial and administrative autonomy to the FIRS following the recommendations of the 'Study and Working Group on Nigerian Tax System' which had been set up in half a decade earlier<sup>11</sup>. These and other reforms represented the first major attempt at shifting focus away from oil to a more sustainable source of revenue, that is, the non-oil sector. Since then, a raft of changes that cut across organisational restructuring of the Federal and State authorities, the enactment of a National Tax Policy (NTP), funding, legislation, taxpayer education, dispute

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<sup>5</sup> W.A. Chukwuma, *An In-depth Study of the Business Tax law in Nigeria: A Comparative Study of Better Regimes in some Commonwealth Countries*; A Doctorate degree Dissertation, August 2016, p.15.

<sup>6</sup> *Ibid.*

<sup>7</sup> M.N Umenweke, *op cit.*

<sup>8</sup> O. Odhiamba & O. Olushola, 'Taxation and Economic Growth in a Resource a Rich Country: The Case of Nigeria', <http://www.10.5772/intechopen.74381>: Accessed on 20/10/2019.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

resolution mechanism, taxpayer registration, human capacity building, automation of key processes, refund mechanism and several other areas have been effected<sup>12</sup>.

The foregoing would lead to one logical question: why so many reforms?<sup>13</sup> Given the low tax to Gross Domestic Product (GDP) ratio, it is plausible to assume that the need to address the problem of low tax returns motivated the Nigerian Government to embark on these reforms<sup>14</sup>. The scope of, and frequency with which tax reforms have been implemented should however, be viewed within the broader context of the structure of Nigeria's economy and the centrality of taxes to the attainment of national development objectives.

### **Tax Laws and Regulations: Who Taxes What?**

Tax regulations and laws refer to the embodiment of rules and regulations relating to tax revenue and the various kinds of taxes<sup>15</sup>. A tax administration that encourages voluntary compliance, resolutely and legally enforces compliance, treats the tax payer as partner, rewards pro-tax behaviour and operates in an environment of accountability is a preferred tax system<sup>16</sup>. The federal system of government in Nigeria implies that fiscal power is based on a three-tiered tax structure: Federal, State and Local Governments, each of which has, in principle, different and distinct tax jurisdictions<sup>17</sup>. Specifically, the Federal government taxes corporate bodies<sup>18</sup> while State and Local Governments tax individuals<sup>19</sup>. The Taxes and Levies Act (Approved List for collection) gives the Federal, State and Local Governments the responsibilities for collecting the taxes and levies listed in, respectively, Parts I, II and III of the schedule to the Act<sup>20</sup>. Part I of the schedule contains taxes to be collected by the Federal Government<sup>21</sup>. Similarly, Part II of the Schedule presents taxes and levies to be collected by the State Governments<sup>22</sup>. Part III of the Schedule contains taxes and levies to be collected by the Local Governments<sup>23</sup>, with the insertion of user fees and charges therein<sup>24</sup>.

To address the hitherto inherent conflict of fiscal responsibilities and powers among the three tiers of government, the 1999 Constitution<sup>25</sup> classifies governmental taxation responsibilities and powers into exclusive, concurrent and residual lists. The National Assembly<sup>26</sup> is empowered to issue legislation on the taxation of incomes, profits and capital gains, and on matters classified in the concurrent list—particularly those related to the division of public revenue. The State Houses of Assembly<sup>27</sup> may prescribe the collection of any tax, fee or rate, or the administration of a law to provide for such collection by a local government council<sup>28</sup> or any tax, fee or rate not expressly stipulated as being within the authority of the Federal government. The State government<sup>29</sup> is empowered to impose tax on all items in the concurrent list as well as residual matters but to the extent that such laws are consistent with those of the National Assembly. At this stage, it is necessary to examine some of the problems hitches, and roadblocks we have been experiencing in this country through unstructured, and most often illegal tax legislations that different levels of government tend to churn out without giving due regard to the provisions of superior law—especially the Constitution. This practice compounds the problem of tax compliance and enforcement in Nigeria. Sometimes, the problem could emanate from the 1999 Constitution<sup>30</sup> itself, which is

<sup>12</sup> *Ibid.*

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> *Ibid.*

<sup>17</sup> *Ibid.*

<sup>18</sup> Taxes and Levies (Approved Lists for Collection) Act, LFN 2004 (As Amended), Section 1 (1).

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> Taxes and Levies (Approved List for Collection) gives a false impression that there are 39 taxes in Nigeria. A careful consideration of its provisions will reveal that it is even a taxing statute properly called since it deals with the 'power to collect' and not a 'power to impose taxes'. This position is reinforced by the language of the statute which employed words and phrases such as 'collecting,' 'collects' and 'shall assess or collect'.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> CFRN LFN 1999, Sections 2(2), 3(1) and 3 (6) .

<sup>27</sup> CFRN LFN 1999, Part 1 of the Second Schedule to the Constitution.

<sup>28</sup> CFRN LFN 1999, Sections 4(4) and 2(2).

<sup>29</sup> CFRN LFN 1999, Items 7 and 9 of the Concurrent Legislative List, Part 11 of the Second Schedule to the Constitution.

<sup>30</sup> It must be noted that the taxes mentioned in item 7 of the Concurrent legislative list are contained in the Exclusive legislative list. The power to impose taxes is exclusively reserved for the National Assembly. But under item 7 of the Concurrent

some cases, may not be clear enough as to which level of government shall exercise legislative powers in certain subject matters. This situation gives rise to the prevalence of double or multiple taxations on taxable goods and services: on the same taxpayer for the same goods or services already taxed by another level of government. This practice gives rise to an astronomical increase in the tax burden of complaint taxpayers: and, therefore, discourages compliance<sup>31</sup>.

#### **A Review of National Tax Policies**

Tax policy provides a set of rules, *modus operandi* and guidance for all stakeholders in the tax system. Tax policy formulation in Nigeria is the responsibility of the FIRS, Customs Services, Nigerian National Petroleum Corporation (NNPC), and other agencies of government but under the guidance of the National Assembly<sup>32</sup>. A good tax policy needs to satisfy both efficiency and equity criteria. Any tax policy is, however, continually subjected to pressure and changes. The authors opine that the best approach to reforming taxes is one that considers taxation and empirical evidence<sup>33</sup>. Efforts shall be targeted at blending the envisaged ideals with a good dose of local knowledge and sound appraisal of the prevailing macroeconomic and international situation to produce a feasible set of proposals sufficiently attractive to be implemented and also, robust enough to withstand changing times. More recently, a National Tax Policy (NTP),<sup>34</sup> which sought to provide a set of guidelines, rules and *modus operandi* that would regulate Nigeria's tax system and provide a basis for tax legislation and tax administration came on board. The NTP seeks to resolve amongst others, some inherent problems of the existing tax system such as multiple taxation; uncertainty and leakages in the tax system. The NTP, in effect has shifted focus from direct taxation to indirect taxation. Presently, the Buhari-led government has introduced a Finance Bill<sup>35</sup>, which the government has claimed would promote fiscal equity, reform domestic tax laws, support small businesses, introduce tax incentives for investments in infrastructure and capital markets, and also, raise revenues for the government. The bill, otherwise tagged Finance Bill 2019, contains vast changes to the Companies Income Tax Act, Value Added Tax Act, Petroleum Profits Tax Act, Personal Income Tax Act, Capital Gains Tax Act, Customs and Excise Tariff Act and also, Stamp Duties Acts.<sup>36</sup> It is expected that the Bill shall be enacted by the National Assembly at the same time at the passage of the 2020 National Budget and the 2020 Appropriation Act<sup>37</sup>.

#### **4. Focus on Taxes in Nigeria**

The authors shall confine the present discourse on the trends, prospects and challenges of petroleum tax, companies income tax, personal income tax and value added tax as veritable fiscal tools for economic growth in Nigeria;

##### **Petroleum Profit Tax (PPT)**

Petroleum taxation in Nigeria is as complex and complicated<sup>38</sup> as the taxation of any other primary products. Many non-tax considerations<sup>39</sup> seem to weigh higher than taxation, which is the subject-matter, and that perhaps explains the complication. Though the Petroleum Profits Taxes Act (PPTA) remains the current principal Act, yet it is not the only taxing law<sup>40</sup>. What standard would apply to an operator would invariably be dictated by the agreement, the operators signed with the NNPC, which is the government agency, and or the petroleum

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Legislative list, the National Assembly can delegate the power to collect those taxes (with the exclusive of taxes relating to companies) and or administer the laws imposing such taxes to state government.

<sup>31</sup> Perhaps the problems that predated the emergence of the 1999 Constitution on the division of taxing powers are still alive with it. Most governments still legislate and collect taxes in areas not allocated to them.

<sup>32</sup> The authors assert that the desperations and lawlessness being orchestrated by various tiers of government are as a result of the scheme to outwits one another in their assessment and collection of taxes

<sup>33</sup> Legally speaking, multiple taxation is not unlawful if it is not prohibited by law. It becomes unlawful, especially in a federation like Nigeria when one level of government goes ahead to collect taxes or enact tax laws on subjects reserved for a particular and different level of government. But the problem with multiple taxation, which is why it is frowned at, is that it stands at variance with one of the cardinal principles of taxation, which is a 'simplicity and easy to comply.'

<sup>34</sup> Study Group on the Nigeria Tax system, Nigerian Tax Reform in 2003 and Beyond (2003) (unpublished p. 49).

<sup>35</sup> The Finance Bill 2019 was presented together with the 2020 Appropriation Bill to a joint session of the National Assembly on the 8<sup>th</sup> of October, 2019 by President Muhammad Buhari.

<sup>36</sup> The Finance Bill 2019, if passed into law, shall bring along with it far reaching changes in the fiscal policy through initiation of reviews in the nation's domestic tax laws and other enabling laws. Top on the proposed legislation is the upward review of VAT from the present 5% to 7.5 %, an indication of 50% upward review, amongst other proposed reviews.

<sup>37</sup> The authors are of the view that the Buhari-led government intends to drive the proposed 2020 Budget from the proceeds that shall arise from the proposed Finance Bill 2019.

<sup>38</sup> J. A Arugundede, *Nigerian Income Tax & Its the International Dimension*, (1<sup>st</sup> 'edn' Printmarks Ventures, Sosami Ibadan, 2008) p 226.

<sup>39</sup> *Ibid.* Other factors included political, ethnic, economic, social, etc.

<sup>40</sup> CAP P8 LFN 2004.

concessionaries, as the case may be. The Act still provides the framework for the computation of the PPT, but what goes into the computation is dictated by the terms of these agreements which modify the application of the provisions of the PPTA. The provisions of the Act are similar to those of the CITA and the PITA with respect to assessment and appeal procedures for tax purposes<sup>41</sup>. For tax purposes, these are four main fiscal regimes, Joint Ventures Contracts, Production Sharing Contracts, Sole Risks and Risk Services Contracts. There are variances of these main groupings, depending on the operating arrangements within the regime. For instance, within the 'Sole Risk' regime, there are the stand-alone operations (those that do not have foreign technical partners), the joint-operating partners (those that team up with foreign partners as a unity), and the service-contract arrangement (arrangement similar to production sharing contract, where the technical partner produces the capital and the know-how for the venture, but the profit is shared in agreed ratios).

The scope of taxation of profits from this sector is a reflection of the structure of the industry<sup>42</sup> which is broadly categorized into three, namely the upstream activities, otherwise called exploration and production, midstream operation, downstream operations and the provision of various ancillary services to the industry. Upstream activities involve prospecting exploration and production of crude oil, while midstream operations cover petrochemicals, refineries and lubrication plants. Downstream operation covers marketing and transportation. There is the oil servicing which includes services such as surveys, drilling seismic analyses, supplier of materials or personnel provided by company in petroleum industry. The Federal Inland Revenue Services is responsible for assessing, collecting and accounting for all taxes, levies and dues including royalties from companies operating in the extractive sector<sup>43</sup>. The taxes paid by the companies in the petroleum operations are handled by a specialized department in the Services. The Central Bank of Nigeria is the depository for royalties, PPT and also, other direct taxes and further provides equally for collection of information for reconciliation of all government receipts. Other government institutions that monitor the petroleum sector include Weights and Measures Units, the Expatriate Quota Office, the Environment Protection Agencies, the State Boards of Internal Revenue<sup>44</sup>etc.

#### **Companies Income Tax (CIT)<sup>45</sup>**

The term corporation tax or companies income tax refers to tax on the profits of companies<sup>46</sup>. Companies Income Tax Act (CITA) defines the term company as any company or corporation (other than a corporation sole) established by or under any law in force in Nigeria or elsewhere. The limitations of Companies Income Tax are as prescribed by the extant provisions of the current law which consolidates the provisions of all other pre-existing laws on the subject matter. A paradigm shift on the statutory framework for the regulation of companies income tax regime was introduced in 1939 through the instrumentality of the Companies Income Tax Ordinance. Before the law came into being, the regulation of both personal and business taxation was vested in one and the same legal regime. The second time a law was passed at the exclusive taxation of companies income was in 1961. This was the Companies Income Act which was a landmark legislation, first because from the date it came into force, the provisions of the Income Tax Administration Ordinance together with all rules made there under ceased to have effect with respect to companies income tax. Second, the Act established the Federal Board of Inland Revenue as a statutory body and vested it with the power to administer companies income tax as well as federal taxes. The Companies Income Tax Act 1961 was in force until 1979 when it was repealed by the Companies Income Tax Act No. 28 1979.

The Companies Income Tax Act 1979 has been amended severally by various Finance (Miscellaneous Taxation provision) Act. In 2007, CITA 1979 was further amended by the Companies Income Tax (Amendment) Act to reflect some of the recommendations of the 2002 Study Group. The authors have been able to identify the following as factors which are still impeding the full actualization of the envisaged goals of the companies Income Tax Act in spite of the various reforms initiated so far. These include: Imprecise CITA Provision on Nature of Penalty. A glance of the penal provisions in the tax extant law<sup>47</sup> show that the law fixes the maximum sentence and leaves it to the judge to decide the quantum of sentence to be given to a convict. In this regard, the court must

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<sup>41</sup> On assessment, collection and enforcement procedures, PPTA shares in every respect some characteristics with CITA and PITA, for the simple reason that, apart from the mere legislation, the propeller driving the law remains the one and only statutory body, the FIRS.

<sup>42</sup> E. Anna, 'From fossils, To Hydrocarbon To Fortune: The Oil and Gas Evolution', *Gauge- A Quarterly Publication of the FIRS*, July-September, 2012, P9.

<sup>43</sup> FIRS(E) Act LFN 2007 Section 3.

<sup>44</sup> *Op Lit.*

<sup>45</sup> The incumbent Buhari-led government is tinkering of reviewing upward various business taxes as a measure to widen the tax nets of the nation's taxable bases.

<sup>46</sup> A Garner, *Black's Law Dictionary* ( St Paul, MN: Thomson/West, 2004) p. 379.

<sup>47</sup>This is validly captioned under CIT (Amendment) Act LFN, 2007, Part XIII.

justify the trust and confidence reposed in it by the public to impose sufficiently severe sentence not being unnecessarily lenient. The authors, however, are not oblivious of the fact that there is too much emphasis on the separation of moral consideration from the interpretation of tax statutes even when tax avoidance schemes are involved. This position had earlier been echoed in *Margin v. IRC*.<sup>48</sup> There is also Power to Compound Offence under the Act. By compounding tax offences, it means that the tax authority<sup>49</sup> will agree for consideration not to prosecute any tax offence by accepting a money payment in lieu of criminal liability. Thus, the relevant any tax authority is imbued with the discretionary power to compound any offence under the Act by accepting a sum of money not exceeding the maximum fine specified for the offences. It is the view of the author that granting the Federal Inland Revenue Service the power to compound all the offences will surely whittle down the power of the Service and thus, that may portray the Service as a compromising agency. Again, the author is of the view that such power might be susceptible to abuse.<sup>50</sup> There is further power to Vary or Revoke Rate of Company's Income Tax. One of the fallouts of the reforms of the Companies Income Tax Amendment Act<sup>51</sup> was the amendment to the Act which now vests in the National Assembly the power to vary or revoke the rate of companies income tax earlier vested in the president. The amendment is of the view that the National Assembly shall act only on the president's proposal. The author considers this very reform as mere superfluous. The view is very simple. By the tenets of the amendments, the National assembly can only act unless and unless the president directs, as it were.

### **Personal Income Tax (PIT)**

This is a tax regulated by the Personal Income Tax Act (PITA)<sup>52</sup> It is imposed on individuals who are either in employment or are running their own businesses under a business name or partnership. Though imposition of the tax is a federal responsibility, the tax, however, is collected by state governments from those that are resident in their various states, regardless of whether they are federal, state, local government or private sector workers<sup>53</sup>. However, in case of resident of Federal Capital Territory, staff of Ministry of External Affairs, members of the Armed forces, and the Police, as well as non-resident individuals, the tax is collected by FIRS<sup>54</sup>. Persons chargeable there under are either in employment or business. They include any individual or body of individual such as communities, families, any corporation or executors of the estate of a deceased person. Collection of Personal Income Tax is the responsibility of both Federal and State Tax Authorities<sup>55</sup>. The Taxes and Levies Act permits the Federal, State and Local governments to collect taxes from their jurisdictions<sup>56</sup>. The Act limits the federal government to collecting personal income tax from all residents of the Federal Capital Territory, Abuja, the police the Armed Forces, staff of Ministry of Foreign Affairs as well as non-residents,<sup>57</sup> There are two methods of collecting of personal income tax, and they are; pay-as-you-earn or through direct assessment on the incomes of self employed persons. Under Pay-As-You-Earn, all employers with a minimum of certain number of workers should initiate a scheme for deduction from the earnings of the staff<sup>58</sup>. At the beginning of the year, all employees are to obtain and complete from 'A' and based on the information contained therein, the assessment of their annual tax liability is made. Direct Assessment is otherwise known as the informal sector. It is often referred to as an underground economy<sup>59</sup>. This is based on direct assessment of incomes of self-employed persons. The potential taxpayer under the mode is assessed by the Revenue Authority, and the taxpayer is made to pay the assessed tax on the spot. This approach is the hallmark of taxation in the informal sector of the economy. This mode has been criticized by not just a few due to its apparent defects<sup>60</sup>.

The authors contend that the following factors seem to hamper the development of the Personal Income Tax in Nigeria. They are;

#### *Joint Tax Board: A Lame Duck?*

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<sup>48</sup> 1971) AC 739 at 736

<sup>49</sup> FIRS(E) Act, LFN, 2017, Section 48(1)

<sup>50</sup> This is so because the Act fails to prescribe standards for tax authorities for compounding tax offences.

<sup>51</sup> *Op cit*, section 100.

<sup>52</sup> PITA, LFN, 2004, Section 1 (a) & (b).

<sup>53</sup> *Ibid*, Section 2 (1) .

<sup>54</sup> *Ibid*, Section 2 (2).

<sup>55</sup> *Ibid*, Section 2 (3).

<sup>56</sup> Taxes & Levies (Amendment) Act, LFN, Section 1(1).

<sup>57</sup> *Op cit*,

<sup>58</sup> PITA LFN, 2004, Section 81.

<sup>59</sup> This is referred to as an informal or underground economy because the operation of the sector might not have been captured into the tax net by any known law or regulation.

<sup>60</sup> An approach that resembles a scenario of tuggery and violence where use of force is employed by Revenue Authority to make prospective taxpayers comply.

The Joint Tax Board is a big umbrella covering all the tax authorities in Nigeria. It was originally a creation of Income Tax Management Act (ITMA)<sup>61</sup>. The 1961 ITMA provided for a representative each from each of the then three regions, now States, and the defunct Federal Territory of Lagos. Sub-section (2) provided thus, ‘The Board shall consist of the following members charged with responsibility for matters relating to income in each territory’. Subsection (8) (a) thus sets a limiting factor for the operation of the Board, thus ‘the Board shall exercise the powers or duties conferred upon it by any express provision of this Act and... of each territory to be exercised by the Board’. It was evident that the power and authority in a purely technical organization, resided not with members but with the government of each region. The situation has not even changed up till now<sup>62</sup>. This created a destabilizing factor in the operation of the Board since a member had and still has no opinion different from that of the sponsoring government<sup>63</sup> in a technical matter. Thus an independent view of a member implies replacement.

#### *Evidence of Double Jeopardy as Created by PITA*

It is trite that payment of penalties for tax default is quite different from criminal prosecution, which upon conviction may earn a term of imprisonment. The key difference is that while penalties are imposed privately and subject to generate confidentiality that surrounds a person’s tax affair, criminal prosecutions are done in open court<sup>64</sup>. Does it not relieve a person from liability to payment of tax for which he is or may become liable? The question that quickly comes to mind is whether this is compatible with the constitutional preclusion of a citizen from double jeopardy? In other words, can acquittal of a taxpayer on a charge for any delinquency bar the relevant authority from imposing penalty for tax fraud regarding the same facts and intent? Thus the authority laid in *Helvering v. Mitchell*<sup>65</sup> is apposite.

#### *Apparent Uncertainty in Interpretation of Section 95(2) PITA*

The author evaluates critically the intendment of the law vide section 95 (2) PITA which defines the offence of making incorrect returns and penalty thereto. What the Act punishes under this section is making incorrect returns. The law, perhaps, is ‘silent on making no returns at all’. Thus, there is no definition for and imposition of penalty for making no returns at all. One may query-what then happens should the Revenue Authority finds that a taxpayer has made no returns in a particular year in view of section 36(12) of the Constitution. The case of *Moschi v General Commissioner for Kensington & Anor*<sup>66</sup> tried to provide an answer to this kind of circumstance. It was the argument of the counsel in that suit that making an improper return is not the same as making no returns at all, and it is the former that attracts penalty and not the latter.

#### **Value Added Tax (VAT)<sup>67</sup>**

VAT, which is regulated by the Value Added Tax Act (VAT Act),<sup>68</sup> is a consumption tax, otherwise technically referred to as a multi-stage tax, which is imposed on non-exempted goods and services at each stage of the consumption chain<sup>69</sup>. However, it has a single effect and therefore does not add more than the specified rate to the consumer price no matter the number of stages at which the tax is paid. Since VAT is a consumption tax, it is relatively easy to administer and difficult to evade. The yield from VAT is a fairly accurate measurement of the growth of an economy since purchasing power (which determines yield) increases with economic growth.<sup>70</sup> VAT is broadly based tax on consumer expenditure. To be more specific, it is a tax on three classes of transaction made in Nigeria, as set out below. VAT is charged on supply of goods and services made in Nigeria by traders referred to as ‘taxable persons’<sup>71</sup>. Tax is chargeable by the taxable person who makes the supply and he periodically pays the amounts so charged to the FIRS<sup>72</sup>. This tax is known as ‘output tax’<sup>73</sup>. VAT is charged when goods are moved

<sup>61</sup> Now PITA LFN 2004 Section 86.

<sup>62</sup> The authors still assert that even with the introduction of the current provision vide PITA (Amendment) Act LFN 2011 section 22 (c) that nothing substantial has changed with the operations of the board.

<sup>63</sup> Thus the authors still consider the JTB as a lame duck.

<sup>64</sup> J. Tilley, *Revenues Law* (Butterworths London 1778) Pp 82-83.

<sup>65</sup> (1971) 303 US 1630; the authority calls for a bar to a subsequent action on a recalcitrant taxpayer for such shall expose the party to double jeopardy.

<sup>66</sup> (1980) STC PT 681.

<sup>67</sup> Nigeria’s VAT rate is undergoing a process of an upward review from the current 5% to 7.5% as an executive bill is underway for legislative approval. The incumbent administration claims that the proposal is one of the various measures aimed at broadening the nation’s tax net.

<sup>68</sup> Value Added Tax (Amendment) Act LFN 2004

<sup>69</sup> Section 42, *Ibid.*

<sup>70</sup> Section 7, *Ibid.*

<sup>71</sup> Section 10 (2), *Ibid.*

<sup>72</sup> Section 42 *Ibid.*

<sup>73</sup> Section 13 (2), *Ibid.*

to Nigeria.<sup>74</sup> The tax due on goods imported is paid direct to the FIRS at the same time as import duties<sup>75</sup>. This is normally the time when goods are entered for home use, either at the time of importation or when they are removed from warehouse or a free zone. VAT is largely removed from business cost, and hereby confined to consumer expenditure, by providing taxable persons with a credit mechanism. Subject to a number of exceptions, taxable persons are entitled to recover the VAT they have paid from the FIRS. This tax is then known as 'input tax.' Taxable Goods/Services include all goods and services manufactured/assembled in or imported into Nigeria and cover also services rendered by any person in Nigeria, excepting those in either case, exempted under the law.

Is VAT Act a Potpourri of Legal Confusion or is it a legal absurdity? Considering the contention between Lagos State and the Federal Government<sup>76</sup> over the validity or otherwise of the VAT Act and the State's Sales Tax Law, the author examined the possible legal arguments in support of the parallel and opposing positions taken by each level of government (Federal and State) against each other. Thus, it is not only Lagos State Government that is contesting the legality of the Federal Government to impose and collect VAT throughout the country, some other states<sup>77</sup> are joining the fray apparently because they need to increase their financial bases?. Is VAT Act in exclusive or concurrent list? Having examined the provision of the 1999 Constitution<sup>78</sup> as it relates to existing law, the query now is- of what status is the VAT Act? Can it be regarded as an Act of the National Assembly applying to intra-state, inter-state and or international transactions throughout the country? Or can it be regarded as a law validly made by the House of Assembly of State which has now displaced Sales Tax Law that is enacted by the different state governments in the country? There appear two contending views the author intends to examine here. The first view maintains that the VAT Act can only survive section 315 and other provisions of the Constitutions as an Act of the National Assembly applying only to inter-states transaction where the sales tax law operates.<sup>79</sup> However, the second but opposing view maintains that the VAT Act, like the Personal Income Tax, survives Section 315 and other provisions of the Constitution as an Act of the National Assembly (without any change to its areas of operation) and therefore applies throughout the country<sup>80</sup>. Hence, any state's sales tax law that conflicts with it (the VAT Act) is thus void and null to the extent of its inconsistency<sup>81</sup>. Be that as it may, some opinions have argued that VAT Act may validly operate *pari passu* with a state's sales tax law<sup>82</sup>.

## 5. Tax Developments in some Foreign Jurisdictions

The authors now examine tax developments in some other foreign jurisdiction, with a view to comparing the strides attained in those other chimes with the spate of tax developments in Nigeria. The foreign jurisdictions examined are India, Ghana and the United Kingdom.

### Indian's New Tax Plan under Focus<sup>83</sup>

In India, those who do pay tax feel unfairly squeezed since large sections of the economy remain outside the tax net. In 2017, of the total population of 1.33 billion, only 84.4 million Indians paid income tax<sup>84</sup>. Many political leaders have pointed out that 'when it comes to taxes, India is a non-compliant nation'. They (the political leaders) were of the view that, the problem was not limited to returns not being filed; adding that even those who do pay taxes, tend to significantly under report their incomes. Perhaps, one consequence of so many Indians choosing to either avoid or evade tax has been that tax rates have rarely determined the nation's voting patterns. However, a country's tax structure is often crucial in determining the quantity and quality of investment it attracts, which in

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<sup>74</sup> Section 10 (2) *Ibid*.

<sup>75</sup> Section 2, *Ibid*.

<sup>76</sup> *Attorney General of Lagos State v Eko. Hotels Ltd & Federal Board of Inland Revenue*; unreported, Suit No. CA/L/428/015 (CA).

<sup>77</sup> Others include Oyo, Ogun and Ekiti States.

<sup>78</sup> CFRN LFN 1999, Section 315.

<sup>79</sup> The authors contend, and in a very strong terms too, that since item 59 of Part 1 of the second schedule to The 1999 Constitution covers taxation of incomes, profits and capital gains, and since there is no place where in the Exclusive Legislative List where the taxation of consumption of goods and services is mentioned, it then means that such consumption tax is not captured there under. *Simpliciter!*

<sup>80</sup> Thus it becomes the assumption when VAT Act is presumed to have been captured by the omnibus clause of section 315 of the 1999 CFRN which seems to have saved all pre-existing Decrees prior to the extant Constitution.

<sup>81</sup> This is so by virtue of the provisions of CFRN LFN 1999 Section 4 (3).

<sup>82</sup> Such opinion holders would readily rely on the authority of the Supreme Court's decision in *Attorney General of Ogun State v. Aberuagba & Ors* (1985) 1 NWLR (pt 3) 395.

<sup>83</sup> We shall assess the present tax initiatives of the incumbent Modi government in India by highlighting the problems and prospects of its fiscal policies. That figure projects about 6:3 percent of the Indian's population Available at <http://www.indianewsforum.com>. Accessed on 24/10/2019.

turn, has a substantial impact on a country's growth rate.<sup>85</sup> The proposed tax structure is mindful of India's current environment, and could include incentives to encourage investment, such as making it easier for corporate to restructure after mergers and acquisitions. The code also has proposals to make tax administration less intrusive. 'Tax terrorism'<sup>86</sup> is a criticism that the government has repeatedly faced, with protests about harassment by tax officials coming from across the board, from start-ups to big businesses. The committee's recommendations also include some measures on how assessments would be made and the use of technology to increase compliance in a non-intrusive manner. Indian's new tax plan includes suggestions to review the extant tax legislations on dividends and equity and also, to activate savings and consumption. There are also suggested reforms to create an effective and efficient dispute resolution mechanism. The overarching theme behind the recommendations has been to introduce simplicity to the tax legislations and also, restore people's faith in the taxman<sup>87</sup>. Whatever the final proposal includes, the author is of the firm view that the government ought to be mindful of the fact that a slew of economic sectors are already facing financial distress and are looking for some sort of relief. On this count, the authors predict that the new direct tax code shall be expected to lower income taxes and take forward the plan to lower the corporate tax. The Modi government has already overhauled India's indirect tax regime via the Goods and Services Tax.

### **Ghana's Current Tax Initiatives**

Ghana's tax reforms constitute the major policy instrument needed to accelerate growth and poverty reduction. Over the past two decades,<sup>88</sup> the government has consistently spent more revenue than it has often been able to generate and the gap is often financed with foreign aid which has perpetuated the country's aid dependency. The authors opine that the two options can be explored to reduce the gap between government revenue and expenditure; generate more revenue or reduce government expenditure. Although the latter sounds reasonable, the authors are still of the view that the government needs to spend more on key sectors like education, health and infrastructure if the country is to significantly reduce poverty. The article has been able to highlight that the critical issue has been how to generate the needed resources domestically, using tax instruments that are least harmful to the poor. This will obviously involve reforming the tax system to ensure efficiency by widening the tax net without necessarily increasing the tax rate. The authors provide an assessment of the changing structure of the tax system in Ghana over the last two decades and also, suggest ways to improve tax administration in the country. What is the impact of Ghana's tax reforms? Have reforms succeeded in generating more tax revenues? By the research conducted at the instance of the United Nations University-World Institute for Development Economics Research(UNU-WIDER)<sup>89</sup> which assesses the changes in the structure, components and impact of taxes in Ghana over the last two decades, the UNU-WIDER noted that the nation's tax revenue has increased, but that, 'it is still low in relation to government expenditure'. The tax system in Ghana has improved over the last two decades<sup>90</sup>. As a result, the tax-to-GDP (Gross Domestic Product) ratio has more than doubled. However, domestic tax revenue is still low in relation to government expenditure, which remains largely financed by foreign aid

### **United Kingdom Ignites New Tax Frontiers**

Significantly, the United Kingdom (UK) has decided to move ahead of the European Union (EU) in announcing her plan to introduce a new tax on the turnover of certain digital businesses. Thus UK shall introduce a two percent tax on the revenues of certain digital businesses<sup>91</sup> that derive value from their UK users. According to the proposal, the new tax shall apply to revenues generated by search engines, social media platforms, and online marketplaces. The proposed tax shall also apply to revenues from those activities that are linked to the participation of UK users<sup>92</sup>. Happily enough, the proposed tax regime shall include a 'safe harbor' The proposed tax initiative intends to introduce new corporate tax reliefs and amendments to existing provisions<sup>93</sup>. The new tax plan has provision for introduction of a new Structures and Buildings Allowance (SBA), which shall provide relief for qualifying capital expenditure on new non-residential structures and buildings. The proposed UK tax regime shall introduce

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<sup>85</sup>These include the Indian's former fiancé ministers, Arun Jaitley and Petrus Chidambaran. Available at <http://www.investopedia.com/terms/i/indianews>. Accessed 01/11/2019.

<sup>86</sup> This underscores. Modi's government aim of growing India to a \$ 5 Trillion economy in 2024. This is so particularly with consumption currently on a slide, at the lowest it has been in a while. Available at <http://www.worldnews>. Accessed 04/11/2019.

<sup>87</sup>The authors presume that perhaps a direct tax reform could provide a similar boost to business and industry as crucial steps along the way would involve making compliance easier, reducing rates for business and industry, and also laying out a comprehensive dispute-resolution mechanism. Available at <http://www.indianewsforum.com>. Accessed 29/10/2019.

<sup>88</sup> Ghana's new tax measures to reinvigorate the economy. Available at <http://www.ghanaradio.com>. Accessed 25/10/2019.

<sup>89</sup> UNU-WIDER investigations in Ghana. Available at <http://ghanaradio/24htm>. Accessed 20/10/2019.

<sup>90</sup> Ghana new tax roadmap. Available at <http://www.ghanatelelnews>. Accessed 29/10/2019.

<sup>91</sup> New tax plan in UK. Available at <http://www.onlinenews/ukairnews>. Accessed 29/10/2019.

<sup>92</sup> UK budget 2020 proposals. Available at <http://www.ukwnews/com/waves>. Accessed 02/11/2019.

<sup>93</sup> UK proposal taxes. Available at <http://www.ukchannelstele/com/uknews>. Accessed 05/11/2019.

also a limit on the amount of payable tax credit that can be claimed by a company under the new tax relief. The limit shall be set at three times the company's total Pay As You Earn and National Insurance contributions (NICs) payment for the period, with effect from 2020 accounting periods. The proposed tax review shall further simplify stamp taxes on shares and thus prevents contrived arrangements from being used to avoid tax. Finally, changes are to be legislated for in the proposed Finance Bill to make technical amendments to the long funding lease and corporate interest restriction rules to ensure they function as intended, including following the introduction of the new accounting standard for leases. The UK legislation on tax relief shall also be amended to ensure the law works as intended, and also, to prevent relief for carried-forward losses being claimed in excess of that intended.

## **6. Conclusion and Recommendations**

The authors have examined the relationship between taxation and economic growth in Nigeria, with special focus on petroleum profits tax, companies income tax, personal income tax and also, value added tax. However, we have observed that the proportion of tax contribution to the growth rate of the Nigerian economy falls short of the optimal level in terms of the volume of economic activities and total value of output, as well as the country's potential for revenue generation. This finding is instructive for both policy and decision making as far as the enhancement of Nigeria's taxation structures and domestic resource mobilization are concerned. Also, we have been able to identify, through a comparative study, of some developed and developing nations (India, Ghana and United Kingdom) that Nigeria is lacking behind most other nations in evaluating the impact of tax on its contribution to the growth rate of the Nigerian economy. Hence, there is an urgent need on the part of government to initiate a tax policy that will drive and sustain the nation's economy. Thus we are of the firm view that the ongoing tax policy and institutional reforms, as well as strategies aimed at diversifying and shifting the economy from over-reliance on the oil and gas sector, shall not only elevate the relative position of non-oil tax revenues, but also improve the overall tax effort so that taxation can become an important instrument of fiscal policy, thereby ensuring macroeconomic stability and steady economic growth. We are therefore resolute in our position that the proposed Finance Bill which has just been passed into law and also, assented to by the President, shall further initiate and sustain a robust fiscal policy to drive the nation's economy. We make bold to assert, and in strong terms too, that the newly passed Finance Bill, now an act of the parliament, shall enthrone the envisaged tax-driven economy, as opposed to the hitherto oil-led economy, which has proven to all Nigerians, to be volatile and therefore, unstable.