

LEGAL APPRAISAL OF THE PROSPECTS IN TAXATION OF INCOME OF NON-GOVERNMENTAL ORGANISATIONS IN NIGERIA

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Abstract

Taxation is one of the veritable tools in the hands of countries of the world. Income realized from taxation in some countries far outweighs the income realized from other sources of revenue of government. In the present growing rate of economic activities and dwindling rate of income generated from oil, Nigeria just like most countries of the world has the potential risk of failing to carry out its obligation from the income generated from oil. The government of Nigeria has also started looking inwards in the area of taxation by enacting certain tax laws to increase the rate of tax payable on goods and services such as vatable goods and services. There are corporate bodies called non-government organizations, which comprise of churches, town unions, civil liberties organizations, trade unions, foundations, and so forth that the law exempts their income from payment of taxes. These non-governmental organizations engage in one economic activity or the other wherein they acquire income to run the affairs of the organizations and enjoy every facility provided by the government. However, there are no adequate legal and institutional mechanisms for effective and efficient taxation of income of these non-governmental organizations. A lot of prospects abound for the economy of Nigeria when adequate legal and institutional mechanisms are put in place for the effective and efficient taxation of the income of non-governmental organizations in Nigeria. This work aims to appraise the prospects inherent in the taxation of income of Non-Government Organizations in Nigeria. The researchers adopted the doctrinal legal research methodology using the analytical approach with the aid of statutes, case law, textbooks, journals, articles, and Internet materials. The researchers concluded that the absence of a clear-cut legal framework among other things is seriously impeding the prospects inherent in the taxation of income of non-governmental organizations in Nigeria. Consequent to the above, the researchers recommended that there is an urgent need for stakeholders in Nigeria to ensure that adequate legal and institutional mechanisms are put in place for the effective and efficient taxation of the income of non-governmental organizations to actualize the prospects inherent in the taxation of income of non-governmental organizations in Nigeria.

Keyword: Taxation. Law, Non-Governmental Organisation, Nigeria

1.0 Introduction

The structure and tax administration in Nigeria is multi-tiered namely the federal, state, and local governments all of which tiers have their taxing authorities, powers, and objectives provided for and defined in federal laws. There are a plethora of other taxes and levies provided for under different Nigerian laws as well as a myriad of levies collected by local government authorities outside the ambit of the law¹.

While the above defines the general nature of taxation in Nigeria, our focus in this paper shall be to identify and appraise what prospects inherent in taxation of NGOs within the Nigerian tax system.

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¹IO Okauru., *Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria* (Oxford: African Books Collective, 2012).

2.0 Meaning and Nature of Taxation

Tax is defined as a monetary charge imposed by the government on persons, corporate bodies, transactions, or property to yield public revenue.² It is an obligatory fee payable by members of a state from their income, property, and or business, to the government of the state for various state uses. It is mandatory, it is based on residency and not citizenship.¹ In *Mathews v Chicory Marketing Board*,² the Australian Supreme Court defined tax to be a compulsory exaction of money by a public authority for public purposes or taxation as raising money for the government using contributions from individual persons. *Michigan Employment Sec Commission v. Platt*,³ defined tax as a compulsory contribution towards a country's expenses raised by the government from people's salaries, property, and from the sale of goods and services. It is also a strain, burden, or heavy demand.⁴ It is the money that you have to pay to the government which they use for public services. People pay taxes according to their income, and businessmen pay taxes according to their profits.⁵ It is a compulsory contribution to support the government which is levied on persons, property, income, commodities, transactions, and so on, now at a fixed rate most proportionate to the amount on which the contribution is levied.⁶

Taxation is the process of collecting taxes within a particular location and in this regard, tax can be defined as a pecuniary burden laid upon individuals or property to support government expenditure. It is therefore not a voluntary payment or donation, but an enforced and compulsory contribution exacted with legislative authority⁷. Taxation is the means through which a government imposes or levies tax on its citizens and corporate entities as a way of raising revenue which is then used to meet their budgetary demands. Through payment of tax, governments finance their expenditure by levying charges on citizens and corporate bodies.⁸ Taxes are imposed under the authority of the legislature. They are levied by a public body and they are intended for public purposes.⁹

Akanle¹⁰ defines taxation as a compulsory levy imposed on a subject or upon his property by the government having authority over him. This definition also reflects a wider base of taxation, as tax may be charged not only upon persons but also upon properties and transactions to raise money for public purposes.¹¹

Tax is not an optional payment or voluntary donation to the government, it is rather, an enforceable contribution exacted by the legislative provisions by constituted authorities. Therefore, tax, in

¹ (n 2)

² (1938)60 C.L.rR. 263 at 276.

³ 4 Mich App; 224; 14 N.W 2nd 663.

⁴ M N Umenweke,, *Tax Law and its implications for Foreign Investments in Nigeria*, (1st edn; Enugu: Nolix, Educational Publications, 2008), p. 5.

⁵ (n 4)

⁶ IA Ayua, *The Nigerian Tax Law*, (1st Edn; Spectrum Law Publishing, Lagos, 1996) 3.

⁷ JAA Agbonika *Topical Issues on Nigerian Tax Laws and Related Areas*, (1st Edn, Ibadan; Ababa Press Ltd, 2015) p. 365.

⁸ UMJ Anushiem, 'Invention of Finance Act, 2019, As Amended on Taxation of Dividends in Nigeria: A legal Appraisal' (2022) (9)(1) *Nnamdi Azikiwe University Journal of Commercial and Property Law* p. 19.

⁹ MT Abdulrazaq, *Taxation System in Nigeria*, (1st Edn, Ikeja-Lagos, Gravitas Legal & Business Resources Ltd, 2016) 342.

¹⁰ O Akanle, *Tax law and Tax Administration in Nigeria*, (1st edn, Lagos: Nigeria Institute of Advanced Legal Studies, 1991) 1.

¹¹ AI Paye, *Nigeria Tax Law & Administration: A Critical Review* (1st edn, London: ASCO prime Publication Ltd, 2014) 2.

modern times, takes the form of a pecuniary burden laid down upon individuals or property to support the government usually imposed upon them by statute.¹²

3.0 Meaning and Nature of Non-Governmental Organisation

A Non-governmental Organization (NGO) on the other hand, is a voluntary group of individuals or organizations, usually not affiliated with any government that is formed to provide charitable, religious, cultural, and other incidental services to the people.¹³ They are independent of the government and are typically non-profit entities and many of them are active in humanitarian service.¹⁴ Non-governmental Organizations (NGOs) also known as civil society organizations, are a collection of social organizations, formed voluntarily by citizens to advance shared goals or interests. They include independent public policy research organizations, advocacy organizations, organizations that defend human rights and promote democracy, humanitarian organizations, private foundations, charitable organizations, and religious organizations, excluding political parties.¹⁵

The diversity of NGOs strains any simple definition. They include many groups and institutions that are entirely or largely independent of government and they have their primary objectives. These objectives include creating awareness in order to influence government policies and¹⁶ representing persons who have been marginalized, oppressed, or underrepresented. Some of them are formed from where some groups of persons are experiencing inequalities. They create a voice for the people who are less privileged and they speak and act on behalf of parties with no voice, such as the poor.¹⁷ They play a role in shaping a sustainable society. From the above definitions, an NGO can be said to be an organization made up of a group of persons who work to achieve their desired goal and are independent of the government.

The impact of taxation on the economic growth of any country or society cannot be overemphasized. In most countries around the world, taxes have proven to be a major source of revenue generation. In Nigeria, oil has been a major source of revenue over the past years. However, the dwindling oil prices in the global oil market, have truly led to a huge decrease in the funds available to the government for infrastructural development, distribution to states, and use for national and economic activities. Based on this fact, there is a need for a paradigm shift in the source of revenue generation from oil sources to non-oil sources through taxation. Hence, there is a need for the Federal, State, and Local Governments to start generating adequate revenue through tax revenue. In Nigeria, although NGOs are seen as non-profit organizations in reality a lot of them engage in trading and business activities thereby deviating from the object of the organization and also making a lot of profit from those business activities.

¹² Y S, Uthman, 'Review of Some Effects of Nigerian Corporate Tax Regime on Investment promotion' (2010) Vol. 1 (1) *Abuja Journal of Public and International Law*, 33.

¹³ M P, Karns, 'Non-Governmental Organization' available at www.britannic.com/topic/non-governmental-organization assessed on the 8th March 2022 at 10:28pm.

¹⁴ A Blinken, Non-governmental Organization (NGOs) in the United States available at <http://www.state.gov/non-governmental-organizations-ngos-in-the-united-states>, assessed on the 9th March, 2022 at 09:02am.

¹⁵ (n. 14)

¹⁶ N , Definition of an NGO, available at www.gdrc.org/ngo/wb-define.html assessed on the 12th March, 2022.

¹⁷ M I Anushiem, H O Obi and UMJ Anushiem. 'The Role of Civil Society Organizations in the Nigerian Electoral Process: A Legal Appraisal', (2021) *Awka Capital Bar Journal (ACBJ)* Vol. 2 , 54.

Section 7 of the Finance Act 2021 as amended¹⁸ exempted from tax the profits of any company being a statutory or registered friendly society, profits of any company being a co-operative society registered under any enactment or law relating to co-operative societies, and profit of any company engaged in ecclesiastical or charitable activities of a public character in so far as such profits are not derived from a trade or business carried on by such company. From the above provision of the law, it is clear that although the profits made by these non-government organizations (NGOs) are exempted from tax under the law, when these non-governmental organizations engage in any form of trade or business, any profit made from such trade or business will be subjected to tax. Most trustees, running these NGOs are unaware that they are not exempted from paying taxes. A lot of them hide under the fact that they are non-profit making organizations and as such they are exempted from paying taxes. That is why they engage in all manner of trade and businesses and derive huge profits but do not remit that portion of the profit made from the trading and business activities. These trustees buy expensive houses, and landed properties, buying expensive cars and private jets. There is a need for the government to monitor the activities of these NGOs, to tax the profit or income that is taxable. For payment of tax, all NGOs are expected to register with the Federal Inland Revenue Service (FIRS) and obtain Taxpayers Identification Number (TIN). It is also mandatory that these NGOs file their annual returns to the Federal Inland Revenue Service (FIRS) every year. They are required to file their annual returns at FIRS-designated tax offices covering their locations. The essence is to enable the FIRS to monitor the activities of these NGOs to know when they have engaged in any trade or business activities that will subject them to pay tax.

Whenever it is found that these NGOs engage in any trade or business or invest their assets in any institution, the profit or income derived is liable to be taxed appropriately. In other words, profits of these NGOs derived from trade or business carried on by the organization/institution such as proceeds from sell of goods or merchandise, provision of consultancy, professional or other services rendered for a fee are subject to the company's income tax. These taxes when generated by the government will boost its revenue and also enhance the provision of infrastructural developments like the construction of good roads; building rail lines; provision of electricity; pipe borne waters; payment of workers' salaries; provision of basic education and subsidizing tertiary education and so many other responsibilities of government. Citizens of Nigeria must 'declare their income honestly to appropriate and lawful agencies and to pay their taxes promptly.'¹⁹

4.0 Prospects of Taxation of Income of Non-Governmental Organisations in Nigeria

4.1 Creation of more Revenue for the Government.

Taxation of income from non-governmental organizations will create more revenue for the government. Most of these non-governmental organizations carry out trade, businesses, and other forms of economic activities and they make a lot of profits or gains from such economic activities. These profits or gains made by these NGOs are not adequately taxed.

In some cases, these NGOs evade payment of taxes in Nigeria or they pay little or no tax in Nigeria. However, through the taxation of income of non-governmental organizations, a lot of these NGOs will be captured to pay taxes to the Nigerian government and when this is achieved, it will generate more revenue for the government and also save our country from debt servicing.

¹⁸ Finance Act 2021 S.7; Companies Income Tax (Amendment) Act 2011 s 23.

¹⁹ Constitution of the Federal Republic of Nigeria 1999 as amended, s 24.

4.2 Expansion of Tax Net.

Taxation of Non-Governmental organizations will widen the Nigerian tax net. The Federal Government through the Federal Inland Revenue Service (FIRS) has put measures in place in order to widen the tax net which in turn will increase the revenue of Nigeria and ease the burden on the Nation's economy. Beyond the technicalities around the assessment of taxes, rates of taxes to be paid, and computation of taxes, the Federal Inland Revenue Service (FIRS) should ensure the creation of an enabling tax environment where the tax system will be fair, equitable and efficient to make payment of taxes easier for these NGOs who carry out economic activities in Nigeria.²⁰ The Federal Inland Revenue Service (FIRS) should also put measures in place to widen the tax net to capture NGOs who are liable to pay tax in Nigeria by mandating them to register with the FIRS for purposes of payment of tax and to obtain their Tax Identification Number (TIN).

4.3 Diversification and Migration from an Oil-Based to a Tax-Based Economy

The Nigerian government has so much relied on oil as its major source of revenue but the decline in the prices of oil in recent times and the COVID-19 pandemic have no doubt led to a huge decrease in the revenue generated by the government to run its affairs. The emergence of the COVID-19 pandemic which resulted in the lockdown of economic activities all over the world forced the governments of different countries to fashion out ways of revenue generation. This pandemic revolutionized online trading activities all over the world²¹. More so, because of this revolution, the Nigerian government through the Federal Inland Revenue Service (FIRS) should put measures in place to achieve effective taxation of non-governmental organizations. The Nigerian government has so much relied on oil as the major source of revenue in Nigeria, that there is a need for the government to explore the opportunities that abound through the taxation of income of non-governmental organizations. As a matter of extreme urgency and importance, there is a need for the government to start generating revenue from non-oil-based revenue through payment of tax.

4.4 Reduction in Governmental Borrowing

Nigeria has so much relied on oil revenue as its major source of revenue generation. There is a need to diversify the Nigerian economy through the taxation of income of non-governmental organizations to stall problems created by fluctuations in the prices of oil globally²². This will no doubt reduce the incidence of borrowing by the Nigerian government. When more taxpayers are captured into the Nigerian tax net, it will increase the inflow of revenue and when this is achieved, it will reduce the incidence of excessive borrowing by the Nigerian government. According to the Director General of Debt Management Office (DMO) Patience Oniha, diversification of the Nigerian economy and its source of revenue will reduce Nigeria's reliance on borrowings to fund budget deficits. Nigeria has so much depended on foreign and local loans to augment its annual budgets due to deficit.²³ Because of this, the Federal Government is faced with the challenge of increasing its revenue base to ease the debt burden.²⁴ The major reason for the increase in borrowings is that, over the years, Nigeria has had consecutive budget deficits. The Debt-to-Revenue Ratio as of 2021 was 71 percent and Nigeria's debt profile as of March 2022 stood at

²⁰ A Odotola, 'Experts Call for Tax Net to be Widened to Boost Revenue, *NMEJ* (2022) 1 (1) <http://nairametrics.com> accessed 20th Aug 2022.

²¹ PB Ibijoke, 'Educational Barriers and Inaccessibility to Digital Tools during the COVID -19 Pandemic in Nigeria' *Obafemi Awolowo University Law Journal OAUJLJ* [2020] 1(4) 154.

²² F Alion, *Why we're Diversifying Nigeria's Economy* (Lagos, The Vanguard, 2022) 7.

²³ P Imouokhome, *Nigeria Need More Than Taxes to Fix its Insufficient Funds Problem*, (Lagos Business Day, 2022) 4.

²⁴ P Oniha, *Economic Diversification, Improved Government Revenue Will Reduce Debt Burden* (Lagos, 01, April 2022) 17.

41.60 Trillion Naira²⁵. It is high because the government has been borrowing for a long time and every debt, there is an interest. Nigeria has borrowed excessively from the World Bank between February 2020 and October 2022, the World Bank approved a total of \$9.2 billion for Nigeria, the largest any country ever got within such a short period.

4.5 Reduction in Public Debt Servicing

Taxation of income of Non-Governmental organizations will reduce debt servicing by the government. The Federal Government spends much of its revenue on service debt, which means that there will be very few resources to finance other activities of the government like infrastructure development. Each year the debt stock has been growing since 2010 and Nigeria has been running a budget deficit.²⁶

Nigeria spends up to 60% of its revenue on debt servicing. Nigeria's debt service to revenue ratio is reported as 80.7% according to the information contained in the 2023 Budget presentation made by the Minister of Finance. The World Bank has warned that Nigeria's debt service cost-to-revenue ratio could hit 160 percent in five years, except broad-based reforms are implemented to 'unfreeze' the fiscal space²⁷.

However, despite the efforts made by the government to grow its revenue base to reduce the dependence on borrowing Nigeria's revenue base is dependent on oil. This can be achieved through the taxation of income of non-governmental organizations. It is important to know that we have a low revenue base, which is worsened by the fact that most of the country's revenue comes from crude oil. This means that Nigeria has a revenue problem. There is a need for the government to grow its revenue by taxing the income of non-governmental organizations because it will encourage the private sector to invest in Nigeria and discourage excessive borrowing done by the Federal Government.

5.0 Conclusion

Taxation of NGOs in Nigeria is indeed surrounded by uncertainties ranging from non-direct recognition of NGOs by the relevant corporate and Tax laws to a plethora of other tax challenges discussed in this paper. Much as these uncertainties and challenges abound, there seems to be an obvious contemplation of the existence and taxation of NGOs by the relevant provisions of the Nigerian laws namely, the CAMA²⁸, the CITA,²⁹ and the PITA³⁰ From our discussions so far, it would appear that NGOs do not operate in Nigeria strictly as charity organizations as are found in other jurisdictions and accordingly, no specific place is given to it in the tax laws. This is especially true when one considers the relevant provisions of Part F of the Companies and Allied Matters Act³¹, the Personal Income Tax Act,³² and the Companies Income Tax Act³³ on non-profit organizations. By the definitions given by the relevant provisions of these laws, NGOs would

²⁵ G Iyatse, *Stop Borrowing, Experts Warn FG as Debt Profile Hits 41.60 Trillion Naira* (Lagos, The Guardian, 2022) 12.

²⁶*Ibid*, (n. 23)

²⁷ G Iyatse, 'Nigeria to Spend 160% of Revenue on Debt Service in 2027, World Bank Warns', *The Guardian Newspaper* 7th Dec 2022, 42.

²⁸ Companies and Allied Matters Act, 2020 ss 823, 830 and 838.

²⁹ Companies Income Tax Act (Amended), 2007 s.23 (1)(a & c).

³⁰ Third Schedule, Paragraph 13

³¹ (n 28) Sections 823, 830 and 838.

³² Third Schedule, Paragraph 13.

³³ (n 29), section 23

comprise any organization incorporated for religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purposes.

As a result of the above circumstance, ascertaining the position of the law on taxation of NGOs in Nigeria is largely fraught with a lot of legal assumptions and interpretations. We find the tax authority, the FIRS, ceaselessly developing circulars³⁴ and guidelines³⁵ after guidelines to clarify the tax position of NGOs. Constant amendments are also made in the tax laws to ameliorate the effect of this gap in legislation. From the legal assumptions, interpretation, and guidelines, what is decipherable is that the existence of NGOs in Nigeria is contemplated in the relevant corporate and tax laws in Nigeria, and NGOs in Nigeria are exempted from taxes to a certain extent and liable for taxes in certain other cases. Despite all the frantic efforts to bridge the legislative gap on the taxation of NGOs in Nigeria, taxation of NGOs in Nigeria will bring a lot of prospects to the economy of Nigeria as has been highlighted above.

6.0 Recommendations

To create the much-needed enabling environment for the thriving of NGOs, taxation of the NGOs forms one of the many paramount factors to be considered. We recommend that given the many prospects identified in this paper that may be accrued from adequate taxing arrangements for NGOs in Nigeria, the following suggestions would be invaluable:

1. Need for a Clear-Cut Legislation for Provision of Taxes Payable by Non- Non-Governmental Organizations

In Nigeria as of today, there is no dedicated statute providing exclusively and with certainty for the operation of NGOs in Nigeria other than the piecemeal provisions on not-for-profit organizations littered in the CAMA, the CITA, and the PITA which at best made blank provisions, lumping all Non-Profit Organizations such as churches, educational institutions, sports institutions, cultural organizations, and charity organizations together in one category. A statute should be enacted by the legislature to provide for the formation, operation, and regulation of NGOs in Nigeria. The statute when enacted will define in clear terms what organizations qualify as NGOs, the scope of their operations, and the kind of incentives available to such NGOs as well as the extent of the incentives. With this sort of legislation in place, the very many tax laws could then be amended to reflect and achieve the intendment of the NGO Act. This we believe would introduce certainty in the Nigerian taxing system as it relates to NGOs, and will lead to eschewing the system of all manner of ambiguity.

2. Proper Identification of Income and Resources of these Non- Governmental Organizations

There is a need to identify the income and resources of these taxable non – governmental organizations in Nigeria. To achieve an effective tax administration and enforcement, proper identification of these taxpayers' income and resources must be done by the Federal Inland Revenue Service. The Tax Identification Number of these Non-Non-governmental organizations should be made to reveal the income and financial status of these Non-Non-governmental organizations. This will help in achieving effective taxation of these Non-Non-governmental organizations in Nigeria.

³⁴ Federal Inland Revenue Service Circular of 2021.

³⁵ Generally, Guidelines on the Tax Treatment of Non-Governmental Organisations (NGOS), 2021.

3 Discouragement of Tax Evasion/ Corruption

We recommend that there is a need now more than ever for a more transparent tax regime that would bring clarity to the Nigerian tax system as it relates to NGOs; reviewing the loopholes in the nation's tax legal framework to reduce the rates of tax evasion and avoidance practices by the NGOs and incorporating steps that would encourage strict compliance and enforcement in the polity. Additionally, looking at the current performance of the tax authorities in Nigeria, it would appear that the Agency lacks a reliable and comprehensive database of finances and operations of the NGOs to be able to capture all the taxable incomes of the civil society groups in the country. Efforts should equally be intensified for progress in this regard.

4 Tax Awareness and Communication:

Tax awareness is key to tax compliance because it is only when these NGOs are aware of their tax responsibilities that they are more likely to remit their tax liabilities as and when due to the relevant tax authorities. It is recommended that apart from having a dedicated statute for taxation of NGOs and creating clarity as to the tax responsibilities of NGOs, there should be concerted efforts from tax authorities as well as all relevant government agencies to embark on periodic but constant orientation of the civil populace on the social significance of taxations.