

RE-APPRAISING THE LEGAL FRAMEWORK FOR IMPOSITION AND COLLECTION OF VALUE ADDED TAX ON CROSS BORDER TRANSACTIONS IN NIGERIA*

Abstract

A transaction will generally be considered a 'cross-border' transaction where parties are not all located in the same jurisdiction and/or where the governing law of the transaction documents is different from the nationality or jurisdiction of parties. Cross border taxation focuses on the laws which have been put in place by a country for the levying of tax on the inbound and outbound transfer of goods and services in its own jurisdiction. In Nigeria, the law governing and regulating such transactions is the Value Added Tax (Amendment) Act 2007 and Value Added Tax amendments contained in the Finance Act, 2019 and 2020. VAT is imposed and collected on the value added at each stage in the production and distribution of a good or service. It is, in effect, levied on the difference between the sales and production inputs of a business. It is charged at 7.5% on supply of goods and services in Nigeria. Cross-border transactions come with many challenges which impact current VAT rules and systems negatively and expose serious shortcomings and difficulties in their proper interpretation, compliance and administration. The principal deficiency in modern VAT systems is their inability to levy VAT on affected transactions as many VAT rules were designed only taking into account national economic activities and not international activities. Many cross-border trading activities may potentially fall outside of the tax net thereby generating uncertainty and consequently, litigation. This paper primary focus is the reduction of cross-border tax obstacles by improving the VAT rules governing cross border arrangement. It is therefore intended in this work to appraise the legal framework for VAT as it relates to these issues and makes necessary recommendations among which is that government should adopt appropriate and current information technology that will make tax payment process easy, which will in turn reduce tax evasion.

Keywords: Value Added Tax, Cross Border, Transactions, Goods, Services, Nigeria

1. Introduction

The level and magnitude of economic growth in terms of political, social and infrastructural development of any nation most times depends on the amount of revenue generated/and/or available in that country¹. One means by which government generates revenue to meet her primary obligations in Nigeria is through a well-structured tax system.² The success or failure of any tax depends largely on the extent of how it is properly managed, the extent to which it is interpreted and implemented as well as the publicity brought to it. All this determines how a particular tax is able to meet its objective.³ Tax laws all over the world are generally fraught with arcane complexities that sometimes give rise to difficulties in their proper interpretation, compliance and administration.⁴ The Nigerian Value Added Tax Act Cap V1 L.F.N. 2004 as amended by Act No. 12 2007 is not immune from this global challenge although it appears simple and straightforward at a glance.⁵ The scheme of the Value Added Tax (VAT) regime is to bring under the tax net all value added to goods and services as they proceed through various stage of productions, distributions and services as they are rendered which is eventually borne by the final consumer.⁶ The legal framework for the imposition and collection of Value Added Tax on cross-border transactions in Nigeria has left much to be desired in terms of effective implementation. The underlying principle of a common VAT system is that supplies should be taxed in the country where they are consumed i.e. used and enjoyed. Determining the place of consumption is crucial and poses' problem at times. For purposes of VAT, it is important also to distinguish between the supply of goods and of services as the two are treated differently. As straightforward as that may seem taxpayers and tax authority do not always agree on whether an item is goods, services, or neither. These difficulties pose a challenge to enforcing the current VAT rules governing cross-border supply of goods and services thereby reflecting its inadequacy. The collection of VAT on cross border transaction is not guaranteed in the absence of adequate VAT rules. Many countries are faced with the challenge of

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¹BA Olaniyi and TA Bello 'Effect of Value Added Tax and Capital Gains Tax on Economic Growth in Nigeria: Traditional Versus Buoyancy Approach' (2016) (5) (1) *Entrepreneurial Journal of Management Sciences*, 47.

²GN Ogbonna and A Ebimobewe, 'Impact of tax reform and economic growth of Nigeria: A time series analysis' [2012] (4) (1) *Current Research Journal of Social Science* 62.

³N Loveday, 'Withholding tax and corporate financial performance: evidence firm the construction industry in Nigeria' [2012] (4) *International Journal of Academic Research* 151.

⁴A Ezeamama, 'Vat on Imported Services – Re-Examining the Vexed Issue of Carrying on Business in Nigeria in the Context of the Vat Act (Part 1)' [28 October 2017]<<https://www.linkedin.com/pulse/vat-imported-service-re-examininig-vexed-issue-in-nigeria-ezeamama>> accessed 12 January, 2022.

⁵ *Ibid*.

⁶ KA Ishola, *Taxation Principles and Fiscal Policy in Nigeria* (Ibadan: Crest hill Publishers Ltd 2017), p24.

establishing adequate rules that will ensure better collection of VAT.⁷ It is becoming very important to consider how to better address the issues which result from cross boarder sales and purchases. A simplified and optimal VAT system that minimizes the inefficiencies in the collection of VAT payable on cross border supply of goods and services is required.⁸

This paper is therefore predicated on a background of the foregoing, and will appraise the legal framework for the imposition of value added tax on cross border transactions by residents and non-residents. The nature of cross border transactions would also be examined as well as the basis for the determination of taxable persons and recommendations for improvement to the legislative framework will be proffered.

2. Nature of Value Added Tax

Value Added Tax (VAT) is one of the most popular taxes around the world. It has been introduced in developing countries like, Benin republic, Cote d' Ivoire, Guinea, Kenya, Madagascar, Mauritius, Niger republic, Senegal, Togo etc. Evidence has shown in these countries that VAT has been an important contributor to total government revenue. Before the introduction of VAT in Nigeria, Sales tax was under the jurisdiction of the States and generally poorly administered with marginal contribution in terms of revenue.⁹ It covered only nine categories of goods plus sales and services in registered hotels, motels and similar establishments. The narrow base of the tax negated the fundamental principle of consumption tax, which by nature is meant to cut across all consumable goods and services. Also only locally manufactured goods were targeted by the Sales Tax of 1986. Value Added Tax is a consumption tax, multi-stage tax and a self-assessment tax. It is a consumption tax on the basis that it is intended to tax personal consumption comprehensively, neutrally and efficiently.¹⁰ In general, with consumption tax the tax burden is divided between individuals according to the degree in which they make use of the output of society instead of their ability to contribute to the expenditure of the government.¹¹ VAT as a multi-stage tax is charged on supplies between ¹²businesses throughout the production and distribution chain and not just on the ultimate sale of goods and services to a final consumer, the actual tax burden is ascertainable at each stage in the production and distribution chain.

Taxable persons can deduct from their VAT liability the amount of tax they have paid to other taxable persons on purchases for their business activities. This mechanism ensures that the tax is neutral regardless of how many transactions are involved. The objective is to avoid 'cascading', which can have a snowballing effect on prices.¹³ VAT is a self-assessment tax that is paid when returns are being rendered to the government. Assessment by the FIRS will only be made as a last resort.¹⁴ VAT is imposed and charged in Nigeria as provided under the Act.¹⁵ It is imposed on the supply of all goods and services other than those goods and services listed in the first schedule to the Act. Nigeria adopts the single rate of 7. 5% which is comparatively the lowest when juxtaposed against that of other countries.¹⁶

3. The Nature of Cross-border Transactions

Borders are artificially delineated, geographic or littoral lines that form the boundaries of a nation.¹⁷ Within this enclosure, a country exercises autonomy and jurisdiction as a political and economic entity¹⁸. From recent

⁷Jean Monnet Center and Academy of European Law, 'Shortcomings of the Present European VAT System with Respect to Electronic Supplies' <<http://www.jeanmonnetprogram.org/archive/papers/01/01330103.html>> accessed 12 January, 2022.

⁸ G Badenhorst , 'The VAT Challenges of Cross-border Supplies' [2013] <<http://www.thesait.org.za/news/146080/The-VAT-Challenges-Of-Cross-BorderSupplies.html>> accessed 12 January,2022.

⁹ FIRS Information Circular No 9304 of 20th August.1993 2.

¹⁰ A Schenk and O Oldman, *Value Added Tax A Comparative Approach* (New York: Cambridge University Press 2007)1.

¹¹K Huxham and P Haupt, *South African VAT* (1991) 2; L Ebril and others, *The Modern VAT* (2001) 16; A Schenk and O Oldman, *Value Added Tax: A Comparative Approach* (2007) 17; RM Bird and PP Gendron, *The VAT in Developing and Transitional Countries* (2007) 10; K James, *Exploring the Origins and Global Rise of VAT* (2011) 17.

¹³JM Bickely, 'The Value Added Tax: Concepts, Issues, and Experience' In EA Ogunde (eds) *Value Added Tax: Theory and Practice* (Lagos: University of Lagos Press 1996).

¹⁴LA Nwanyanwu, 'Value Added Tax Administration in Nigeria: An Inquiry into Irrecoverable Invoices' [2015] (2) (4) *Applied Economics and Finance* Redfame Publishing < <http://dx.doi.org/10.11114/aef.v2i4.1042>> accessed 17 January, 2022.

¹⁵ Value Added Tax (Amendment) Act 2007, s 1.

¹⁶JK Naiyeju, *Value Added Tax, The Facts of a Positive Tax in Nigeria* (,Kupag Public affairs 1996) 18.The rate is as high as 85% on some goods and services in Kenya and Malawi, South Africa is at 14%, the rate is 17.5% in Ghana and 18% in Benin republic respectively.

¹⁷AK Etea, 'Nigeria: Fiscal and regulatory considerations in optimizing Nigeria's Cross Border Trade' [30 September 2016] <<http://www.mondaq.com/Nigeria/x/531728/Transfer+Pricing?Fiscal+And+Regulatory+Considerations+In+Optimizing+Nigerias+Cross+Border+Trade>> accessed 29 March 2022.

¹⁸ Ibid.

economic developments, the expansion of the West African regional market to foreign investors and the search for emerging markets within the African continent has led to a continuous increase in business mobility and cross border investments with Nigeria.¹⁹ The two main socio-economic processes that take place across a country's borders are the movement of people and goods (for trade). This movement is an integrative process that links people from both within and outside the country. Importation and exportation are the defining financial transactions of international trade.

Jurisdictional Scope of VAT: Place of Supply Rule

The core issue of economic principles in relation to VAT, as with commodity taxes more generally, is determination of the place where goods and services will be taxed. It is commonly posed as the choice between destination and origin principle. These principles define the allocation of taxing rights amongst nations that are engaged in cross border transactions.²⁰ These principles also provide a guideline to prevent double taxation or non-taxation of cross-border transactions.

Destination or Origin Principle?

The notable provisions of the Nigerian VAT Act that underpin the Destination Principle are the provisions of sections 2, 3, 46²¹ and the First Schedule to the VAT Act. These combined provisions provide that VAT is chargeable and payable on the supply of all goods and services that are provided for consideration other than those goods and services listed as exempted in the First Schedule to the VAT Act. The Destination Principle imposes VAT on imports as against exports. Exports are generally zero-rated²² implying that the importer would be entitled to VAT refund on the input VAT paid by him when purchasing the materials he used in the manufacture of the exported commodity. VAT on imports is taxed on the same basis and at the same rates as domestic supplies. The overarching objective of this principle therefore is to ensure that VAT on cross border transactions is charged in the jurisdiction where the final consumption took place irrespective of whether this is different from the jurisdiction where the value was originally created.²³ It is important to note however that countries generally apply either of the two principles or both, although there is widespread consensus in favour of the Destination Principle since it amongst others achieves neutrality in international trade. The principle of economic neutrality requires that imported goods and services are taxed at the same rate as similar goods and services produced domestically because the purpose is to create a level playing field and not to protect the domestic market.²⁴ This can be realized by applying the destination principle instead of the origin principle.²⁵ Under the Origin Principle, an exporting jurisdiction levies VAT on the value created within its own borders and accordingly tax its exports on the same basis and at the same rate as its own domestic supplies. The importing jurisdiction in principle is expected to forgo its taxing rights by either giving an exemption against their own VAT or giving a tax credit for the VAT supposedly suffered in the exporting jurisdiction. In essence, the importing jurisdiction will only impose VAT on imports to the extent that its VAT rate is greater than those imposed in the exporting jurisdictions.²⁶ Accordingly, the Destination Principle is endorsed by the World Trade Organization rules²⁷. Also, the Organization for Economic Co-operation and Development International VAT/GST Guidelines 2017 lean in favor of the Destination Principle. Perhaps on the basis that the imposition of VAT on the Origin Principle as against the Destination Principle amongst others would lead to the erosion of the revenue base and fiscal sovereignty of many developing nations that create less value within their borders and therefore rely heavily on import taxes as a major source of government revenue. In any event, the application of any of the two rules and not both in international trade works as a tool against double taxation.

¹⁹ Ibid.

²⁰ K Micheal, 'Interjurisdictional Issues in the Design of a VAT' [2010] (63) (2) *Tax Law Review* 1.

²¹ Section 46 is the definition section and it defines "supplies" as any transaction, whether it is the sale of goods or the performances of a service for a consideration, that is, for money or money's worth.

²² In Nigeria, the provision of Part III of the First Schedule to the VAT Amendment Act 2007 is instructive on this point. Note though that the refund mechanism is only applicable to exported goods and does not extend to exported services.

²³ GE Metcalfe, 'Value Added Taxation: A Tax whose Time has Come?' [1995] (9) (1) *The Journal of Economic Perspectives* 121-140.

²⁴ A Schenk and O Oldman, *Value Added Tax: A Comparative Approach* (USA: Cambridge University Press 2007) 21.

²⁵ S Cnossen, 'Design of the Value Added Tax: Lessons from Experiences' in SJ Khalilzadeh and A Shah (eds) *Tax Policy in Developing Countries* (Washington DC: World Bank Symposium 1991) 74-75.

²⁶ R Millar, 'Jurisdictional Reach of VAT' in Krever R (ed) *VAT in Africa* (Pretoria: Pretoria University Law Press 2008) 176-177.

²⁷ OECD, 'Addressing the Tax Challenges of the Digital Economy: Action 1 - 2015 Final Report' (Paris: OECD Publishing 2015) 30.

Imposition and Collection of VAT on Import Transactions

Import

Import means bringing in or carrying to be brought in goods and services from another country or from an export processing zone. It consists of transaction in goods and services to a resident of a jurisdiction from non-residents. The party bringing in the goods is called an importer.²⁸ An import in the receiving country is an export from the sending country. Countries are most likely to import goods or services that their domestic industries cannot produce as efficiently or cheaply as the exporting country. For purposes of VAT, it is important to distinguish between the supply of goods and of services as the two are treated differently. The place of supply and VAT collection mechanisms differ depending on whether one is dealing with goods or services.

Goods

Generally, it is fairly uncomplicated to determine the place of supply where physical goods are consumed and where they should be taxed. This is usually the place where the goods are delivered or made available to the customer. VAT must be levied on imported goods as soon as they enter the country for customs and excise purposes. It can therefore be argued that the place of supply is the customs area where the goods first entered the country. Conversely, where they are imported into Nigeria for domestic consumption, the place of supply will be Nigeria.²⁹ Section 6 provides for the Value of imported goods which is the amount which is equal to the price of the goods so imported and shall include- (a) all taxes, duties and other charges levied either outside or by reason of importation into Nigeria, other than the tax imposed by this Act; (b) all costs by way of commission, parking, transport and insurance up to the port or place of importation.³⁰

Services

The definition of 'services' is particularly wide so as to include any form of intangible thing, service, or right. The Act creates confusion by its definitions of 'import' and 'imported services'. While imports are services brought into Nigeria, imported services are services rendered or performed in Nigeria. Flowing from this uncertainty is a second difficulty- Are services capable of delivery in the same way as goods? A service is not property or a thing but rather an intangible item in the form of human effort, skill or labor. It is incongruous to associate services with delivery. It, therefore, stands to reason that the requirement that a service be supplied in Nigeria is satisfied when the service is performed in Nigeria. If the customer is in Nigeria, the transaction is taxable, but exempt as exported services if the customer is abroad.³¹ So, in determining whether a non-resident has supplied services in Nigeria, the enquiry should be whether the activity was carried out in Nigeria, thus, the definition of imported service as a service rendered in Nigeria by a nonresident to a person inside Nigeria is consistent with the intent of the act. To this end, advisory services provided by foreign firms to Nigerian clients are not taxable. Repair of equipment by an engineering firm in Berlin also falls outside the scope of the act.³² Further, the law recognizes an export processing zone (EPZ) as a different jurisdiction from where imports can be made in Nigeria. An enterprise in the EPZ, therefore, qualifies as a non-resident and service performed by it for a resident entity would be taxable only if performed in resident companies.

VAT on Intangibles

It has already been stated before that taxpayers and the tax authority do not always agree on whether an item is goods, services, or neither. Judicial intervention has not been helpful in resolving this controversy but has rather obfuscated the matter more.³³ Examples of intangible property that do not exist as rights include electricity, internet bandwidth, airtime, and methane or dry gas. These items constitute a class of property different from choses in action in the sense that not being rights, they are properties capable of being sold and not assigned. However, they have in common with incorporeal property an absence of the kind of physical presence typically associated with goods.³⁴ Are these items, therefore, taxable?

Sale of Land

The Federal Inland Revenue Service ('FIRS'), which is the body responsible for administering VAT in Nigeria, has issued several information circulars to further clarify the scope of VAT exempt items. A review of the schedule of exempt items shows that land and buildings are not included in the list, and this may suggest that the sale of

²⁸ 'Meaning of Import Trade: What is Import Trade?' [11 February 2019] <<https://howtoexportimport.com/Meaning-of-Import-Trade-9040.aspx>> accessed 29 March 2022.

²⁹ Value Added Tax in Nigeria' Resolution Law <<http://resolutionlawng.com/value-added-tax-in-nigeria/>.

³⁰ Ibid (n8 ch 1) s6.

³¹ K Amaefule, 'Nigeria VAT: A Practitioner's Guide' [2017] (28) (5) *Journal of International Taxation*.

³² Ibid

³³ Ibid (n15) 32.

³⁴ Ibid.

land and buildings is not exempt from VAT and is therefore liable. One of the fundamental issues now facing the industry is the question of whether VAT should apply on the sale of the housing units, and, indeed, on the sale of land for property development. The FIRS usually adopts the position that once an item is not included in the VAT exempt list, VAT becomes automatically applicable to such item. This opinion is based on their view that all items not specifically mentioned in the VAT exempt list are VATable, irrespective of whether or not they qualify as 'goods' or 'services'.³⁵ But is this really correct? Given that the law is quite explicit on the fact that VAT applies on the supply of goods and services, it is necessary to establish that there has been a supply of goods and services before VAT can be said to apply.³⁶ The VAT Act does not define the terms 'goods' and 'services'.

The Lagos State Sale of Goods Act defines 'goods' as: all chattels personal, other than things in action and money... and includes emblements, industrial growing crops and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale.³⁷ The above definitions are very instructive as they differentiate items permanently attached to land from those that can be severed from the land. They also imply that for items attached to land to qualify as goods, there must be an agreement to sever them from the land before sale or under the contract of sale.

Further, Black's Law Dictionary, which is often regarded as the gold standard for legal interpretations, defines 'goods' as: All things (including specially manufactured goods) which are movable at the time of identification to the contract for sale other than the money in which the price is to be paid, investment securities and things in action.³⁸ Again, there is an emphasis on the movability of an item before it can qualify as a good. It can be inferred from the definitions that, to the extent that an item is not movable or severable from land, it should not qualify as a good and by extension; the sale of such item will not qualify as a supply of a good. If we are unable to conclude that the sale of land or buildings constitutes a supply of goods, we should also consider whether it can constitute a service. The VAT Act does not define the word 'service'. However, *Black's Law Dictionary* defines 'service' as 'an intangible commodity in the form of human effort, such as labour, skill or advice.'³⁹ Arguing that the transfer of a title or interest in real property will constitute a service may not be tenable. It might well be that the activity conducted over the land is what should constitute a taxable service within the Act. Based on the definition of service as an intangible commodity in the form of human effort, skill or labor, the process of developing a building for sale may, therefore, qualify as a service. There have been court rulings on the applicability of VAT to sale of land and buildings, and this can serve to provide further clarification on the matter. In respect of the applicability of VAT on the sale of buildings, the VAT Tribunal, in *FBIR v Ibile Holdings*, held that the sale of buildings involves the transfer of property in goods, and therefore, constitutes a supply of goods which is liable to VAT.⁴⁰ The basis for this was Act s. 42 (now s. 46), which defined 'supply of goods'. Meanwhile, in the Federal High Court ('FHC') case *Momotato v UACN Property Development Company Plc*, the judge held that sale of land, in itself, does not constitute a supply of goods, and therefore, is not liable to VAT. However, the judge clarified that services rendered in developing the land, such as sand filling, tarred road network, electricity supply and so on, should qualify as supply of services, and therefore liable to VAT.⁴¹ This suggests that the development of properties on the land can also be liable to VAT even though the land is not liable.

The relevant issues here are to identify the item that is the subject matter of the transactions undertaken by Ibile, and then determine whether it is goods, services, or neither. The item here is the right to the unexpired residue of Ibile's leasehold in some cases and a right to a sub-lease in others, and neither of these is a good or service. Rather, they are incorporeal property. The 'FIRS' reliance on the non-inclusion of land and buildings in the VAT exempt list, as a basis for insisting that they should be subject to VAT, is insufficient.⁴² However, from the joint reading of these judgments, it can be inferred that while VAT does not apply to the sale of land, it should apply on any service provided to develop the land and also to the sale of buildings. The value of any improvements carried out on the land should be subject to VAT. In this regard also, the development of buildings on the land can be viewed as improvement on the land, and as such the sale of such building is liable to VAT.⁴³

³⁵ Ibid

³⁶ Ibid

³⁷ The Lagos State Sales of Goods Act 2003.

³⁸ BA Garner (ed), *Black's Law Dictionary* (7th Edn, West Publishing Co 2004).

³⁹ Ibid

⁴⁰ [2010] 2 TLRN.

⁴¹ FHC/L/CS/1016/05.

⁴² AA Aderonke, 'Applicability of Value Added Tax to Real Property Transactions in Nigeria' [17 December 2014] <<http://www.mondaq.com/Nigeria/x/361072/Applicability+of+Value+Added+Tax+to+Real+Property+Transactions+In+Nigeria>> accessed 29 March 2022.

⁴³ S Oladimeji, 'Applicability of VAT on Real Estate Transactions in Nigeria' 21 March 2019 <<http://www.tnp.com.ng/insights/applicability-of-vat-on-real-estate-transaction-in-Nigeria>> accessed 29 March 2022.

Incorporeal Property

Incorporeal property is legal right in property that has no physical existence such as patent, lease, or mortgage. This kind of property lacks a physical body and so cannot be touched. Transfer of such property is not by sale but by an assignment of the assignor's subsisting rights in the property. In the FHC case between *CNOOC Exploration Production Nigeria Limited v Attorney General of the Federation and Ors* (although it does not entail transfer of title in land), the third defendant transferred its rights in an oil mining lease ('OML') to the plaintiff and sought to charge VAT in respect of the sale. The authorities took the position that such an assignment of right qualifies as a 'supply of goods and services' and therefore, liable to VAT. The FHC held that the right to an OML does not constitute goods under section 2 of the Act because such right is an intangible property, which constitutes a chose in action.⁴⁴ This aligns with the judgment in the Momotato case where transfer of title in land was ruled as non VATable. The court said that, in the U.K., it was solely as a result of statutory intervention that the assignment of a right constituted services, the supply of which would be taxable. Consequently, the absence of any reference to incorporeal property in the list of taxable items was evidence that such property was outside the coverage of the Act. The effect of this decision is to exclude from tax dealings in stock, options, franchise, copyright, and any property that exists as rights.

Internet Bandwidth

The question on whether a transaction falls under supply of goods or services, allows a rethink of the TAT's decision in Vodacom, where it held that the supply of bandwidth capacity was a supply of services and, therefore, taxable. Bandwidth is the total maximum transfer rate of a network cable or device and measures how fast data can be sent over a connection.⁴⁵ It lacks a physical and tangible presence and so does not qualify as personal chattel. Also, as information capacity, bandwidth is property, though intangible, and, therefore, excluded from services.⁴⁶ It is hoped that as tax education and knowledge grow, taxpayers will be equipped to challenge incorrect assessments judicially with robust and articulate arguments. This will assist in reducing the risk of judicial misdirection as most of the judges and some of the tax commissioners appointed into the TAT may not have sufficient tax knowledge to produce the right decision independently.⁴⁷

Imposition of VAT on Export Transactions

Goods

Under the first schedule of the VAT Act, Part 1 all exported goods are exempted from taxation. Countries that rely on the destination principle to tax international transactions typically zero rate exports of goods (regardless of the nature of the goods exported). This is not a preference. The export sales are merely beyond the jurisdictional reach of the tax.⁴⁸ The destination principle reflects the near universal understanding that in geographically assigning sales tax or VAT burdens and revenues, the country of consumption gets both; the country of production gets neither. Consistently, most countries do not tax sales of goods located abroad for delivery abroad because these sales are beyond the scope of the VAT. Meanwhile, to encourage the diversification of the Nigerian economy away from huge oil and gas dependency, the VAT Act of 2004 was amended by Act No. 12 of 2007. The amendment includes all non-oil exports as zero rated and therefore entitling the exporters to input VAT refunds.⁴⁹ Zero-rated items include non-oil exports, goods and services purchased by diplomats, and goods and services purchased for use in humanitarian donor-funded projects.

4. Conclusion

The attempt in this paper has been to appraise the statutory provision by which Value Added from cross border transactions are taxed in Nigeria. The following recommendations are hereby proffered; that there should be harmony in the objectives of tax reforms with other industrial and macroeconomic objectives. VAT legislation

⁴⁴ [2011] 4 TLRN 185.

⁴⁵ K Will, 'Bandwith' Investopedia' 25 June 2018 <http://www.investopedia.com/terms/b/bandwith.asp> > accessed 29 March 2022.

⁴⁶ O Stephen, 'Uncertainty trails court rule on VAT transaction between Nigerian companies, NRCs' March 7 2018 <https://businessday.ng/news/article/uncertainty-trails-court-rule-vat-transaction-nigerian-companies-nrcs/> > accessed 29 March 2022.

⁴⁷ O Abifarin, *Value Added Tax in Nigeria, Modern Trend in Tax Law, Administration and Practice in Nigeria* (Makurdi: Juniper Publication 2013) 84.

⁴⁸ AO Oladipupo and FP Izedonmi, 'Public Perception and Attitude towards Value Added Tax (VAT) in Nigeria' *iBusiness* [December 2013] < <http://dx.doi.org/10.4236/ib.2013.54016> > accessed 29 March, 2022.

⁴⁹ B Celia, 'Nigeria: Lagos Tax Tribunal Rules on VAT on Services Rendered outside Nigeria' [17 May 2016] <<http://www.mondaq.com/Nigeria/x/491916/sales+taxes+VAT+GST/Lagos+Tax+Tribunal+Rules+On+VAT+On+Services+Rendered+Outside+Nigeria>> accessed 30 March, 2022.

and rules are expected to contribute to the growth of the economy as they ensure equality of competition amongst businesses. Nigeria can learn from other countries' tax system in order to improve her tax system. It is also important for Nigeria to learn from developed countries. The over reliance on oil revenue is a serious problem that the country need to fight. The issue of recession we have in the country now is traceable to the sudden fall in the price of petroleum in the international market. If nation can widen her scope of the revenue the better. There is need for Nigeria to regularly improve her tax policy to make it less hostile to business and entrepreneurs and to indeed make it reasonable and easy to comply with. Most of the provisions of the Nigerian tax laws are outdated and make it difficult to comply with, thereby discouraging foreign investors. Government should adopt appropriate and current information technology that will make tax payment process easy for business and individual, and that will also reduce tax evasion to the minimum. Government should effectively use revenue from tax in order to encourage compliance from businesses and individuals. Development in the level of basic infrastructural facilities and social amenities will encourage voluntary compliance from taxpayers. With regards to taxation of cross border transactions, it is important for law makers to revisit the Nigerian VAT Act and amend the contentious sections to ensure clarity in the application of VAT on cross border transaction especially items that are currently under dispute such as imported service, e-commerce activity, and electricity. Moreover, there is need to expand the limited scope of the Nigerian VAT system into a classical system that would also address the recoverability of VAT for service companies beyond the current system that more or less mirrors a simple sales tax regime. Applying these recommendations would enable Nigeria to make appreciable progress in revenue generation. If the Nigerian government is determined to generate sufficient revenue to finance its numerous projects and meet the sustainable development goals of eradicating poverty from the country, it is important for the government to take these pragmatic steps.