

**A CRITICAL EXAMINATION OF THE NIGERIAN NATIONAL TAX POLICY\***

**Abstract**

*This article undertakes a critical examination of the Nigerian National Tax Policy (NTP). It finds that the Policy is very comprehensive, well-detailed and extensive. It identifies the issues set out to be tackled by the Policy and ascertains how successful this has been while also outlining recommendations to entrench the Policy. Although the Policy is lofty, the fact that it is just a 'document' and not a statute seriously limits its effectiveness. Nevertheless, a faithful implementation of same and the creation of more awareness would go a long way towards improving the tax jurisprudence of Nigeria.*

**Keywords:** Tax, Policy, Taxation, Revenue, Taxpayer, Policy.

**1. Introduction**

The Federal Republic of Nigeria has an extant tax Policy laid out in 2012 which stipulates the guidelines, rules and *modus operandi* which guide the country's tax regime and also acts as an important scheme for accentuating the generation of revenue by all the tiers of government, entrenching socio-economic development, ensuring fiscal responsibility and improving redistribution of income<sup>1</sup>. The said Policy identifies several issues militating against the Nigerian tax regime such as multiple taxation, inadequate accountability for tax revenue and insufficient clarity on taxing powers of the tiers of government and proceeds to set out a paradigm to resolve them albeit while acknowledging that it is 'only a document' whose benefit will only be reaped when its contents are effectively implemented<sup>2</sup>. It is divided into seven chapters and contains three appendices. It is proposed in the following lines to critically examine the contents of the NTP and ascertain how much of it has been implemented and what must be done to ensure further progress.

**2. Summary of the Contents of the NTP**

**Introduction**

This is the first chapter of the NTP. In this segment, the background for the NTP was laid out. The NTP is enunciated to be a document which stipulates wide parameters for taxation and matters connected therewith. It elucidates the principles governing administration of tax and collection of revenue and states the guidelines relating to taxation in Nigeria<sup>3</sup>. In this chapter, certain pertinent terms such as 'taxation' were defined and the distinction between 'taxation' and 'revenue' was also stated.<sup>4</sup> The rationale and purpose of the NTP were stated to include the stimulation of economic growth and job creation and the entrenchment of certain reforms to guarantee the required effectiveness, efficiency and equity needed for a virile public finance<sup>5</sup>. The NTP was borne out by the need by the Government to address the following issues:

- i. Multiple taxation;
- ii. The uncertainty and loopholes in the tax system emanating from the inadequacy of information furnished to tax payers *vis-à-vis* tax compliance requirements;
- iii. Insufficient accountability for tax revenue and its expenditure;
- iv. Inadequate clarity on the taxing powers of each tier of government;
- vi. Inadequacy of staff;
- vii. Insufficiency of funding;
- viii. Delegation of tax collection to third parties;
- ix. Utilization of unorthodox means of collecting tax;
- x. Non-refund of excess taxes to taxpayers;
- xi. Failure to periodically review tax statutes;
- xii. The absence of a specific policy direction relating to tax matters in Nigeria; and
- xiii. The lack of laid-down procedural mechanisms for the operation of the tax agencies<sup>6</sup>.

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<sup>1</sup> 'National Tax Policy' (Hereinafter referred to as 'NTP'), Being a Publication of the Federal Ministry of Finance, April 2012, iii. For A brief history of the background to the NTP, see NU Richards, 'Overview of the National Tax Policy and its Implication for Tax Administration in Nigeria', NAUJILJ 10 (2) 2019, 1.

<sup>2</sup> NTP, iii.

<sup>3</sup> *Ibid*, p.1.

<sup>4</sup> *Ibid*, pp 1-2.

<sup>5</sup> *Ibid*, pp 2-3.

<sup>6</sup> *Ibid*, p. 3.

Clearly, part of the mission of the NTP is to resolve the above challenges which have been present owing to the fact that the government had long relied on oil revenues<sup>7</sup>. This chapter also seeks to establish a paradigm for sustainable development in the Nigerian tax regime as well as entrench healthy competition amongst the tax agencies, which shall be held up as the philosophies underpinning the development of the Nigerian tax jurisprudence<sup>8</sup>. Subsequently, the chapter enunciates the role of fiscal federalism and states that the NTP would provide a viable paradigm for the correct application of the doctrine of separation of powers *vis-à-vis* taxation<sup>9</sup>. It then goes on to state the objectives of the Nigerian Tax System, which are:

- i. To promote fiscal responsibility and accountability;
- ii. To facilitate economic growth and development;
- iii. To provide the government with stable resources for the provision of public goods and services;
- iv. To address inequalities in income distribution;
- v. To provide economic stabilization;
- vi. To pursue fairness and equity; and
- vii. To correct market failures or imperfections<sup>10</sup>.

Finally, this chapter articulates the guiding principles of the Nigerian tax system as follows:

- i. Simplicity, Certainty and Clarity;
- ii. Low Compliance Cost;
- iii. Low Cost of administration;
- iv. Equity and Fairness;
- v. Flexibility;
- vi. Economic Growth and Efficiency; and
- vii. Transparency and Accountability<sup>11</sup>.

In the course of this study, it will be seen whether the above challenges have been surmounted and to what extent.

### **The Role of Stakeholders in the Nigerian Tax System**

This chapter identifies the stakeholders<sup>12</sup> in the Nigerian tax regime and broadly categorizes them as follows:

- i. The three arms of government;
- ii. The tax authorities;
- iii. Tax payers; and
- iv. Professional bodies, Tax Practitioners and Consultants<sup>13</sup>.

Having expressly identified the stakeholders in our tax regime, this chapter goes on to elucidate the principles which should regulate their conduct, as follows:

- i. Complete adherence to federalism and the rule of law;
- ii. Strict observance of constitutional provisions in relation to fiscal matters;
- iii. Observance of fiscal federalism and separation of powers *vis-à-vis* fiscal matters;
- iv. Recognition and respect for the rights and powers of each tier of government *vis-à-vis* the collection and control of revenue within its jurisdiction;
- v. Total adherence to tax law provisions in tax administration;
- vi. Commitment to the enforcement of tax provisions in a lawful and constitutional manner;
- vii. Commitment to the peaceful settlement of all disputes and respect for judicial pronouncements on disputes submitted for adjudication;
- viii. Commitment to the creation and sustainable development of a stable, secure and pragmatic tax regime for Nigeria; and
- ix. Commitment to the unity, development and progress of a united Nigeria in the acknowledgment that the tax system can be utilized as a major fulcrum for realizing National Developmental Goals<sup>14</sup>.

Subsequently, this chapter sets out certain globally-endorsed principles which would ensure cordial relationship amongst the stakeholders in the Nigerian system. They are:

- i. Affirmation and acknowledgment of the importance and contribution of all stakeholders in tax administration in Nigeria;

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<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, pp 3-4.

<sup>9</sup> *Ibid.*, p 4.

<sup>10</sup> *Ibid.*, pp 5-6. See also, MT Abdulrazaq, *Cases and Materials on Nigerian Taxation* (Lucknow: Eastern Book Company, 2016), p.14.

<sup>11</sup> NTP, pp 6-7. See also, MT Abdulrazaq, *op cit*, pp 15-17.

<sup>12</sup> Defined in this chapter as 'those persons or entities that contribute to and derive benefits from the country's tax system'.

<sup>13</sup> NTP, p. 8.

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

- ii. Provision of specific and general feedback by all stakeholders in a proactive manner on issues and developments which are relevant to the administration of tax in Nigeria;
- iii. Ensuring the observance of good faith by all stakeholders, especially between the taxpayers and tax agencies on the one hand, and between the government and tax agencies on the other; and
- iv. Fairness in the treatment of all stakeholders by one another, especially in the allocation of resources and consideration of each party's perspectives<sup>15</sup>.

Thereafter, this chapter outlines the respective roles of the stakeholders, beginning with the three arms of government and moving on to the tax agencies, tax payers and professional bodies, tax consultants and practitioners, while highlighting the pragmatic rudiments for the effective relationship amongst stakeholders<sup>16</sup>.

### **Taxation as a Tool for Wealth Creation and Employment**

In this chapter, the role of taxation in wealth creation and employment is considered, in particular, its ability to realize the above in the following ways:

- i. Stimulation of growth in the economy by increased trade and economic activities;
- ii. Stimulation of domestic and foreign investment;
- iii. Application of revenue derived from taxes to identified sectors of the Nigerian economy to stimulate them;
- iv. Utilization of revenue derived from tax to develop effective regulatory systems, strengthen financial and economic structures and address market imperfections and other distortions in the economic sector; and
- v. Redistribution of income<sup>17</sup>.

This chapter subsequently reflects on the variation of tax rates in reaction to economic developments and advocates for a paradigm shift from direct to indirect taxation to entrench economic growth<sup>18</sup>. It then goes on to enunciate the following special arrangements for attracting investments:

- i. Tax free zones;
- ii. Tax incentives;
- iii. International and Regional Treaties; and
- iv. Creating a competitive edge by means of reducing the number of effective taxes, avoiding internal multiple taxation, liberalizing the tariff regime, diversifying the Nigerian economy using tax incentives and strengthening the oil and gas sector<sup>19</sup>.

### **Tax Administration**

This chapter sets out guidelines on tax administration issues<sup>20</sup>. Within the precincts of the NTP, the issues identified in tax administration are:

- i. Intelligence and Information Gathering;
- ii. Registration of Taxable Persons;
- iii. Filing and Returns Processing;
- iv. Payment Processing and Collection;
- v. Record Keeping;
- vi. Audit and Investigation;
- vii. Enforcement of Tax Statutes;
- viii. Operation and Funding for Tax Refunds;
- ix. Automation of Processes; and
- x. Accounting for Tax Revenue Collected.<sup>21</sup>

### **Fiscal Dispute Resolution Mechanisms**

In this chapter, the NTP observes that disputes are bound to arise from time to time in the course of interaction among the various tiers of government, between the government and taxpayers or between taxpayers<sup>22</sup>. It goes on to recognize that in the past, insufficient effort was made to quickly resolve the disputes and the structure for resolving them was also inadequate<sup>23</sup>. Consequently, it elucidates a framework for resolving disputes between Federal and State Governments, between State Governments, between State and Local Governments, between the

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<sup>15</sup> *Ibid*, pp 8-9.

<sup>16</sup> *Ibid*, pp 9-16.

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

<sup>18</sup> *Ibid*, pp 17-18.

<sup>19</sup> *Ibid*, pp 18-20.

<sup>20</sup> *Ibid*, p 21.

<sup>21</sup> *Ibid*, pp 21-26.

<sup>22</sup> *Ibid*, p 27.

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

Executive and Legislature, amongst and between the Executive, Legislature and Judiciary and with Taxpayers respectively.<sup>24</sup>

### **Institutionalising Tax Culture in Nigeria**

This chapter starts by acknowledging the need to create awareness about the critical role taxation plays in National Development and then outlines the following Areas which need attention in order to entrench a sustainable tax culture among Nigerians:

- i. Overview and Philosophy for creating a tax culture amongst Nigerians;
- ii. Concept of the Tax Identification Number (TIN);
- III. Institutions to drive tax policy and administration;
- iv. Elimination of impediments in the system;
- v. Identification of Government Revenue currently not being collected;
- vi. Accountability for the tax and other revenue collected;
- vii. Ensuring proper utilization of tax revenue collected and communicating the uses of same to tax payers<sup>25</sup>.

### **Implementation of the NTP**

In this chapter, the strategy for implementing the NTP was stated to be ‘based on an approach that recognizes fiscal federalism in the promotion of a tax culture in Nigeria’<sup>26</sup>. Furthermore, the said strategy is believed to entrench a sustainable paradigm for national development<sup>27</sup>. The following were identified as priority areas for action:

- i. Development of Strategies to ensure Fiscal Optimization;
- ii. Improved Equity and Fairness;
- iii. Promotion of Fiscal Responsibility and Accountability;
- iv. Reflection of Fiscal Federalism;
- v. Creation of Employment;
- vi. Creation of a Competitive Advantage in the Nigerian Tax System;
- vii. Reduction of Income Tax Rates;
- viii. Increased Adoption of Indirect Taxation;
- ix. Simplification of Tax Statutes;
- x. Reduction in Cost of Tax Administration; and
- xi. Transparency and Accountability<sup>28</sup>.

This chapter then concludes on the note that the NTP ‘shall provide a stable point of reference for all stakeholders in the tax system to subscribe to and a standard to which they shall be held accountable<sup>29</sup> and the NTP is expected to ‘provide a platform for realizing Nigeria’s overall developmental goals utilizing the tax system as the much needed catalyst<sup>30</sup>. This work will subsequently turn to review the level of implementation or otherwise of the NTP.

### **3. Comments on the Implementation of the NTP and Recommendations**

For a start, it must be firmly stated here that the NTP, as lofty as it is, is just a Policy, not a statute. A Policy is defined as ‘a standard course of action that has been officially established by an organization, business, political party, etc.’<sup>31</sup> Unlike a statute, it is neither mandatory nor compulsory. The NTP itself acknowledges that it is ‘only a document’ whose benefit will only be reaped when its contents are effectively implemented<sup>32</sup>. Therefore, its contents must be enthusiastically adopted and implemented for optimal results. Lending credence to this view, it has been posited that ‘the NTP should not become a redundant policy document or reference tool only for academics. The NTP should be the ‘bible’ that guides the thinking, formulation and execution of strategies relevant to taking tax administration at all levels (assessment, collection etc) and the tax system at large to optimum heights’<sup>33</sup>. This is a ratiocination with which we are in complete agreement but how much of the NTP has been realized? We now proceed to answer that. With regard to multiple taxation, it is unfortunate to say that

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<sup>24</sup> *Ibid*, pp 27-29.

<sup>25</sup> *Ibid*, pp 30-35.

<sup>26</sup> *Ibid*, p 36.

<sup>27</sup> *Ibid*.

<sup>28</sup> *Ibid*.

<sup>29</sup> *Ibid*, p 37.

<sup>30</sup> *Ibid*.

<sup>31</sup> BA Garner, Black’s Law Dictionary, (10<sup>th</sup> ed, St. Paul: Thomson Reuters, 2014), p. 1345.

<sup>32</sup> NTP, iii.

<sup>33</sup> O Arowolo and F Folarin, ‘Nigeria’s National Tax Policy: Any Agenda for the New FIRS’ Chair?’, available at <<https://www2.deloitte.com/za/en/nigeria/pages/tax/articles/inside-tax-articles/nigerias-national-tax-policy-any-agenda-for-the-new-firs-chair.html>>; last accessed on 22<sup>nd</sup> September 2022.

things have not improved. From interviews conducted in the course of this research,<sup>34</sup> many taxpayers complained of multiple and even arbitrary taxes levied on them. This should not be so because it discourages honest taxpayers from paying tax. A faithful implementation of the Taxes and Levies (Approved List for Collection) Act as well as greater synergy between the various tax agencies should tackle this problem once and for all. As to the uncertainty and loopholes in the tax system emanating from the inadequacy of information furnished to taxpayers *vis-à-vis* tax compliance requirements, the said uncertainty and loopholes persist and this impedes the realization of the NTP. The solution is however simple. A massive sensitization campaign should be carried out using a combination of the traditional media such as television and radio broadcasts as well as social media posts and billboards to furnish taxpayers with information regarding their tax compliance requirements. As to the issue of insufficient accountability for tax revenue and its expenditure, the NTP in this regard has not been realized. The tax agencies still fail to publish amounts received as taxes and to clearly articulate what they have used it for. This creates distrust amongst taxpayers. It is recommended that all the tax agencies undertake a mandatory monthly publication of the revenue generated from taxes and how it was spent. This will go a long way towards building trust with taxpayers and thereby galvanize their resolve to pay taxes, with the consequence of generating more revenue for the country. On the issue of inadequate clarity on the taxing powers of each tier of government, it is submitted that the clarity is sufficient. The Constitution of the Federal Republic of Nigeria 1999 As Amended clearly articulates the respective taxing powers of the federating units<sup>35</sup> and the Taxes and Levies (Approved List for Collection) Act outlines the respective taxes to be collected by the three tiers of government. Nevertheless, the Joint Tax Board must do more to ensure that this area is properly streamlined. As to the inadequacy of staff and insufficiency of funding, it is submitted that the staff and funding are adequate but there is a need for a more dynamic approach. Therefore, the staff must be adequately trained and regularly retrained in order to meet up with global best practices. Similarly, the resources of the tax agencies must be utilized prudently.

In the area of delegation of tax collection to third parties, it is sad to say that this trend has not ended. This is not only reprehensible but illegal. The Taxes and Levies (Approved List for Collection) Act, which outlines the different taxes collectable by the different tiers of Government, clearly stipulates that ‘no person, other than the appropriate tax authority, shall assess or collect, on behalf of the Government, any tax or levy listed in the Schedule to this Act.’<sup>36</sup> The Act further provides that contravention of the above provision is an offence which attracts a fine or imprisonment or both.<sup>37</sup> Flowing from the above provisions, it is demonstrably clear that any purported delegation of the power to collect tax by any tax authority to an individual or private company is illegal. Affirmation of this is further found in the words of Umenweke who espoused, *inter alia*, that ‘... there can be no valid delegation of the functions of tax collection vested on the three tiers of Government. The attitude of the State Governors and Local Government Chairmen in setting up parallel bodies or appointing agents or consultants to collect taxes is wrong and their existence is not supported by law.’<sup>38</sup> Having established the above, it is submitted that tax authorities should refrain from delegating their powers to collect tax to private individuals and companies. Therefore, it is suggested that much has to be done to create awareness about this so that innocent taxpayers are not arm-twisted into paying tax to private individuals and companies.

Regarding the utilization of unorthodox means of collecting tax, the reality is that things have not changed. This is intolerable. Taxpayers are human beings who must be treated always in a civilized manner and treating them properly will go a long way in winning their hearts. The tax agencies must therefrom refrain from utilizing unorthodox means of collecting tax. Awareness must also be created so that in cases of infraction, taxpayers can easily lodge complaints.

As to Non-refund of excess taxes to taxpayers, the story has not changed. In the course of this research, it was observed that in spite of the fact that the tax statutes clearly stipulate the refund of excess taxes to taxpayers,<sup>39</sup> in practice though, actual refunds are seldom made. Usually, the refunds are set off against future tax liabilities.<sup>40</sup> It is submitted that payment of refunds in deserving cases will significantly restore the confidence of taxpayers in the tax system and the tax agencies should improve in this regard, bearing in mind the fact that the refund of excess fund is one of the rights of taxpayers<sup>41</sup>.

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<sup>34</sup> In Enugu and Abakaliki in the month of September 2022.

<sup>35</sup> The Constitution, Second Schedule.

<sup>36</sup> Taxes and Levies (Approved List for Collection) Act, s. 2(1).

<sup>37</sup> *Ibid*, s. 3.

<sup>38</sup> MN Umenweke, *Tax Law and its Implications for Foreign Investments in Nigeria* (Enugu: Nolix Educational Publications, 2008), p. 80.

<sup>39</sup> See for instance, the Federal Inland Revenue Service (Establishment) Act, s. 23(1).

<sup>40</sup> *Ibid*, s. 23(3).

<sup>41</sup> SM Olokooba *et al*, ‘Taxpayer’s Right to Refund under the Nigerian Law: A Right in Fact or Privilege in Camouflage?’, *Ebonyi State University Law Journal*, Volume 9 No.1, 2018, 143-144.

Regarding the failure to periodically review tax statutes, this is an area that has been well-implemented especially in recent times. Recently, the current administration enacted The Finance Act 2020<sup>42</sup> and followed same up by enacting The Finance Act 2021 which was signed into law by President Muhammadu Buhari on 31<sup>st</sup> December 2021 after it was passed by the House of Representatives and Senate of the Federal Republic of Nigeria respectively on 21<sup>st</sup> December 2021 and 22<sup>nd</sup> December 2021<sup>43</sup>. It is expected that this current approach of regularly updating the tax statutes is to be maintained in due course. As to the absence of a specific policy direction relating to tax matters in Nigeria, it is submitted that the NTP itself has comprehensively set this out. What needs to be done is to take fervent steps to faithfully implement it in order to reap the full benefits. Finally, regarding the lack of laid-down procedural mechanisms for the operation of the tax agencies, it is submitted that there is a very adequate mechanism for same<sup>44</sup>. All that needs to be done is to be consistent in implementing it and to keep updating in order to meet up with the international best standards in taxation.

#### 4. Conclusion

Having reviewed the contents of the NTP and examined how much of it has been implemented, this work now concludes that although it is a very lofty and comprehensive articulation of paradigms to rejuvenate and reposition the Nigerian tax system, more needs to be done especially in the area of implementation. There is need to create awareness with respect to all the stakeholders in the tax system and to implement same faithfully. This would undoubtedly engender a tax system at par with international best practices in taxation. To say the least, this will significantly galvanize the system and accentuate the generation of revenue from tax to be utilized for the betterment of all and sundry.

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<sup>42</sup> Signed into law by President Muhammadu Buhari on 13<sup>th</sup> January 2020. For a review of same, see, K Etim *et al*, 'Finance Bill 2019: Tax Implications for Nigerian Entities', (1999) Alert 06 *Grey Matter Tax Digest*, 1 – 8.

<sup>43</sup> Schedule to the Finance Act 2021. For a comprehensive review of same, see EOC Obidimma & DC Nwuzor, 'A Review of the Finance Act 2021', *IJOCLLEP* 4(1) 2022, 5-10.

<sup>44</sup> Stipulated in the Federal Inland Revenue Service (Establishment) Act.