

ROAD TAX: THE ROAD NOT TAKEN IN NIGERIAN TAX REFORM***Abstract**

The current trend in the taxation of road user's vehicle advocates for the reduction of the emission of carbon dioxide. It contemplates the implementation of element of Carbon dioxide emission into the tax base of annual road tax. The paper however concentrates more on the importance of road user's taxation for proper and adequate road maintenance and not the current trend of road tax that has imposed and enforced taxation base on Carbon dioxide emission. Road tax in Nigerian tax regime is ambiguous and unclear compare to what is obtainable across the globe. The crux of this paper is to spike a police guide for the reformation of road tax in Nigeria and ensuring its conformity with the global trend.

Keywords: Road Tax, Vehicles, User, Tax Reform, Nigeria

1. Introduction

The countries of the world across the globe have long harnessed the huge advantage of road user's taxation in road maintenance and development. Fiscal function is the oldest and the most important function of taxes.¹ It is essential that any tax must meet the fiscal function. But sometimes, it is appropriate to impose specific tax for the purpose of financing specific items other than financing public amenities generally. Road tax is imposed most specifically for road development and maintenance.² The place of road tax in Nigeria jurisdiction is not clear. There is no actual data with regards to number of road tax collected and how it is ploughed back to the specific need of road maintenance as Nigerian roads remains bad. Most tax reforms have not considered the importance of road. There is lack of clear legislation on road tax administration and collection. The only legislation that provides for road tax is Taxes and Levies (Approved List for Collection) Act.³ The Act provides that road tax shall be collectible by the State Government.⁴ There is no further provision as to what road tax is and how it shall be collected. A lot of taxes are collectible in the form of road tax. There is excise duty, registration of vehicle, parking fees, different categories of motor stickers etc. Another similar legislation which did not mention road tax is Federal Highway Act. The Act provides for the power of the minister to collect or designate the collection of toll fees.⁵ While tolls are important instrument for charging road users in developed countries, they are not yet of widespread relevance for Sub-Saharan Africa.⁶ It is important to develop a clear legislative map for collection and administration of road user's taxation. This paper seeks to provide the basis for the legislative and police guide. Where it is properly collected and accounted for, there will be increase in revenue for road maintenance. The work conceptualizes the theories of road tax and examines the challenges and problems of road tax administration. It will provide insight for efficient road tax reform in Nigeria.

2. The Concept of Road tax

Road user tax is referred to the main taxes which road users are required to pay in order to use the road network.⁷ It is better described as road user taxation. These are payments which vary with road use, such as the tax on the petrol and diesel, Scandinavian kilometer tax, as well as payments which are fixed regardless of road use such as the annual vehicle tax.⁸ The road tax purpose can be defined as taxation of road network usage by road vehicles. The legislation tried to solve the urgent problem of how to raise the financial funds for maintenance and development of road infrastructure. Road users should be required to cover their 'costs' and that road user taxes should be determined on the basis of this objective. However, the definition of road use

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¹ D Peter, 'Principle of Taxation of Road Motor Vehicles and their possibilities of application' Acta Univ. agric. Et silvic Mendel. Brun., 2012, LX, No.2 pp. 483-492 available at <<https://www.researchgate.net/publication/270702798>> accessed 20 May, 2021.

² *Ibid* pg 2.

³ Cap T2 Laws of Federation of Nigeria (LFN) 2004.

⁴ This is provided for under part B of the Act.

⁵ Federal Highway Act, Cap. F13, LFN, 2004.

⁶ C Creightney, 'Road User Taxation in selected OECD Countries' Sub-Saharan Africa Transport Policy Program, The World Bank and Economic Commission for Africa, SSATP Working Paper No 3 available at <http://documents.worldbank.org/curated/en/Road-user-taxation-in-selected-OECD-countries> accessed on 20 May, 2021.

⁷ C Creightney, 'Road user taxation in selected OECD Countries' Sub-Saharan Africa Transport Policy Program, The World Bank and Economic Commission for Africa, SSATP Working Paper No 3 available at <<http://documents.worldbank.org/curated/en/Road-user-taxation-in-selected-OECD-countries>>. accessed 20 May, 2021.

⁸ *Ibid*.

costs varies from country to country, and even within countries, definitions vary according to the use being made of the concept. Indeed, taxes are often levied specifically on road users with the objective of raising general revenues. Revenue from taxation of motor vehicles is one of the key sources of revenue. This tax was initially levied as a regulatory tax but over the years it has emerged as an important source of revenue for the Government.⁹ Historically, the local population (especially the landowners) was responsible for the repair of roads and bridges. Since they were the dominant users and beneficiaries of such roads, this was found to be the ideal approach. Each individual had to devote time and money to maintain the roads. Land owners were levied special assessments for access roads because land would have little value if it were inaccessible. Anyone who caused extraordinary damage to a road could be held accountable for its repair. This framework was based on a static theory of roads; the emphasis was on maintaining the roads, not on improving them or providing for an expansion of the road network. With the development of commerce and trade in the later part of the 18th century, a more dynamic view of roads emerged. Certain routes began to be used as important inter-city routes thereby losing much of their local service characteristics. At the same time, roads continued to be built and maintained by property taxes collected in the successive towns along the routes.¹⁰

The user tax is meant to recover for the government some part or all of the costs of supplying road services through direct charges on those using the same. In order that user prices effectively replace taxes as a means of financing publicly supplied services, there has to be a possible measure of the individual's share in the total usage of the services. Road user tax has been universally justified on the basis of the benefit principle. Accordingly, road finance theories place only slight reliance upon 'the ability to pay',¹¹ the common basis for the majority of existing tax levies. Great reliance is placed on the ability to pay principle where services are provided as though benefits and amounts consumed are equal. Thus, it has long been recognized that road users are a natural group to pay taxes on a *quid pro quo* basis. To grant that there may be reasons to supply road facilities over and above those that would be supplied to meet the effective demand of users is quite a different thing from justifying general tax support on the basis of benefit apportionment. Thus, the possibility of construing the road function in common welfare terms does not establish the desirability for doing so.

Formulation of road policy almost wholly with reference to traffic considerations would probably cause no serious neglect of needed requirements nor work injustice upon those required to bear the cost that meet the effective demand of users is quite a different thing from justifying general tax support on the basis of benefit apportionment. Thus, the possibility of construing the road function in common welfare terms does not establish the desirability for doing so. Formulation of road policy that is essentially based on traffic considerations would probably cause injustice upon those required to bear the cost.¹² The issue of Historical practice reveals a further distinction of the general 'benefit principle' based on two schools of thought. One postulates that road user taxes should be based on the cost of service while the other recommends that road taxes should be based on the value of service.¹³ Typically, a number of schemes have been derived to divide the costs of road provision between road users and non-users. Some of them used theories include The Relative Use Method, Predominant Use Method, Earnings Credit Theory, Incremental Cost Theory

Relative Use Method

This theory apportions the cost of each road according to the different purposes for which the road is used. The costs assigned to it 'through' traffic are all paid by road users and the costs assigned to the provision of access roads are paid by property owners; the costs of providing for neighbourhood traffic are divided between users and the community. Under such a scheme, effective collection of taxes is never made upon the basis of actual apportionment. These collections are always made on an average basis. Thus, even if total road costs are recovered, there may still be external effects between various groups and all of society.

Predominant Use Method

In Predominant Use Method, three-way division for road tax responsibility is made between access, trunk roads and other roads. Thus, all urban and rural access roads have their costs financed by property taxes. The predominant beneficiaries of the main roads are the users. All the remaining roads falling between the two

⁹ Mahesh and Vishnu, 'Road User Taxes in India, Issues in Tax Policy and Governance' Foundation for Public Economics and Policy Research New Delhi-110052, available at <https://morth.gov.in> accessed 20 May, 2021.

¹⁰ *Ibid*

¹¹ *Ibid*

¹² P Shorey, (1932), 'Highway Policy on a Commercial Basis', *Quarterly Journal of Economics*, pp. 417-443 available at <https://doi.org/10.2307/1883392> accessed on 30th May, 2021

¹³ *Ibid*.

extremes, whether urban or rural, are financed by the community out of general revenue. Again, the scheme is designed to recover the annual average financial cost of providing the system.

Earnings Credit Theory

Earnings Credit Theory costs of the road system would be computed per vehicle mile / kilometre and this cost would be different from the main trunk routes to access roads. The amount by which motor-tax revenue fell short of meeting these costs would be assumed to be the responsibility of the local tax payer or property owners. Once again, this appears to be a cost of service allocation mechanism.

Incremental Cost Theory

Here, an attempt is made to allocate specific costs to specific groups. However, in the case of costs incurred 'jointly', there is no recovery from others under this method. Thus, it is observed that when it comes to allocation of costs among road users, the recovery of costs has been the guiding principle with the system of average leaving open the scope for external effects to persist amongst geographically separated groups of users and among vehicle classes.

This paper found the Relative Use Method and Earnings Credit Theory as the most appropriate theories to be adopted in formulating an effective road user's taxation policy in Nigeria. Commuters on a particular section of the road shall bear the cost of maintaining the road. This is practicable with the erection of tolls on the Highways. Earning Credit Theory is susceptible to annual vehicle registration where the cost is generally distributed in annual budget.

3. Motor Vehicle Tax (MVT)/Road Tax

The avowed purpose of Motor Vehicle Tax (MVT) is to defray the costs of road maintenance out of the revenue realized from user charges. Besides, motor vehicle taxation is also geared to fulfil other objectives like the reduction of both congestion and pollution. However, multiplicity of objectives results in complex tax structures, cross-classifications and unintended economic and welfare effects.¹⁴ Broadly the rationale behind motor vehicle taxation is two-fold. First, levies on the road transport sector can be justified as approximate user charges. MVT in the form of registration charges are essentially a charge on access to road network. In fact, the more a motor vehicle is used, the less the vehicle charge per kilometer travelled. But while access charges may vary according to vehicle type, they do not discriminate according to usage. The current structure of MVT in Nigeria takes the form of vehicle licence, road worthiness and other forms of road related taxation. It is primarily based on ownership and only indirectly linked to consumption of the road transport service. MVT is being levied in all states as an important source of tax revenue for the States. There are different bases for computation and different rates, leading to differing incidence of taxes per vehicle in different States.

4. Toll Charges for Financing of Highways

Toll charges or toll taxes are user charges upholding the concept of the 'user-pays'. Tolls are paid only when a particular facility is used and the tolls paid cover operating and maintenance costs as well as debt retirement of the facility. It is a form of pay-as-you use. This involves less cross-subsidy amongst road users and makes the incidence of tolls more visible and real to the user. Further, it permits rapid construction, inclusion of adequate operating and maintenance costs in the toll rates and the use of tolls as a form of congestion pricing. Developed and developing countries are finding it increasingly difficult to maintain their road systems and provide for road expansion. This is mainly because prevalent sources of funding are inadequate to meet the growing requirements. Given the persistent pressure on resources, often the need has been felt to explore more extensive use of alternatives i.e. unconventional sources of funding for road construction and maintenance. One such alternative is toll financing of roads which is in limited use in Nigeria. A significant number of toll roads have been built in Western world particularly in France, Italy, Japan, Spain, Portugal and the United States. In these countries, toll roads actually form a system of roads which, in general, is crucial, though its proportion in the total road system is often minimal.¹⁵ In Nigeria, the Minister has power to erect toll gates on the high way. According to section 2 of Federal Highways Act¹⁶, The Minister shall have power to erect, equip and maintain toll gates on any Federal highway as and when required, with the approval of the President. Without prejudice to the generality of subsection (1) of this section, the Minister may prescribe such fees, dues or charges that may be payable at any toll gate erected, equipped or maintained pursuant to subsection (1) of this

¹⁴ M Kafoglis, 'Highway Policy and External Economies', cited in Mahesh and Vishnu, 'Road User Taxes In India, Issues in Tax Policy and Governance' available at <https://morth.gov.in> accessed 20 May,2021

¹⁵ Mahesh and Vishnu, 'Road User Taxes In India, Issues in Tax Policy and Governance' Foundation for Public Economics and Policy Research New Delhi-110052, available at <https://morth.gov.in> accessed 20 May,2021

¹⁶ Cap F13, LFN, 2004

section.¹⁷ In the exercise of the powers conferred upon the Minister by subsection (2) of this section, the Minister may classify the categories of vehicles plying or passing through any toll gate covered by the provisions of this Act and the amount payable by such category of vehicles.¹⁸ The Minister may authorise in writing any officer, agent or person to exercise any of the powers conferred upon him by subsections (1), (2) and (3) of this section.¹⁹ The Minister may make such order which may be published in the Federal Gazette or issue such notice as he may deem necessary in respect of fees, dues and charges payable under this Act.²⁰

Nigeria maintained tollgates on the Highways in the 70, 80 and early 90's until it was dismantled by the Federal Government under the regime of Olusegun Obasanjo citing corruption surrounding the funds and the inconvenience motorists experienced at such tollgates as reasons. The present government of Rtd General Muhammadu Buhari, however, has recently announced plans to reintroduce tollgates on Nigerian roads and 12 highways have been earmarked for concession to private companies. The Minister of Works and Housing, Babatunde Fashola announced the policy while receiving the Outline Business Case Certificate of Compliance for 12 pilot federal highways billed for the concession. According to him, the issuance of the certificate signifies the return of the toll gates as concessionaires.²¹ While experts have welcomed this plan²² it is not clear whether challenges that led to the dismantling of the former has been addressed. Corruption in tollgate collection could kill the plan again if not properly regulated.

5. Road Network Scenario

The Nigerian roads are demarcated amongst various tiers of government. The roads in are divided into Federal Roads (FR), State Roads (SR) and Local Government Roads (LGR). The FR facilitates medium and long distance inter-city passenger and freight traffic across the country. The SR are supposed to carry the traffic along major centres within the State. The LGR provide villages accessibility to meet their social needs as well as the means to transport agriculture produced from village to nearby markets. The traffic on National Highways has been growing at a rapid pace; it has not been possible for the Government to provide matching funds due to competing demand from other priority sectors. This has led to a large number of deficiencies in the network. According to the Government Infrastructure Concession Regulatory Commission, Nigeria has about 195,000 km of road network of which about 60,000 km are paved.²³ Most of the major road networks were constructed in the 80s and early 90s. As a result of poor maintenance and low-quality materials used for repairs, the condition of roads is deteriorating. Travelling is very difficult, and sometimes almost impossible in many areas on secondary roads during the raining season due to potholes and eroded, uneven surfaces. The roads are categorised as Trunk Road 'A' Trunk Road 'B' and Trunk Road 'C'. Trunk Road 'A' forms the skeleton of the national road grid. It cuts across regional boundaries in the country. This class of roads is constructed, maintained and financed by the Federal Government through the Federal Ministry of Works and Housing. Trunk Road 'B' is the second category of main roads in Nigeria. It links the major cities within States. These roads are financed by the State governments. Trunk Road 'C' are local feeder roads constructed and maintained by the Works Department of local government authorities in Nigeria. This class of road is usually untarred and seasonal in nature. Nigeria's most important highways run from South to North and were designed to bring produce from the hinterlands to the coast for export and to link the economies of old Northern and Southern Nigeria.

6. Management of Road User Taxes

The desired objectives of a tax cannot be achieved unless it is properly administered. In fact, as stated by Milka Casanegra, an expert from the fiscal affairs department of the International Monetary Fund, in developing countries such as India, 'tax administration is tax policy.'²⁴ Also, it is important to realise that failure to properly administer the tax defeats its very purpose and threatens the canon of equity because only those who

¹⁷ Section 2

¹⁸ Section 3

¹⁹ Section 4

²⁰ Section 5

²¹ B Nwannekanma, 'How Proposed Tollgates Will Revive Road Infrastructure' Guardian (Lagos, 14 April 2021<
<https://guardian.ng/property/how-proposed-tollgates-will-revive-road-infrastructure-by-experts>> accessed on 26 May,2021.

²² *Ibid.*

²³ Infrastructure Concession Regulatory Commission available at <https://www.icrc.gov.ng/> accessed on 30th May,2021

²⁴ CJ Milka, 'Administering the VAT' in *Value-Added Tax in Developing Countries*, ed. by Malcolm Gillis, Carl S. Shoup, and Gerardo P Sicat, World Bank, Washington; p. 179 available at <
<https://documents1.worldbank.org/curated/en/107821468764724876/pdf/multi-page.pdf>> accessed on 30th May,2021.

cannot avoid it then make full payment of the tax. Thus, a badly administered tax further increases the evasion of tax affecting adversely the morale of the honest tax payers. Consequently, the administrator collects large proportion of tax from easy-to-tax sectors and increases inter-sector inequity in the incidence of the tax.²⁵ Improvement in the administration of road tax is, therefore, of paramount importance. This could be attempted by improving the activities that Motor Vehicle tax section performs. Broadly speaking, the motor vehicles tax section performs two types of activities, viz., the functional and the institutional.²⁶ While the former is performed to fulfil the purposes for which the section exists, the latter refers to the type of activities the department must concern itself with, in order to enable it to serve as a department. In fact, the institutional activities relate to the pattern of internal organisation that can directly contribute success in the execution of the primary or the functional activities of the department. A proper and effective performance of these activities is, therefore, crucial to any study of the organisation.²⁷ An efficient and vibrant road transport system is the important ingredient for the long-term socio-economic and cultural prosperities. The Motor Vehicle department of Internal Revenue Service should go beyond functional activities and reflect institutional mandate that will make her acceptable to the people. The department shall have monitoring unit that should be able to give account of how road tax is utilised. It has direct bearing on the quality of the life of the people with enormous implications embodied. The efficacy of road transport system is inextricably linked with the types and extent of regulatory, management and administrative setup in the State.

7. Challenges and Problems of Road Tax in Nigeria

Lack of clarity in the road tax legislation is the major challenge of road tax in Nigeria. The only statute that mentioned road tax in the Nigerian legal regime is the Taxies and Levies (Approved List for Collection) Act.²⁸ There is no further legislation on how road tax should be administered. The obscurity in the law has caused a lot of problems to road tax administration as many states have taken advantage of those loopholes to collect all manners of taxes in the form and guise of road tax. It has caused multiple taxation. Road is a network of two or more states; or two or more local government. Sometimes a federal road or state road may link two or more states, and each of the states or local government may want to collect road tax in different forms and name. This has caused the tax payer the burden of paying taxes, fees or levies to various states while en route. The Taxies and Levies Act did not make any provision with respect to; whether the road tax shall be collectable by one state so that it would not be paid to different states. But if the Act made such provision, which state would want to leave it for another to collect? This is the problem with road tax collection and administration.

Another problem is issue of touting by revenue agents. Most of the road tax collectors are fake tax agents. Under the aegis of government revenue agents, they mount road blocks to collect taxes. They use all manners of force and intimidation to extort money from the commuters. They charge higher amount and engage the tax payer in negotiation against the principle of a good tax system that tax payment must be certain. The inefficient administration has also caused untold revenue leakage for the government. The most revenue consultants appointed to collect road taxes are the stooges of the political gladiators who are assigned such as a political patronage them. What the consultants do is to pay an agreed some to the State Inland Revenue Service to secure the contract to collect the road tax. What would eventually be collected would naturally be much higher than what is paid; the difference is the shortfall of the state's revenue. The price of goods in the market increases on daily basis depending on the number of tolls, tickets, stickers commuters pay before reaching their final destination. Where goods are transported from Northern Nigeria to Eastern Nigeria, more than 12 to 15 revenue teams would have intercepted the vehicle en route their destination, they would extort different manners of taxes from the commuters. In some instances, the market women are made to pay the fees when their driver is averse to the payment in order to facilitate the movement of her goods. All the expenses made on the way gradually transcend into the cost of the product. The resultant effect is inflation.

²⁵R M. Bird and CJ Milka (Eds) (1992), *Improving Tax Administration in Developing Countries*, International Monetary Fund, Washington, D.C., p.1 available at <<https://www.imf.org/en/Publications/Books/Issues/2016/12/30/Improving-Tax-Administration-in-Developing-Countries-24>> accessed on 30th May,2021

²⁶ CJ Milka 'Administering the VAT' in *Value-Added Tax in Developing Countries*, ed. by Malcolm Gillis, Carl S. Shoup, and Gerardo P. Sicat, World Bank, Washington; p. 179 available at <<https://documents1.worldbank.org/curated/en/107821468764724876/pdf/multi-page.pdf>> accessed on 30th May,2021.

²⁷ Bird, Richard M. and Milka Casanegra de Jantscher (Eds) (1992), *Improving Tax Administration in Developing Countries*, International Monetary Fund Washington, D.C., p.1 available at <<https://www.imf.org/en/Publications/Books/Issues/2016/12/30/Improving-Tax-Administration-in-Developing-Countries-24>> accessed on 30th May,2021.

²⁸ Cap T2, LFN, 2021. Nevertheless, Highways Act has provisions on the power of the Minister to collect toll fees on the highways which is a form of road tax. But the tollgates are no longer functional.

The general cause of all the problems is lack of political will to address it. Those who should fight the problems of road tax are benefitting directly or indirectly from it. Nigeria has witnessed tremendous reforms in the tax sector; but there seems to be no political will to reform road tax because of the beneficiaries of the inefficiencies are political associates. Where there is political will to address same, it can be reformed like others and this work has provided theoretical and practical guides for the reform.

8. Conclusion/ Recommendations

Nigeria needs to catch up with the world on road user's taxation policy. Efficient road user's taxation is potential to the maintenance of roads in Nigeria. One of the key reasons for poor road maintenance in Sub-Saharan Africa is lack of funding occasioned by poor road user's taxing policy. Accordingly, any initiative to improve the financing of roads in Nigeria must address the question of taxing the road users. Experience from the selected countries has shown that road cost is distributed to the road users in different categories. The good road network enjoined in Europe is paid by the people. It is important for the Nigerian tax regime to awaken to the consciousness. The state of roads in Nigeria is despicable and needs urgent attention. Where a good road user's taxation is implemented, the road network will rebound. Road tax should be taken away from part B of the Taxes and Levies Act to address the problem of multiple taxation occasioned by state agents. The federal government should be responsible for the legislation in ensuring a unified process that will be applicable to states. It should be harmonized with Federal Road tax collectible in form of toll fees on the Highways.²⁹ This will remove the number of tax collectors working for different states on the Highway. This approach was used to solve multiple taxation syndrome that arose from Personal Income Tax in the 1960 Constitution. Because of conflicts arising from different states in the imposition of Personal Income tax, the legislation was taken away from the Concurrent list and placed in the Exclusive list of the Constitution. Value Added Tax was also introduced to unify the inherent problem of multiple taxation arising from Sales Tax Law of various states. The same approach can be taken to unified road user's taxation of various states. When the law is unified, the issues of touting arising from different state agents will be gone. Corruption and revenue leakage will disappear as there would be no deal for the political stooge. Compliance will be high and more revenue will be generated.³⁰ Concerns could be raised about the efficient implementation and utilization of the tax revenue. People have lost confidence in the payment of tax as there is no visible dividend of taxation. Road tax being a specific tax should be used for the specific purpose. The tax fund should be separated from general revenue account and an independent body should manage it. Where road tax is paid and the road is bad, the taxpayer can maintain an action for damages. Road user's taxation when separated would be immune from the Directive Principle and Fundamental Objective that is not justiciable.

²⁹ Re-introduction of tollgates will engineer this harmony.

³⁰Adesanya & Oguntola have opined that efficient road tax system will be a veritable opportunity for state government to collect additional revenue needed in discharging its pressing obligations. See Adesanya & Oguntola, *The Legal and Institutional Framework for Taxation in Nigeria: Some Aspects of Law, Policy and Practice*, International Journal of Research and Innovation in Social Science (IJRISS) [Volume II, Issue VI, June 2018|ISSN 2454-6186, available at <https://www.rsisinternational.org/journals/ijriss/Digital-Library/volume-2-issue-6/06-10.pdf>