

AN APPRAISAL OF THE TAXING POWERS OF THE THREE TIERS OF GOVERNMENT IN NIGERIA¹

Abstract

Taxation power is the power of a sovereign government to raise revenue by imposing compulsory taxes or levies on persons or sources of wealth within its territory. In a single tier system of government, there is no problem with the devolution of this power. Consequently such a government can impose any form of tax for any purpose and at any rate. Nigeria as a federal republic has three tiers of government that is federal, state and local. A fundamental feature of federalism is the allocation of the power among those tiers, taxation power inclusive. Therefore it is essential that powers are allocated and defined in the fundamental laws of the land. This article discusses how the various laws in place have distributed taxing powers in Nigeria and to also ascertain which tier of government has the power to impose and collect what tax. The aim is to succinctly discuss the distribution of taxing powers among the three tiers of government in Nigeria in a coherent form for the proper guidance of taxpayers, legal practitioners, tax practitioners, researchers, students and investors.

Introduction

The essence of tax is to raise fund for government to use in providing the basic amenities needed to better the life of its citizens and also to meet the other needs of the government. Tax has also been used to encourage or discourage certain activities. Governments all over the world, Nigeria not an exception have enacted laws aimed at meeting the essence of taxation. The laws deal with different types of taxes and persons liable to pay those tax. In a single tier system of government, there is no problem with the devolution of this power. However, in a federal system of government which is what is practiced in Nigeria, because of the inherent conflict situation always existing between the different tiers, it is essential that powers are allocated and defined in the fundamental laws of the land. Apart from the issue of elimination or minimization of conflicts between the different tiers of government, the need to define allocation of powers particularly in the field of taxation is underscored by

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the interest of taxpayers for it is not in the nature of man to voluntarily part with his property especially when it is to an abstract entity such as governments. Therefore, there is need for certainty in the area of who has what power to tax in any particular circumstances. Effort shall therefore, be made in this research to examine the scheme of division of taxing powers in Nigeria, the extent to which the various tiers of government have complied with those divisions, the issue of assessment and collection of wrong/illegal taxes and the attitude of the courts towards that, finally suggestions shall be proffered on how to tackle some of the conflicts still in existence despite the division of the taxing powers.

Meaning of Tax

There has been no universally accepted definition of tax even though it has been variously defined both judicially and by various authors. The functional and essential nature of tax influenced its definition.

The word *to tax* is derived from the Latin word *taxo*, which literally means "I estimate" is to impose a financial charge or other levy upon a taxpayer (an individual or legal entity) by a state or the functional equivalent of a state such that failure to pay is punishable by law².

The Black's Law Dictionary defined the term as a monetary charge imposed by the government on persons, entities, transactions, or property to yield public revenue. Most broadly, the term embraces all government impositions on the person, property, privileges, occupation and enjoyment of the people and includes duties, imposts and excises.³

Section 69 of the Federal Inland Revenue Service (Establishment) Act,⁴ defined tax for the purposes of the Act as including any duty, levy or revenue accruable to the government in full or part under this Act, the Laws listed in the First Schedule of this Act or any other enactment or law.

Justice Latham of the Australian Supreme Court has stated that:

A tax is a compulsory exaction of money by a public authority for public purposes, or taxation is raising money for the

² **Tax**, available at <http://en.Wikipedia.org/wiki/Taxation> (accessed on July 9, 2013)

³ B.A. Garner, *Black's Law Dictionary* (8th ed., United States of America, Thomson West, 2004) P. 1496.

⁴ Cap F. 36 Laws of the Federation of Nigeria, 2007.

purposes of government by means of contributions from individual persons.⁵

Also Justice Roberys of the United States of America Supreme Court rightly opined in 1936 that:

A tax in the general understanding of the term, and as used in the constitution signifies an exaction for the support of government. The word has never been thought to connote the expropriation of money from one group for the benefit of another.⁶

Tax is also a pecuniary burden laid upon individuals or property to support the government and is a payment exacted by legislative authority⁷.

In **Fargo V. Wetz**⁸, the court stated that tax is any payment exacted by the state or its municipal subdivisions as a contribution towards the cost of maintaining governmental functions where the special benefit derived from their performance is merged in the general benefits.

Tax therefore is not a voluntary payment or donation but an enforced contribution, exacted pursuant to legislative authority.⁹

It is a legislative demand by government and mandatory for a citizen who has attained taxable age to pay.¹⁰

From the above definitions of tax, it can be deduced that for a charge to qualify as a tax, it must have the following characteristics,

1. it is an imposition by government,
2. it is compulsory,
3. it must have legislative backing and
4. it is for the support of the government.

Having seen the basic characteristics of tax as stated above, it is clear that it is only government with legislative backing that has power to impose tax.

⁵ **Mathews V. Chicory Marketing Board** (Vict) (1938) 60 C.L.R., 263 at 276.

⁶ **United States V. Butter**, 297 U.S.I (1936) at 61.

⁷ **Re Mytinger D.C. Tex**, 31 F. Supp 977., M.N. Umenweke, *Tax Law and its Implications for Foreign Investments in Nigeria*, (Enugu, Nolix Educational Publications, , 2008) P.6.

⁸ 5 A L R 731

⁹ **Michigan Employment Commission V. Patt**, 4 Mich. App. 224, 144 N.W.

¹⁰ *Tax Law; Analytical Approach on Double Taxation in Nigeria*, available at <http://www.lawprojectfame.uk.blogspot.com/2010/09/tax-law-analytical-approach-on-double.html> (accessed on June 21, 2013), see also N.B. Okeke, *Taxation Laws and Accounts Principles and Practice*, (Enugu, Computer Edge Publishers, 2002) P.1.

Categories/Types of Tax

Taxes are classified as whether they are levied on income or expenditure or in accordance with the structure of the rate.

1. **Direct Taxes:** These are taxes imposed on income of individuals and organizations. They are demanded from the very persons who it is intended or desired should pay it.¹¹ Direct taxes are those that cannot be shifted by the taxpayer onto someone else. The examples of direct taxes in Nigeria include the following: (a) Personal Income Tax, (b) Company Income Tax, (c) Petroleum Profit Tax, (d) Capital Gains Tax
2. **Indirect Taxes:** These are taxes on goods and services produced inside or outside the country. The incidence of indirect taxes is later passed to the buyers of the goods and services. They can be shifted in whole or in part to someone other than the person legally responsible for payment.¹² They are those taxes which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of the other. In other words indirect taxes are those which are imposed on commodities before they reach the consumer, and are part of the market price of the commodity.¹³
The following are classified as indirect taxes in Nigeria.
 - (a) Import Duties (b) Export Duties, (c) Excise Duties, (d) Value Added Tax¹⁴
3. **Progressive Tax:** This is a tax imposed so that the effective tax rate increases as the amount to which the rate is applied increases.¹⁵ It is based on the idea of vertical equity, which simply means redistribution of income from the well-to-do to the less privileged. In Nigeria, progressive tax rate is applied on personal income tax only.
4. **Regressive Tax:** A tax is said to be regressive in nature, if the rate of such tax decreases as tax base increases. Regressive taxation is not suitable tax for developing countries as it cannot generate the required revenue.

¹¹ J.E. Safra, *The New Encyclopedia Britannica*, (Vol. II, 15th Ed., Chicago Encyclopedia Britannica Inc.) 584.

¹² J.E. Safra, *Ibid* at 584.

¹³ M.N. Umenweke, *Op Cit* at 27.

¹⁴ Value Added Tax Act, Cap. V.I, Laws of the Federation of Nigeria, 2004.

¹⁵ **Tax:** available at <http://en.wikipedia.org/wiki/Taxation> (accessed on July 9, 2013).

5. **Proportional or Flat Tax:** A tax is said to be proportional when the tax paid by each taxpayer takes a constant proportion of income and so can be described as a neutral tax.¹⁶ In this type of tax the effective rate is fixed, while the amount to which the rate is applied increased.¹⁷ The Nigeria company income tax is a good example of proportional tax.

Objectives/Functions of Taxation

1. **Revenue Generation¹⁸**

Taxation has always been employed to raise sufficient revenue to satisfy the needs of the government. Money provided by taxation have been used by the government throughout history to carry out many functions. Some of these include expenditure on defence, enforcement of law and public order, protection of property, economic infrastructure (roads, legal tender, enforcement of contracts, etc), public works, social engineering and the operation of government itself.

2. **Influencing change and control:** The tax system is used to regulate or discourage activities of citizens which are thought to be undesirable on health and social grounds.¹⁹ Tobacco for example is taxed heavily so as to discourage smoking.²⁰
3. **To address inequalities in income distribution.** Tax is used to address inequalities in income distribution. Those with the highest incomes should pay the highest percentage of tax and tax revenue should be utilized to provide affordable social amenities, basic infrastructure, other utilities and services which will be made available for use by both the high and low income earners.
4. **Economic stabilization, growth and development.** Tax is used to achieve economic growth and development. As such, tax allows for stimulation of the economy and not stifle growth.

¹⁶ M.N.Umenweke, *Op Cit* at 25, **Tax:** available at <http://en.wikipedia.org/wiki/Taxation> (accessed on July 9, 2013).

¹⁷ **Tax**, available at <http://en.wikipedia.org/wiki/Taxation> (accessed on July 9, 2013).

¹⁸ M.T. Abdulrazaq, *Revenue Law and Practice in Nigeria*, (Lagos, Malthouse Press Ltd, 2010) P.2

¹⁹ M.N. Umenweke, *op.cit* at 8 – 9.

²⁰ **Tax**, available at <http://en.wikipedia.org/wiki/Taxation>. (accessed on July 9, 2013)

5. **To correct market failures or imperfections.** One of the objectives of tax is the ability to correct market failures in cases where it is most efficient device to employ. In this regard taxes may be reviewed upwards or downwards as may be necessary to achieve government's intentions.
6. **To promote fiscal responsibility and accountability.** One of the primary objectives of a tax system is to ensure that government transparently and judiciously accounts for the revenue it generates through taxation by investing in the provision of infrastructure, public goods and services.
7. **Representation.** One of the consequential effect of taxation in its historical setting has been representation. The American revolutionary slogan "*no taxation without representation*" implied that rulers tax citizens and citizens demand accountability from their rulers as the other part of this bargain.²¹

The Nature of Taxation Power

Taxation power is the power of a sovereign government to raise revenue by imposing compulsory taxes or levies on persons or sources of wealth within its territory. Although some argue that the true interests of society lay in securing to every man the fruits of his accumulations, the trend all over the world is for governments to impose taxes on private earnings. This is basically because a government, whatever its nature, requires revenue, even to sustain its own existence. For this obvious reason, taxation power has always been one of the implied powers of a sovereign government, with the result that a government's power of taxation within its sphere is deemed to be unlimited.²²

Notwithstanding the foregoing assertion, many countries, especially federations where governments exist at more than one level, have statutes which give directions as to which level of government can impose what tax. These directions are usually influenced not only by political considerations, but also by the economic demands confronting the nation or its constituent parts²³.

²¹ C. Alex, "*The Tax Consensus has Failed*" available at <http://www.oxfordgovernance.org/fileadmin/publications/er008.pdf>, (accessed on July 9, 2013), see also M.L. Ross "*Does Taxation lead to Representation?*" available at <http://www.polisci.ucla.edu/faculty/ross/taxrep.pdf>, (accessed on July 9, 2013). Also **Tax**; <http://en.wikipedia.org/wiki/Taxation>, (accessed on July 9, 2013).

²² E.O. Akanki, *Commercial Law in Nigeria*, (Lagos, University of Lagos Press, 2005) P. 660.

²³ See Taxes and Levies (Approved List For collection) Act Cap. T2 Laws of the Federation of Nigeria, 2004, which stated the taxes to be collected by each tier of government in Nigeria, see also E.O. Akanki, *Ibid* at 661.

Power to Impose Tax

The main sources of power to tax in Nigeria are the constitution and the series of creating or amending/consolidating or repealing Acts and Laws.

The series of applicable laws affects the taxation relationship between the federal, state and local governments.

Primarily, the power to impose taxes in Nigeria derives from the constitution. Section 4(2) provides as follows:

The National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the Second Schedule to this constitution²⁴.

The constitution went further to state that the power conferred on the National Assembly by section 4(2) shall be to the exclusion of the Houses of Assembly of states²⁵. It equally without prejudice to section 4(2) equally conferred on the National Assembly with the power to make laws with respect to matters in the concurrent legislative list set out in the 1st column of part II of the Second Schedule to the constitution²⁶.

The constitution also makes provision for the power to make laws with respect to any matter in the concurrent list to the federal/state legislature and item 7 of the concurrent list is on collection of taxes of which the federal legislature is allowed to delegate the collection or administration to the government or other authority of a state. Item 9 of same concurrent list makes provisions for administration of laws providing for such collection by the state government.

The Supreme Court in **Aberuagba v. Attorney General Ogun State**²⁷, noted that "any tax" as used in the provision empowers the states to impose tax on all matters in the concurrent list and Residual matters. A close look at the constitutional provision indicates that states can impose taxes except taxation of companies income, Petroleum Profits and Capital Gains. However, the power of

²⁴ Constitution of the Federal Republic of Nigeria, 1999(As amended)

²⁵ Section 4(3), *ibid*.

²⁶ Section 4(4) (a) & (b), *Ibid*.

²⁷ (1985) NWLR (Pt. 3) 395.

state to impose any tax over concurrent matter could be exercised subject to the rule of inconsistency and the doctrine of covering the field.

However, for an inconsistency to arise, the state law must indicate a disobedience to Federal Law. Inconsistency connotes incompatibility and that the two laws are at variance or running counter to one another. Legislation on a concurrent matter must, therefore be made by both governments before any question of inconsistency can arise. Only then can comparison be made to see if one has conflicted with the other. As it stands, a Federal Law on a concurrent matter does not necessarily preclude State Laws on the same matter. However, any power to impose tax by the state should be exercised cautiously so that the manner of its imposition is not a violation of a constitutional provision. A state can impose tax on matters stated in the concurrent list where there is no federal law covering the matter²⁸.

Distribution of Taxing Powers in Nigeria.

Basically, the power to tax is one of the plenary powers of any government which need not be formally conferred on it. In a single tier system of government, there is no problem with the devolution of this power.

However, in a federal system of government, because of the inherent conflict situation always existing between the central and constituent governments, it is essential that powers are allocated and defined in the fundamental laws of the land.²⁹

Nigeria as a Federal Republic has three tiers of government that is federal, state and local. A fundamental feature of federalism is the allocation of the power of government among those tiers.

Allocation of legislative powers in any particular country is usually predetermined and embodied in the constitution of the country. In the case of Nigeria, it is to be found in the constitution of the federation, 1999 (as amended).

Section 4 of the 1999 constitution (as amended) which dealt with legislative powers, provides as follows:

²⁸ F.E. Nlerum, "Taxation in Nigeria: Matters Arising", April – June, 2010, Vol. 1, No. 4, *Apogee Journal of Business, Property and Constitutional Law*, P. 2 -3.

²⁹ A. O. Giwa, "Collection of Taxes, Levies and Rates by Local Government Councils and the Use of State Revenue Courts in Nigeria", Vol. 1, No. 2, 2003, *Ambrose Alli University Law Journal*, P. 54.

- 4(1) the legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the federation which shall consist of a Senate and House of Representatives.
- 4(2) the National Assembly shall have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter included in the exclusive legislative list set out in part 1 of the second schedule to this constitution.
- 4(6) the legislative powers of a state of the federation shall be vested in the House of Assembly of the state.
- 4(7) the House of Assembly of a state shall have power to make laws for the peace, order and good government of the state or any part thereof with respect for the following matters that is to say:-
 - (a) any matter not included in the exclusive legislative list set out in paragraph 1 of the second schedule to this constitution.
 - (b) any matter included in the concurrent legislative list set out in the first column of part II of the second schedule to this constitution to the extent prescribed in the second column opposite thereto; and
 - (c) any other matter with respect to which it is empowered to make law in accordance with the provisions of this constitution.

Generally, federal legislative powers over taxation are as stated in the exclusive and concurrent legislative lists. But as indicated earlier, the law views the power to tax as an inherent privilege of sovereignty. Hence, it may be argued that mere enumeration of some taxing powers in the exclusive legislative list has not exhausted all the taxing powers of the federation³⁰.

The federal government has exclusive jurisdiction on the taxes as set out in part 1 to the Second Schedule of the 1999 Constitution,

In the case of the taxing powers of the state, the concurrent legislative lists do not confer any direct authority on State House of Assembly to charge or impose tax. States can exercise powers on the items on the concurrent list only to the extent that such powers had not been reserved to the federal government in the second column of the list.

In 1997, the federal government took a decision to wade into the rising problems of multiplicity of taxes. This followed several complaints from the private sector about various

³⁰ E. O. Akanki, *op cit* at 664 – 665

new taxes that were then being introduced, especially at the state and local government levels. In the budget of the year, the federal government announced that a list of taxes and levies that should be collected by each tier of government would be issued.

Subsequently, the Joint Tax Board was directed to publish the list. The publication was made via a Joint Tax Board release of 31st March, 1997 and it took effect from 1st April 1997. The same was eventually promulgated into law as Taxes and Levies (Approved List for Collection) Act, 1998³¹.

The Act, streamlines and for the purposes of certainly specifies the taxes collectable by every tier of Government.

Section 1(1) of the Taxes and Levies (Approved List for Collection) Act, provides that:

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.

Part I of the schedule to the Act provides that the taxes and levies due to the federal government are:

1. Companies Income Tax
2. Withholding Tax on Companies, residents of the federal capital territory, Abuja and non-resident individuals.
3. Petroleum Profits Tax
4. Value Added Tax
5. Education Tax
6. Capital Gains on residents of the Federal Capital Territory, Abuja, bodies corporate and non-resident individuals.
7. Stamp Duties on bodies corporate and residents of the Federal Capital Territory, Abuja.
8. Personal Income Tax in respect of:-
 - (a) members of the armed forces of the federation;

³¹ Now Contained in Cap. T2, Laws of the Federation of Nigeria, 2004. It came into operation on 30th September, 1998.

- (b) members of the Nigeria police force;
- (c) residents of the federal capital territory, Abuja and
- (d) staff of the ministry of foreign affairs and non-resident individuals³².

Part II listed the taxes and levies collectable by the state government as follows:

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 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
 - i. ₦10,000 for registration, and
 - ii. ₦5,000 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 fund is involved.

The taxes and levies collectable by the Local Government as listed in part III of the Act are as follows:

1. Shops and Kiosks rates
2. Tenement rates
3. On and off liquor licence fees
4. Slaughter slab fees
5. Marriage, birth and death registration fees

³² In **Shittu v. Nigeria Agricultural & Cooperative Bank Ltd & 20rs** (2001) 10 NWLR (Pt. 721) 298, the Court of Appeal *per* Obadina JCA, affirmed the above position when he held that under section 2 (1)(b) of the Personal Income Tax Decree No. 104 of 1993 (now Act) (sic), the personal income tax payable and paid by persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air force, the Nigerian Police Force other than in civil capacity, officers of the Nigerian Foreign Service, every resident of the Federal Capital Territory, Abuja and a person resident outside Nigeria who derives income or profit from Nigeria goes to the federal government.

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 licence fees
11. Bicycle, truck, canoe, wheel barrow and cart fees, other than a mechanically propelled truck.
12. Cattle tax payable by cattle farmers only.
13. Merriment and road closure levy.
14. Radio and television licence fees (other than radio and television transmitter)
15. Vehicle radio licence 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.

The Taxes and Levies (Approved List for Collection) Act is enacted in substantial conformity with items 16, 25, 36, 39, 58, 59, 62 and 66 of the exclusive legislative list of the 1999 constitution (as amended) which enumerates the taxing powers of the federal government, Item D paragraph 7, 8, 9 and 10 of the concurrent legislative list of the 1999 constitution which set out the matter upon which both the federal government and state government can legislate upon; and Fourth Schedule of the 1999 constitution which set out tax matters upon which the local government can legislate upon.

It should be noted that the fact that a tier of government has power to impose a particular tax does not make it a beneficiary of the said tax³³. In other words, power to impose taxes is not synonymous with the powers to collect such taxes.³⁴

Imposition and Collection of Illegal Taxes

³³ The Federal Government has the powers to impose Value Added Tax, but its benefits accrue to the states and not the Federal Government.

³⁴ M. N. Umenweke and A.R. Aladegbaiye, "The Legality of Tax Collection by Force in Nigeria", Vol.1, No. 4, April – June 2010, *Apogee Journal of Business, Property and Constitutional Law* P. 79.

The Taxes and Levies (Approved List for Collection) Act as seen above has three lists which shows the tier of government empowered to collect particular taxes. The essence of the Act is to streamline the collection of these listed taxes to avoid double and multiple tax collection from the taxpayers. It is disheartening to note that despite these clear divisions in the taxing powers some tier of government still go ahead in assessing and collecting various taxes in clear violation of the explicit provisions of the Taxes and Levies (Approved List for Collection) Act.

In **Eti-Osa Local Government V. Rufus Jegede**³⁵, one of the issues before the court was whether Eti-Osa Local Government can collect taxes and levies outside the area specified in part III Taxes and Levies (Approved list for Collection)³⁶ The Court of Appeal per Dongba Mensem, JCA stated as follows:

...the respondents in this case which is the Eti-Osa local government has no legislative power of their own to impose or determine taxes and levies, outside the enabling law, Decree No. 21 of 1998 which is of general application and which was promulgated to check indiscriminate levies and taxes imposed on the citizens by the three tiers of government. Where such residual power to collect taxes is given by the state government, to the local government, it must be in conformity with the provisions of the enabling law. Thus the power of the local government bye laws is subject to the enabling law which gives the local government power to collect taxes. Any attempt to act outside the ambit of part III of Taxes and Levies (Approved list for Collection) Decree No. 21 of 1998 will be futile. I therefore hold that the respondents has no power to legislate and demand whatever taxes and levies it deems fit outside the provisions of Taxes and Levies (Approved list for Collection) Decree No. 21 of 1998.³⁷

³⁵ (2007) 10 NWLR (Pt. 1043) 537, In **Fast Forward Sports Marketing Ltd v. The Port-Harcourt City Local Government Area Council** (2001) 4 TLN, 45, the question was whether the Port-Harcourt City Local Government Area Council could legitimately collect agricultural development taxes outside the provisions of Part III of the Schedule to the Taxes and Levies (Approved List for Collection) Act and in conflict with the provisions of Part II of the Taxes and Levies (Approved List for Collection) Act, which is the exclusive preserve of the state government. The court held that the defendant lacks such powers. see also **Mama Cass Restaurant Ltd. and Ors v. Federal Board of Inland Revenue & Attorney General of Lagos State** (2010) 2 T.L.R.N, **Attorney-General of Lagos State v. Eko Hotels Ltd. & F.B.I.R.** (2009) 1 TLRN 198, **Lagos State Board of Internal Revenue v. Nigerian Bottling Co. Ltd & Manufacturer Association of Nigeria** (2009) 1 TLRN 294.

³⁶ Decree No.21, 1998.

³⁷ (*Supra*) at 558, See also **Din V. Federal Attorney General** (1988) 4 NWLR (Pt. 87) 147.

Similarly in **Knight, Frank & Rutley V. Attorney General, Kano State**³⁸, the Kano state Government signed a contract with two firms of accountants. The agreement was to take retrospective effect from 1980 and the accountants were required to provide consultancy and training services for the evaluation of specified tenements in and around Kano metropolis for the purpose of the future assessment of rates thereon. The Government paid part of the fee upfront and mid way terminated the agreement. The termination was predicated on the fact that the assessment/evaluation of tenements for property rating was a matter within the jurisdiction of the relevant local government council.

The trial judge held that by virtue of section 7(5) and Fourth Schedule of the 1979 constitution along with the provision of the 1977 Local Government Edict of Kano state³⁹, that it was only the Local Government authorities that could execute the sort of contract the state government had in this case entered⁴⁰. On appeal, the Court of Appeal unanimously affirmed the decision of the trial court. On further appeal, to the Supreme Court, the issue before the court was whether the state governments had concurrent competence with local government council to embark on property assessments designed eventually to lead to rate collection.

The Supreme Court per Wali JSC said:

The power to assess rates on privately owned houses or tenements for the purpose of levying such rate is within the exclusive statutory power of each local government as conferred on it by section 7(5) of 1979 constitution and paragraph 1(6) and (i) of the fourth schedule...⁴¹

By the Knight Frank decision, the Supreme Court has legally established the proposition that there was competence in the local government council to impose and collect tax under the 1979 (and thus impliedly also, the 1999) Nigerian constitution, and that no other tier of government could interfere with this power and function enshrined in section 7(5) of the

³⁸ (1998) 7 NWLR (Pt. 556) 1.

³⁹ No. 5 of 1977.

⁴⁰ R.A.C.E. Achara, "Can Nigeria Local Government Councils Autonomously Impose Rates?", **Journal of Africa Law**, Vol. 47, No. 2, 2003, 221 at 225, see also M.N. Umenweke, *opp cit* at 70.

⁴¹ (*Supra*) at 209, Section 7(5) 1999 Constitution and Paragraph 1(b) and (J) of the fourth schedule, 1979 constitutions are identical with the same section and Paragraph of the 1999 constitution.

1999 constitution and paragraph 1(b) and (j) to the Fourth Schedule to the 1999 constitution⁴².

In **Mobil Producing Nigeria Ltd v Tai Local Government Council & 2 Ors.**⁴³ The 1st defendant passed a Bye-Law which required the payment of tax on education/youth empowerment, Local Government unified sticker, craftsmanship development skill, community development, effluent discharge pollution, Niger Delta Development permit, landing index/oil gateway, agricultural resources etc. The 1st defendant in a Demand Note signed by the 2nd defendant dated 6th January, 2003 demanded payment of sundry taxes and levies for each and every type of motor vehicles owned by the plaintiff. The plaintiff's vehicle were asked to pay stickers and levies for the following; Community Development, effluent discharge pollution etc. Thereafter on 5th May, 2003, the defendants mounted a road block stopped plaintiff's vehicle at Tai Eleme Junction and demanded for stickers for payment of Education youth empowerment levies, effluent discharge and community development levy etc. When the plaintiffs representative failed to show evidence of payment of the stickers, the vehicle was impounded. The plaintiff by originating summons dated the 13th day of October, 2003 and filed on the same date sought for a declaration that any rates taxes, levies imposed by the 1st defendant on the plaintiff outside those approved by virtue section 1 of the Taxes and Levies (Approved List for Collection) Act or any other rates made pursuant to that statute by the Joint Tax Board are illegal, null and void and of no consequence.

The Court Per Nwodo J held as follows:

The 1999 Constitution has clearly set out the relevant guidance for determining the legal scope of the areas within which the tiers of government within our Federal System may or may not operate. The Taxes and Levies (Approved List for Collection) Decree 1998 commonly referred to as Decree No. 21 was promulgated by the Federal Government, in 1998 to avoid multiplicity of taxes, section 1 (1) of Decree No. 21 stipulates that 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 the Decree respectively. The relevant part on the present application is Part

⁴² M.N. Umenweke, *op cit* at 71, R.A.C.E. Achara *op cit* 227, Similarly in **Bamidele V. Commissioner for Local Government and Community Development, Lagos State** (1994) 2 NWLR (Pt. 328) 568, Lagos state imposed market stallage fees. The Court held this imposition to be a usurpation of allegedly exclusive local government functions.

⁴³ (2004) 10 C.L.R.N 99

III of the Schedule which has listed the taxes and levies to be collected by the Local Government⁴⁴.

The 1999 Constitution in the Fourth Schedule also listed the functions of the Local Government Council from the provision in Decree No. 21 and the Fourth Schedule of the 1999 Constitution. The Local Government has limited power on areas in which they can levy and impose taxes. Therefore any attempt by any Local Government to collect or demand taxes or levies outside the areas specified under the 1999 Constitution or Part III of Decree No. 21 will be outside the ambit of their power⁴⁵.

In effect the 1st defendant from this statutory provision and the Constitution have no powers or authority to impose any taxes or levies outside the specific areas stipulated. In the instant case, the plaintiff averred that 1st defendant imposed community development, effluent discharge pollution, educational/youth empowerment, Niger Delta Development permit, land index/oil gate way agricultural resources. Local Government unified levies, craftsmanship development skill levies and taxes on the plaintiff, a corporate company. These taxes and levies are specifically listed as taxes and levies Local Government can impose. The defendant has no legal right or authority to so impose the alleged levies and taxes. The 1st defendant's power to that extent is *ultra vires*, they exceeded the legal right conferred by the Constitution and Decree No. 21 and if there is no powers to impose there is no legal authority on the 2nd and 3rd defendant to collect these levies and taxes. I therefore agree with Mrs. Essien learned counsel for the plaintiff that the acts of the defendant are illegal and unconstitutional. They arc contrary to the provisions of the Fourth Schedule in the 1999 constitution and Part III of Decree No. 21 1998.⁴⁶

It follows that any of the tiers of government that makes a tax assessment for a tax it does not have power to collect, contrary to the relevant provisions of the 1999 Constitution (as amended) and the Taxes and Levies (Approved List for Collection) Act, that

⁴⁴ (*Supra*) at 110

⁴⁵ (*Supra*) at 109

⁴⁶ (*Supra*) at 110

tier of government makes the tax assessment without jurisdiction and that assessment is null, void, and of no effect and the taxpayer is entitled to have the assessment quashed.⁴⁷

Conclusion and Recommendations

This paper has carefully examined the distribution of taxing powers of the three tiers of government in Nigeria. The relevant laws that delineated the taxing powers to wit: the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Taxes and Levies (Approved List for Collection) Act was examined. We have seen that the Federal Government has power to impose tax in respect of all matters in the exclusive legislative list, listed in part I of the Second Schedule to the 1999 Constitution while the State Governments can impose tax in relation to any matter contained in the residual list. In this paper we also saw that the provisions of the constitution as it relates to the taxing powers between the three tiers of government cannot but create conflict. In order to tackle the conflict the Taxes and Levies (Approved List for Collection) Act was enacted. The Act provides that the Federal, State and Local Governments shall be responsible for collecting the taxes and levies listed in parts I, II and III of the schedule to the Act respectively. The paper also exposed that despite the provisions of the laws on the clear cut demarcation of the taxing powers some tiers of government especially the states and local governments do make assessment/collect taxes outside the provisions of the relevant laws. The few incidences that have been challenged, the courts stood upright to uphold the provisions of the law. Against the above it is recommended that there should be strict adherence to the provisions of the Taxes and Levies (Approved List for Collection) Act. The taxes collectable by each tier of government as contained in the Taxes and Levies (Approved List for Collection) Act should be strictly adhered to. States and local government should restrain themselves from collecting any form of taxes and levies from companies. Capital Gains Tax should be paid to state government by individuals only where it relates to property within the relevant state. If the above recommendation is put into practice it will reduce the abuse of power and double/multiple taxation which have been the achilles heel of the Nigerian tax system.

⁴⁷ See **F.B.I.R. V. Rezcallah** (1962) ALL N.L.R. I.