

REITERATING THE NEED FOR ADHERENCE TO THE PROVISIONS OF THE TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) ACT*

Abstract

Taxes are a cornerstone of civilization and constitute arguably the most certain and consistent source of revenue for every country. Consequently, their collection is of monumental importance. The Taxes and Levies (Approved List for Collection) Act delineates the different taxes to be collected by the Federal, State and Local Government respectively and this ought to harmonize the collection of taxes. Unfortunately, the provisions of the Taxes and Levies (Approved List for Collection) Act are not always heeded with the attendant problems, among which are multiple taxation and sub-optimal tax collection. That is why this work sets out to review the pertinent provisions of the Taxes and Levies (Approved List for Collection) Act as well as relevant scholarly publications relating to the legislation. It concludes that for a harmonious system, the provisions of the Taxes and Levies (Approved List for Collection) Act have to be scrupulously adhered to.

Keywords: Taxes, Tax Collection, Taxation, Payment

1. Introduction

The fundamentality of taxation to the success and stability of every country is an unquestionable and obvious fact. Its impact in the economy cannot be over-emphasized¹ as it serves as a powerful facility available to governments to stimulate and direct their socio-economic development² and to raise revenue³. Tax administration and in particular, tax collection is of paramount importance. Because of the perennial difficulty and confusion relating to the effective collection of taxes, it became necessary to pass an enactment to carefully streamline and delineate the different taxes and the bodies which should collect them⁴. It therefore goes without saying that the Taxes and Levies (Approved List for Collection) Act⁵ is a very important enactment. The philosophy behind the passing of the TLA has been stated to be the harmonization of taxes in Nigeria⁶. Unfortunately, many tax officials and authorities have refused to follow the provisions of the TLA, thereby causing confusion and exacerbating the problems encountered in tax collection. That is why this article calls for an end to this and for a scrupulous adherence and compliance with the provisions of the TLA to ensure order, harmony and efficiency in tax collection in Nigeria.

2. Pertinent Provisions of the TLA

The TLA outlines the various taxes that can be collected by each tier of government. It provides as follows: “notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended, or in any other enactment or law, the Federal Government, State Government and Local Government shall be responsible for collecting the taxes and levies listed in part I, Part II and part III of the Schedule to this Act respectively.”⁷ It must be observed straightaway that the attempt by the above provision to circumscribe the power of the Constitution is untenable. This is because the Constitution is supreme⁸ and any law which is consistent with it is void to the extent of its inconsistency.⁹ The said provision must be amended to correct the

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¹ AL Suleman, ‘Taxation Regime in Nigeria: Critical Analysis of Basic Principles’ in JAA Agbonika ed, *Topical Issues on Nigerian Tax Laws and Related Areas* (Ibadan: Ababa Press Ltd, 2015), 363.

² IA Ayua, *The Nigerian Tax Law* (Ibadan: Spectrum Law Publishing, 1996), 1.

³ DC Nwuzor and CA Onah, ‘The Implications of Taxation on Revenue Generation in Nigeria’, *Law and Social Justice Review* 3(3) 2022, 59. See also, TW Nwoke, ‘Taxing Powers of the Three Tiers of Government in Nigeria: an Extrapolative Appraisal’, *IJOLACLE* 2 (2021), 74.

⁴ A Ipaye, *Nigeria Tax Law & Administration: A Critical Review* (London: ASCO Prime Publishers, 2014), 86.

⁵ Cap. T2 Laws of the Federation of Nigeria (2010), (hereinafter called “TLA”). Note that although this Act was amended pursuant to the Taxes and Levies (Approved List for Collection) Act (Amendment) Order 2015 by the then Minister of Finance, this amendment was set aside by the Federal High Court on 8th May 2020 in the unreported case of *Registered Trustees of Hotel Owners and Managers Association of Lagos v AG Federation* on the ground that the power of the Minister under the TLA to amend the schedule to the TLA is unconstitutional because the power to legislate belongs to the National Assembly and cannot be shared with any other person.

⁶ JO Okorie, ‘Nigerian Tax Harmonisation Policy: An Appraisal’, *EBSU Commercial and Industrial Law Journal*, Vol. 1, No. 1, 111 – 119.

⁷ TLA, s. 1(1).

⁸ 1999 Constitution of the Federal Republic of Nigeria (as amended), s. 1(1).

⁹ *Ibid*, s. 1(3); *Rabiu v The State* (1980) 8-11 SC (Reprint) 85.

anomaly. That said, the demarcation of the various taxes collectable by each tier of government is now examined. The taxes to be collected by the Federal Government are as follows:

1. Companies Income Tax.
2. Withholding tax on companies, residents of the FCT and non-resident individuals.
3. Petroleum Profits Tax.
4. Value Added Tax.
5. Education Tax.
6. Capital Gains Tax on residents of the FCT, bodies corporate and non-resident individuals.
7. Stamp duties on bodies corporate and residents of the FCT.
8. Personal Income Tax in respect of:
 - a. members of the armed forces of the Federation;
 - b. members of the Nigerian Police force;
 - c. residents of the FCT; and
 - d. staff of the Ministry of Foreign Affairs and non-resident individuals.¹⁰

In the view of Sanni, the aforesaid list gives the Federal Government control over the most important spheres of the economy¹¹. Those to be collected by the State Government are:

1. Personal Income Tax in respect of:
 - (a) pay-as-you-earn (PAYE); and
 - (b) direct taxation (self-assessment).
2. Withholding tax (individuals only).
3. Capital Gains tax (individuals only).
4. Stamp Duties tax on instruments executed by individuals.
5. Pools betting and lotteries, gaming and casino taxes.
6. Road Taxes.
7. Business premises registration fee in respect of:
 - (a) Urban areas as defined by each state, maximum of- ₦10,000 for registration; and ₦5,000 per annum for renewal of registration; and
 - (b) Rural areas- ₦2,000 for registration; and ₦1,000 per annum for renewal of registration.
8. Development Levy (individuals only) not more than ₦100 per annum on all taxable individuals.
9. Naming of street registration fees in the State Capital.
10. Right of occupancy fees on lands owned by the State Government in urban areas of the state.
11. Market taxes and levies where state finance is involved.¹²

Those to be collected by the Local Government are:

1. Shops and kiosks rates.
2. Tenement rates.¹³
3. On and off liquor license fees.
4. Slaughter slab fees.
5. Marriage, birth and death registration fees.
6. Naming of street registration fee, excluding any street in the state capital.
7. Right of occupancy fees on lands in rural areas, excluding those collectable by the Federal and State Governments.
8. Market taxes and levies, excluding any market where State finance is involved.
9. Motor park levies.
10. Domestic animal license fees.
11. Bicycle, truck, canoe, wheelbarrow and cart fees, other than a mechanically propelled truck.
12. Cattle tax payable by cattle farmers only.

¹⁰ TLA, Schedule, Part 1. See also, IM Ajogwu, 'An Appraisal of the Controversy Between the Federal Inland Revenue Service and River State Government in respect of Value Added Tax Collection', *NAUJCP* 9(3) 2022, 27.

¹¹ AO Sanni, 'The Approved List of Taxes: a Commentary', *Modern Practice Journal of Finance and Investment Law*, 1998, 2.

¹² *Ibid*, Schedule, Part II. See also, YY Dadem, *Property Law Practice in Nigeria*, (2nd edn: Jos: Jos University Press Limited, 2012), 432.

¹³ For a scintillating argument as to why this tax should be left exclusively for the local government, see AO Sanni, 'The Controversial Lagos Property Tax – The Flip Side of the Coin', (2003)23 *JPPL*, 71 – 92. The aforesaid argument is hereby adopted.

13. Merriment and road closure levy.
14. Radio and television license fees (other than radio and television transmitter)
15. Vehicle radio license fees (to be imposed by the local government of the state in which the car is registered).
16. Wrong parking charges.
17. Public convenience, sewage and refuse disposal fees.
18. Customary burial ground permit fees.
19. Religious places establishment permit fees.
20. Signboard and advertisement permit fees.¹⁴

It is submitted that the above streamlining of the taxes collectable by each tier of government is laudable. This is because it goes a long way to reduce incidents of multiple taxation. Furthermore, it ensures a high degree of certainty, both among the tax authorities and taxpayers, as to who to collect or pay each tax to. Moreover, it increases the effectiveness in tax collection. Last but not the least, it allows each tier (especially the weakest one, i.e, the Local Government) to have some certain revenue to work with.

Nevertheless, the working of the TLA has not been without some difficulties. One of these is that, due to structural incongruities in the tax administration system, a harmonious implementation of the TLA has not been totally achieved. Thus, there are still incidents of multiple taxation. Moreover, the Local Government, being the weakest tier, is often bullied, as it were. It is common place, for instance, for the State Government to collect wrong parking charges, sewage disposal fees, signboard and advertisement permit fees; etc.¹⁵ In spite of the above, it is submitted that the TLA offers a strong framework for taxation in Nigeria going forward; and most of the extant problems are not related to the provisions of the TLA, but to the implementation thereof. That said, the TLA authorizes the Minister of Finance to amend the Schedule thereto.¹⁶ It is submitted that the above provision is baseless and only adds to the pervasive powers of the Minister. Why exactly should the Minister be given the power to do so? Since the National Assembly inherently has the power to make, amend and repeal Acts, including the TLA,¹⁷ does it mean that both the Minister and National Assembly, at the same time, have the power to amend the Schedule to the TLA? It is submitted that such is not the intendment of the makers. Therefore, this provision should be expunged from the Act. The TLA expressly provides that no person, other than the appropriate tax authority, shall assess or collect any tax or levy listed in the Schedule to the TLA.¹⁸ This is a laudable provision. If agents are allowed to assess or collect tax (as is unfortunately the case in most places), this will entrench a lack of professionalism and probity in tax collection.¹⁹ It is good to note then that the FIRS has circumscribed the powers delegable to tax consultants to:

- i. Computerization of the tax system, including payroll system;
- ii. Training and re-training of tax authorities in specific areas;
- iii. Researching into specific areas where improvement in tax administration may be required;
- iv. Reviewing operational procedures from time to time, like the process of assessment, appeals and objection.
- v. VAT monitoring or procedures to ensure VAT compliance, provided assessments are not raised by consultants themselves and they do not undertake collection; as well.
- vi. Monitoring compliance with PAYE procedures operated by employers provided no assessment is raised or actual collection undertaken by the consultants.²⁰

The aforesaid provision however impliedly repeals provisions in other tax statutes²¹ which permit delegation of tax collection.²² The TLA further prohibits any person, including a tax authority, from mounting a roadblock anywhere in the country for the purpose of collecting any tax or levy.²³ This is commendable. People should not

¹⁴ *Ibid*, Schedule, Part III.

¹⁵ Elicited during a series of interviews of random people from all walks of life in the Enugu Metropolis in the last week of November, 2019.

¹⁶ TLA, s. 1(2).

¹⁷ 1999 Constitution of the Federal Republic of Nigeria (as amended), s. 4.

¹⁸ TLA, s. 2(2).

¹⁹ In this wise, see Finance (Miscellaneous Taxation Provisions) Decree No. 19 of 1998, ss. 10 & 11 which prohibits State Boards of Internal Revenue from delegating core tax powers to tax consultants or agents.

²⁰ See *General Tax Guide for Tax Administrator and Practitioners* issued by the FIRS, June 2002, quoted in A Ipaye, *Nigeria Tax Law & Administration: A Critical Review* (London: ASCO Prime Publishers, 2014) 92 - 93.

²¹ See for instance, PITA, s. 88(3).

²² MN Umenweke, *Tax Law and its Implications for Foreign Investments in Nigeria* (Enugu: Nolix Educational Publications, 2008), 77.

²³ TLA, s. 2(2).

be strong-armed to pay tax as there are appropriate procedures to be followed, as shall be seen in this work. Lastly, the TLA makes a contravention of section 2 thereof an offence, with respect to unauthorized collection of tax or mounting a roadblock for the purpose of same.²⁴

3. Conclusion and Recommendations

No statute is perfect and the TLA is no exception. They are some incongruous provisions therein which should be jettisoned and the TLA should be amended from time to time to reflect current realities. That said, it is not in doubt that it is a most worthy and significant enactment designed *inter alia*, to reduce uncertainty and confusion with respect to tax collection in Nigeria. Flowing from the above, it is believed that a faithful and scrupulous adherence to the provisions of the TLA would go a long way towards addressing the issues of multiple taxation, sub-optimal tax collection and internecine conflicts *vis-à-vis* tax collection in Nigeria and the problems associated therewith. The Joint Tax Board, the FIRS and other tax agencies must therefore work in concert to ensure the above. The dividends to be reaped in consequence will certainly be bountiful. The following recommendations should go a long way towards repositioning the mindset of stakeholders in tax collection so that they will adhere to the provisions of the TLA: The Joint Tax Board which has the duty of ensuring harmony in tax administration must be more up and doing. Erring tax authorities who collect taxes they are not meant to collect must be forced to return same to the appropriate tax body. The Local Government Revenue Committee must be strengthened and allowed to collect the taxes stipulated for the Local Government. State governments must realize that the local governments need funding to render projects and social services at the grassroots level. There is the need to inform the populace about the TLA and what taxes should be paid to whom. If the people are well-informed, they will not be coerced to pay taxes to the wrong agencies. There is the need for rigorous training and re-training of staff of the tax agencies so that at any point they will know their schedule of duties and not usurp the jurisdiction of another tax agency. Tax authorities at all levels must eschew the collection of taxes using tax consultants. While tax consultants can participate in training of tax officials, it is wrong for them to engage in core tax administration such as tax collection. Section 1(1) of the TLA should be amended to delete the phrase, “notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria 1979, as amended” because it derogates from the Constitution and is therefore *ipso facto*, null and void. The TLA should be amended periodically to ensure it reflects the practical realities of the country.

²⁴ *Ibid*, s. 3.