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THE EFFECTIVENESS AND DESIRABILITY OF VALUE ADDED TAX

By DR. ODOH CHARLES

Abstract

There are various sources open to government of any nation to raise funds. One of such sources is taxation which is the most important because government exercises unlimited powers in imposing it. Sales tax was formerly a form of tax in Nigeria. Due to the defects observed in the administration and collection of sales tax, the government commissioned a committee to study Value Added Tax. Formally, Value Added Tax was introduced in Nigeria because of its broadened nature. The problem in VAT is the formular to be adopted in sharing its proceeds, which is the main concern of this paper. It is argued that whatever formular adopted should be in favour of the local governments because of their weak financial base or inability to generate enough finance to execute various programmes.

Introduction

The governments of different nations need funds to execute various programmes. These funds may come from any source. These sources according to Aguolu (2001) include foreign aid and humanitarian grants, income from government's direct investments in commercial ventures, bilateral international trade and taxation. Of the above sources, taxation is the most important source. This is because government has unlimited powers to impose taxes in the country and assured of stable revenue at all times from it.

Tax is a compulsory levy imposed by government. It is a non-refundable levy to the government. Taxation according to Buhari (1991) is a compulsory contribution from individual and/or business organizations for the purpose of financing government expenditure. Also, Aguolu (2001) noted that, it is a means of making the citizens contribute to the cost of providing collective needs.

There are various forms of taxes in Nigeria and among them is the sales tax. Sales tax was first introduced in Nigeria by Lagos State Government in 1982. Due to the revenue coming from it, many other states also introduced it. As such, there were multiplicity of laws and tax rates. This confusion made the Federal Government to intervene and attempt a unification. The intervention gave birth to Sales Tax

Act No.7 of 1986. Sales Tax covered very few goods. Therefore, it had a narrow base. It was only applied to locally manufactured goods, while foreign ones were not taxed. The burden of sales tax fell on the final consumer. Sales tax is a Single-stage tax levied as one of stages of sales outlets to a consumer. (Naiyeju 1996). This means that sales tax is imposed on retail sales, goods and services rather on personal circumstances of consumers.

The need for Value Added Tax:

With the defect inherent in sales tax, Federal Government was compelled to look for a replacement or alternative that will be broad based. The following action was initiated by the Federal Government in 1991:

i. an overhaul the entire Nigerian Tax System and embarkment on a low tax regime;
ii. reorganization the entire tax administration to make it more efficient;
iii. Review of the entire tax laws and an attempt to make a remarkable shift from direct to indirect taxation in order to minimize government dependence on oil revenue.

To achieve the above, the Federal Government set up a study group to review the entire tax system in Nigeria. This was to make room for efficiency in tax administration and an increased revenue to the government. The study group recommended the introduction of Value Added Tax. This recommendation was quickly accepted by the government and it subsequently set up the Value Added Tax Technical Committee to carry out feasibility study on its implementation. According to Igben (2004), the feasibility study committee produced modalities for the implementation. The Federal government on January 3, 1993 agreed to introduce Value Added Tax (VAT) in the country in the middle of the year but later shifted its introduction to September 1. This was to enable relevant legislation and proper groundwork concluded. The Value Added Tax was established by Act No 102 of 1993 which came into force on August 24, 1993 and became operational in January 1994. Section 41 of the Value Added Tax Act No.102 of 1993 replaced the Sales Tax Act1986. It reads: *subject to section 6 of the interpretation Act, the Sales Tax Decree 1986 is hereby repealed*". Section 1 of the VAT Act enacted as follows: *there is hereby imposed and charged as tax to be known as the Value Added Tax (in this Act referred to as "the tax") which shall be administered in accordance with the provisions of this Act.*" The Act was to commence from 1st of December, 1993 but for convenience, the legal effective date became 1st January, 1994.

This tax is a member of the indirect tax family. VAT is a consumption tax and its effect is borne by the final consumer. Okonkwo in his book titled Value Added Tax Socio-Economic management series, noted that in the Statements of Standard Accounting Practice (SSAPS) issued in the United Kingdom in April 1974, VAT is a tax on the supply of goods and services which is eventually borne by the final

consumer but collected at each stage of production and distribution chain. The above statement shows that this tax is a gradual collection at various stages as can be shown in table one. Okonkwo (2001) also reiterated that VAT is a multi stage tax levied on the value added to goods and services as they proceed through distribution, and to services as they are rendered. It is the final consumer that bears the tax burden.

Objective Of Value Added Tax

Due to the increase in government expenditure and activities at all levels, there grew an urgent need to be less dependent on oil revenue. This is because oil is subject to international market fluctuation and steady revenue cannot be guaranteed. This called for a serious look at taxation. This yielded the present VAT. Therefore, the objectives of VAT are:

i. To elongate the tax base by bringing in those who ordinarily Cannot be reached through direct taxation (Alade 1994).
ii. to improve the revenue profile of government;
iii. to reduce consumption of luxury items and non essential goods.
iv. to provide incentives for export-oriented production.
v. to encourage rewards from efforts by reducing the burden of direct taxes and promoting consumption tax.

VAT Administration And Structure

Part II of the value added tax Act No.102 of 1993 outlined how Value Added Tax is to be administered. Section 7 (1) of Part II specified that the administration and management of VAT is to be conducted by the Federal Inland Revenue Service. Section 7 (2) authorized the board to assess and collect tax from vatable persons and pay the same according to the provisions of the VAT Act. A vatable person must register with the board within 6 months of the commencement of the Act or within 6 months of the commencement of business whichever comes first. Agencies/bodies authorized to collect tax on behalf of the board include, government ministries, statutory bodies and other agencies of the government. Any contractor having any business transaction with government or her agencies must show evidence of VAT registration before obtaining such contract.

A technical committee which is called VAT Technical Committee was established by Section 17, Part IV of the VAT Act. The Committee is to be made up of members as follows:-

- A Chairman who shall be the chairman of Federal Board of Inland Revenue (FBIR).
- All Directors in the Federal Inland Revenue Service.
- The Legal Adviser to the Federal Inland Revenue Service and;
- A Director in the Nigerian Customs Services and;
- Three representatives of the State government who shall be members of the Joint Tax Board.

The functions of this Technical Committee as detailed in Section 18 of the Act include:

i. to consider all the tax matters that require professional and technical expertise and make recommendations to the Board.
Ii. advise the Board on its duties as specified by Section 7 of the Act and;
iii. Attending to such other matters as the Board may from time to time refer to it.

Section 19 of the Act specified that subject to such directions as the Board may from time to time give, the technical committee shall determine its quorum and regulate its own procedure. The Federal Inland Revenue Service reserves the right to transfer to the Technical Committee any of its staff as the Technical Committee may require for the discharge of its functions.

VAT is administered in Nigeria through a net work of zonal and local offices with headquarters at Abuja. Section 19 of the Act authorized the establishment of VAT tribunals in 8 Zonal headquarters where aggrieved VAT payers could seek redress and facilitate also the prosecution of VAT defaulters.

Operations of VAT

Ikokwu (1993) noted that "VAT is a multi-stage tax imposed on the value added to goods and services as they proceed through various stages of production and distribution and services as they are rendered" The tax is at a flat rate of 5%. The 5% is included in the price of all goods and services supplied by registered persons. Some items of goods and services are exempted from VAT. The proceeds are shared between the Federal, State and local Governments. Section 57 (1) of the Decree establishing VAT gives the Federal Board of Inland Revenue (FBIR) the power to administer and manage the tax. Section 5 (2) gives the board i.e. (FBIR) the power to do such things as it may deem necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected, to ensure accountability proper books of account and records to be kept.

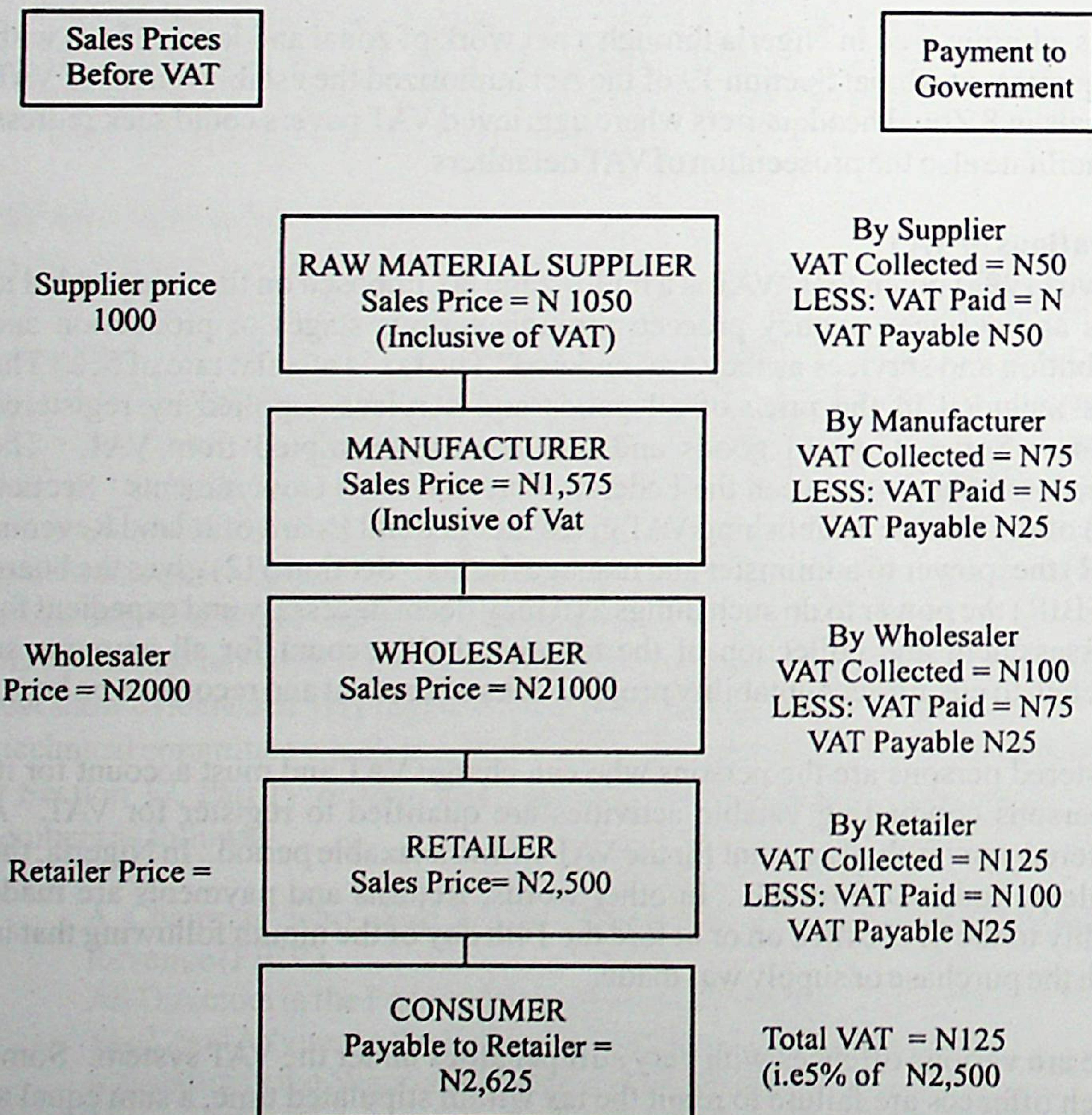
Registered persons are the persons who can charge VAT and must account for it. All persons conducting vatable activities are qualified to register for VAT. A registered person shall account for the VAT within a taxable period. In Nigeria, the taxable period is one mouth. In other words, Returns and payments are made monthly to the VAT office on or before the 14th day of the month following that in which the purchase or supply was made.

There are various offences with very stiff penalties under the VAT system. Some of such offences are failure to remit the tax within stipulated time, a sum equal to 5% per annum (plus interest at the commercial rate) of amount of the tax remittable shall be added to the tax; a person who furnishes false document or a person who

knowingly participates in; or take steps with a view to the fraudulent evasion of tax by him or any other person, is guilty of an offence and liable on conviction to a fine of N30,000 or two times the amount of the tax being evaded, whichever is greater or to imprisonment for a term not exceeding three years.

Other offences are failure to register, making false claims and obstructing VAT inspections, which would attract penalties ranging from an amount up to N1000 to various terms of imprisonment, depending on the magnitude of the offence. The law is stricter in dealing with officers of the board. Any officer of the board who aids in the commitment of any of the offences under the VAT Law will be liable to a fine of N50,000 and/or imprisonment for five years.

Figure 1: COLLECTION OF MULTI-STAGE VAT AT 5%



Value Added Tax in other countries

Czech Republic

Value added tax (VAT) was introduced in the Czech republic on January 1st 1993. It is a tax on consumer expenditure. Entities that registered for Czech VAT can recover VAT costs incurred in the course of economic activity. Czech VAT is principally influenced by the economic union (EU). Her accession to the EU has impacted monumentally on her VAT rules and procedures, as EU directives and regulations now apply.

In Czech, VAT is charged on the supply of the most goods, services and rights (output VAT). Its assessment is based on the transfer price for the supply and forms part of the cost for the purchases. The standard VAT rate is 19% and applies to most goods and services. At the same time, a reduced rate of 5% applies to certain services and essential goods. The following are subjected to VAT in the Czech Republic:

i. Goods acquired from VAT payers registered in a EU member state.
ii. Goods imported from outside the EU are subjected to import VAT but assessed by the customs office.
iii. Certain services imported are subjected to VAT but based on the reverse charge mechanism is the Czech customs self assesses VAT on the purchase of such services.

Considered outside the scope of VAT and VAT exempt are:

The provision of certain services abroad (e.g. banking services, insurance, financial operations) while output VAT on this category of supplies is 0%, input VAT related to them is not reclaimable.

It should equally be noted that the dispatch of goods to a VAT payer registered in an EU member state is considered a "zero rated" supply (no output VAT is charged) but the provider can reclaim input VAT on such supply. The export of goods outside the EU is equally considered a "zero rated" supply, here the provider can also reclaim input VAT there on.

In Czech, administration of VAT is the sole responsibility of the tax office with the exemption of import VAT which is administered by the customs office. For effective administration, complete and accurate records of input and output VAT must be maintained. Invoices and receipts with all essential details are required for both output and input VAT purposes. For VAT return purposes, received taxable supplies must be categorized into domestic, intra community, and imported supplies.

The tax office is authorized to make compliance visits to ensure that proper records

paid within this period. Failure to comply with VAT legislation attracts significant penalties from the financial authorities.

VAT payers engaged in intra community trade must file an European Community sales list for the delivery of goods to VAT payers in the EU. This document is filed on a quarterly basis together with the VAT return with a local tax authority. For statistical purpose, VAT payers involved in intra community trade must file intra-state reports on the record of the movement of goods across internal EU. Where Borders of trade exceeds a certain volume, the reports are filed with the local customs office.

Germany Value Added Tax

In Germany VAT is imposed on assets and services as well as on imports into the country. Exempted from VAT are overseas exports. With effect from 1st January 2007, Value Added Tax rate is 19% in most cases. There is equally a reduced rate of 7% that relates mainly to food and agricultural products. There are special provisions for small business. For effective administration, Value Added Tax reports must be submitted monthly.

Value Added Tax In Thailand

In Thailand the rate of Value Added Tax is 7%. Affected by VAT in Thailand are producers, wholesalers, providers of services, retailers, exports and importers. They are issued with an A4 sized, certificates on application which are framed on their office walls. In Thailand, VAT is paid monthly and calculated thus:

output tax- input = tax paid. (www.gaben.com)

The following are VAT special exemptions:

i. operators earning less than 6000,000 baht a year.
ii. Sales or import of agricultural products, and agricultural inputs such as fertilizer,
iii. Sales or import of published materials and backs.
iv. auditing, legal services, health services plus other professional services.
v. cultural and religious services
vi. educational services
vii. services provided by employees under employment contracts.
viii. the sales of goods as specified by royal decree
Ix. goods exempt from import duties under the Industrial Estate Authority of Thailand (IEAT) Act.
x. Domestic transport (excluding airlines) and international transport (excluding air and sea liners). (www. Mskca.co.wk)

ii. insurance companies
iii. financial securities firms and credit financiers
iv. sales on the stock exchange
v. sales on non-moveable properties
vi. pawn shops

The STB is calculated on the monthly gross receipts at the following rates:

i. banking or similar business:
ii. finance, securities and credit finance business 3% insurance against loss- 3% sales of immovable property on commercial manner for profit 3%. (www.taxrebateservices.com) (http/www. Chiang mailaw. com/tax vat.htm)

Value Added Tax In Ghana

Culled from Joseph R.A.Ayee "Policy management in Ghana: The Case of the Value Added Tax"

Value Added Tax was introduced in Ghana in March 1995 due to the demerits of the then existing taxes which includes: sales tax, hotels and restaurants tax, customers tax, advertisement tax, bathing tax and entertainment tax. It was to widen the scope of the tax net and broaden the tax base and by implication to increase government revenue that made the government of Ghana introduce VAT. VAT bill was first introduced in parliament in July 1993 and it attracted several criticisms. A VAT technical committee, an oversight committee, and a VAT implication agency were established. Despite the criticisms of the VAT bill, it was passed on December 1st 1994, after the original bill had been amended on 23rd November by parliament for the system to commence on March 1st instead of 1st January.

Included in the VAT Act were the following:

i. the VAT rate was fixed at 17.5% for Operators of VAT which included any usiness with an annual turnover of 25 million cedis (10 thousand pounds terling). Others with turnover less than the stipulated amount but willing to register were to do so by applying to the commissioner of VAT services.
ii. operators of the VAT were required by law to file monthly returns at the VAT office.
iii. the accounting period was to be one month and returns were to be made at he VAT office nearest to the operator not less than the last day of the Following month. Those who had to violate the regulation were to pay 10% interest above the prevailing lending bank rate. The same was to be Applied to the refund of tax to any operator by the VAT service.

Schedule 1 of the Act listed 18 items and services to be exempted under VAT. These include the following: Live animals produce in Ghana and those imported for breeding purposes, animals products including edible meats, local agricultural and aquatic food products in their raw state, etc. others are domestic water and electricity, medical supplies (pharmaceutical products) education, transportation etc.

For proper administration and management of VAT a separate institution called Value Added Tax Services (VATS) was established in 1994 .The VATS was also responsible for the collection of and accounting for all taxes, penalties and interest payable. Worthy of note is the fact that customs was responsible for the collection of VAT on imports at the entry points while VATS was in charge of internal VAT. Consequently, cost of VAT collection became very high, about 26 pence per pound as against United Kingdoms one penny per pound. Ayee (policy management in Ghana).

Since the introduction of VAT, many changes occurred in the Ghanaian economy. These include: prices of goods and services increased, transport unions increase long fares by 10% due to increase in prices of spare parts etc. Consequently calls were made on the government to abolish VAT. In response to the peoples agitations, the President on April 6 1995 expressed concern about VAT implementation. Consequently upon the President's concern and increasing public outcry cabinet decided to review certain portions of the systems for corrective measures to be taken. Accordingly, the 17.5% of tax chargeable was amended to a new rate of 15%. Other provisions of the Act were also amended to ease off implementation, in particular the exemption of retail trade.

However, the amendments failed to address the issue of the raising prices of consumer items. Due to growing public discontent , the government decided to withdraw VAT in June 1995 after 3 months of its implementation. (Republic of Ghana, no 2, Act 499).

The following are the factors that contributed to the withdrawal of the Ghanaian VAT:

a. The lunching of the VAT programme was wrongly timed. It was introduced barely two months after the reading of the 1995 budget, which had already increased prices of every item, ranging from transport to food. Petroleum products were also increased by 20%. In Ghana any hike in petroleum prices as a devastating corresponding effect on the prices of every item. The new VAT was a further threat on the people's income.

b. Inadequate public education programme by the VAT services. The VAT services gave Ghanaians the impression that VAT would not increase the prices of goods and services.

Therefore, it failed to prepare the minds of the public for such increase.

VAT was also withdrawn because of institutional problems such as: goods which were exempted under sales tax were subject to VAT: people complained that some items which were exempted from tax under sales tax were being taxed under VAT. For example, garri a locally processed staple food from cassava was exempted under sales tax but was not exempted under VAT. Goods that were exempted under the Ghanaian Investment Promotion Act 1994 (Act 478) were subjected to VAT under the VAT Act. (Act 486). There were situations where imported goods were exempted from VAT while some inputs or similar goods manufactured were subjected to VAT for instance, imported drugs which were considered essential were exempted from VAT while drugs manufactured locally were not.

VAT was also withdrawn because of the following basic reasons among others:

i. difficulties in the calculation of the amount of VAT, even by using electronic calculation.
ii. sundry record keeping and accounting witnesses, particularly in small- scale enterprises.
iii. difficulties in understanding how the tax system works resulting in wrong implementation. (policy management in Ghana).

Value Added Tax : The American Case

Culled from Grieco, P,L,E. and Hufbauer, G.C. America Badly Needs a Value Added Tax

The idea of substituting the US Cooperate Income Tax with VAT was floated by Bill Thomas, a Republican Congress Man and Chairman of the House Ways and Means Committee. This idea incited a conservative agitation. However, the conservative opinion has been considered and the basis for the introduction and implementation of VAT in the US have also been postulated.

The conservatives laid much emphasis on the money machine argument. They claimed that with VAT, much money would be raised which will culminate in recklessness in government spending. There have been cases of splurges spending in America without recourse to VAT. In 2004, George W Bush, US President gave the country Medicare prescription benefits that costs more than one thousand billion dollars over 10 years. This was in addition to existing medical and veteran's benefits all growing without limits. Then, US legislated entitlements that exceeded the historical limits on federal taxation,20% of gross domestic products. Greeco etal (2005).

It is believed that the conservatives only invoked the plight of Europe since American experience cannot provide support for the money machine argument. They asserted that VAT would concern US to embrace a costly European welfare state.

Making reference to the European situation, it is argued that the steep revenue increase was not peculiarity of the VAT system, rather it is a feature across the European landscape. Again that the growth of the European government was not precipitated by VAT, rather, that the welfare programmes were as a result of popular demands which compelled leaders to find less distorting taxes with lower rates and wider bases. It is also argued that the doubling of the tax rates will lead to about four times the distortion. VAT rate tend to be about 15% if introduced unlike the Cooperate Income Tax of about 46% under the Reagan administration.

Dale Jorgenson an economist contended that further high cooperate tax will culminate in economic melt down. This is because the present Cooperate Income tax (35%) already reduced US income by an average of 24cents for every dollar collected.

The conservatives also argued that VAT would only add to existing federal tax instead of contributing to tax reform - Greco etal (2005).

Having considered the conservatives opinion, it is argued that they should rather focus on differences between the two main VAT systems:

Credit invoice method used in Europe and subtraction method used in Japan. Under the first method, Europe assess VAT on each transaction but allows a credit for VAT paid by companies on their purchase of intermediate goods. In the second method, companies pay VAT on their Value Added Tax, computed as the difference between final sales and purchases of intermediate goods. This second system was recommended to the United States giving its administrative resemblance to the Cooperate Income Tax.

In Europe, VAT was a replacement of the old turnover taxes as such the familiar credit invoice system was applied. In US, there is no basis for such. It would rather overlap with state retail sales tax systems and impose esteem burden on 25million small and medium size companies. Greco etal (2005).

In the United States, the subtraction method will be suitable giving the following:

1. It inherits the administrative system of the cooperate income tax.
2. With proper arrangement, many large companies will fill returns.
3. The method is less vulnerable to an array of differential rates than credit invoice VAT. Again, its negative effects on low-income earners can be offset by a complimentary system of tax credit.

Value Added Tax Collection

VAT as a new source of revenue to the government has done marvelously well over the years. It has contributed greatly to the national treasury. A breakdown of the collection over the years till date is shown below. All the targets set up have

always been surpassed. The above has shown the difference between sales tax and VAT. Therefore the proponents of VAT are right in their argument. In support of the above Ogundele (1997), "The quantum of VAT in Nigeria has surpassed the wildest optimistic expectation.In 1994, government projected a collection of N6 billion but the actual collection was 8billion. By 1995, the collection had risen to over €19 billion.

Other years are:-

1996	-	N 32 billion
1997	-	N 37.6 billion
1998	-	N 37.6 billion
1999	-	N 47.7 billion
2000	-	N 58.0 billion
2001	-	N 91.7 billion
2002	-	N108.6 billion
2003	-	N 136.4 billion
2004	-	N 163.3 billion; and in
2005	-	N 192.00 billion.

Problems Of Value Added Tax

There are a number of problems that hamper the effectiveness of VAT and according to Okonwo (2001) they include:

1. Low rate of vatable persons do register;
2. Poor culture of record keeping in both the public and private sectors;
3. Increasing culture of corruption manifesting in varied forms including institutionalized corruption and fiscal indiscipline;
4. Untargeted VAT publicity and poor reading culture;
5. Over domineering resistance from poorly organized private sector such as market unions;
6. Inconclusive debt on VAT revenue sharing formular and perhaps cost sharing formular;
7. Doubtful political will of government on sustainable national and economic development; and Poverty. Okonkwo (2001).

The sharing formula is faulty for each year. It did not take into consideration those states where derivation is more. All it did was to appropriate to the states and local governments equal share. Serious consideration should be given to those states and local governments where derivation is more. For instance, states and local governments that banned the sale of certain goods and services should be excluded from the proceeds of the particular goods.

Secondly, local governments were created with the intention of bringing development to the grassroots. But over 95% of the local governments are not viable. They can hardly pay their workforce, not to talk of bringing development in the local governments. Therefore, a way of making then look viable is by giving them a lion share of VAT proceeds to pursue development in their various areas.

Thirdly, prior to the introduction of VAT, sales tax was another source of revenue to the states and local governments. Therefore, any sharing formula should consider the fact that these governments have been relieved of a major and potential source of revenue. The formula must favour local governments because they have not developed a sound revenue base to execute constituted responsibilities.

View of other Stakeholders

Protest have trailed VAT from inception to date by various stakeholders. For instance, Lagos State government had insisted that VAT be based in states rather than being controlled by the federal government. Federal government should concentrate their effort in the collection of VAT in the federal capital territory. Lagos State government further opined that sharing formula be based on derivation.

They further argued that 70% of the proceeds be given to that particular state. Kano and other states insisted that if the federal government continues to collect, she is only entitle to 5% collection cost and other administrative expenses and no more except VAT from federal capital territory. Some other stakeholders suggested that VAT should be based in the states and on arrangement, states will repatriate a certain percentage to the federal government. Most of the protesters made reference to Sale Tax Act which domiciles states tax Act in the state. They, therefore submitted that VAT should not be an exception. Further if there is intra trade between states the sales affected will have to fashion ways of settling such. They noted that sales Act law stated that states should be responsible for the collection of sales tax domicile in the particular states and federal responsibility of FCT collection.

Despite this protest from various stakeholders, the federal government has continued to collect and administer VAT in all states of the federation. At the end, they take 5% of the total collection as the collection cost plus 15% or above of the total collection as their own share.

Recommendation / Conclusion

There should be intensive campaign in every media outfit to educate the general public on VAT by the Federal Inland Revenue Service. This will go a long way in informing the public about the existence, merits, e.t.c., of VAT.

Tribunals should be set up in various zones (for speedy dispensation) to try offenders and to help VAT payers seek redress if need be.

States and Local Governments must participate in enlightening and in enforcing VAT collection on the people. This government can easily penetrate and reach out to organized private sector anywhere.

The services of business graduates who are youth corpers should be engaged to check the accounting records of vatable persons in private sector. In most cases those who are supposed to prepare accounting records do not know what and how to do it. In this way, the number of vatable persons will increase, so would revenue. This will enable the work of auditors to be light if at all they are engaged.

The present administration has waged relentless war against corruption through the Economic and Financial Crime Commission (EFCC). Funds generated from sharing VAT proceeds should be used for the overall development of the country. This will give the payers joy to continue paying.

Value Added Tax is no doubt a potential and alternative source of revenue to the governments. Efforts should be geared towards sustaining the tempo of collection. Federal Government should hands off VAT procedures because all other sources of revenue in Nigeria belongs to the Federal government. Further, any sharing formular should be in favour of the local government because most of them do not have strong revenue base.

This paper has shown that Nigeria's Value Added Tax rate is the least when compared with countries like Thailand, Czech's Republic and other countries of the world. Therefore, it should be sustained. Federal Government should not think of increasing the rate now otherwise Nigerians will resist it as they did in the past. The case of Ghana, America that reflected Value Added Tax by their people is still fresh in the minds of people and governments of the world.

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Joint Tax Board

Communique Issued at the end of the 120th Meeting of the Joint Board Held from 1st to 4th of March 2009 at Giginya Hotel, Sokoto State.

The Joint Tax Board held its 120th meeting at the Giginya Hotel, Sokoto from 1st to 4th of March 2009. The Board extensively considered various issues and reached the following major decisions.

1. **THE EFFECTS OF THE GLOBAL ECONOMIC MELTDOWN**

The Board noted the negative impact of the global economic meltdown on the world crude oil price/ production and the attendant low level of receipt by the three tiers of Government from the Federation accounts. The Board therefore restated that it has become imperative for Government at each level to be more aggressive in non-oil revenue generating to substantially augment the shortfall.

2. **UNIFORM APPLICATION OF TAX RATES**

The Board re-emphasized the urgent need for States to correctly and uniformly apply the provisions of the Personal Income Tax computation.

3. **EARNED INCOME**

The Board resolved that the definition of "Earned Income" be adopted strictly as provided in the First Schedule of the Personal Income Tax Act, cap p8 LFN 2004 and read together with the provision of section 3 the same Act.

4. **UNIQUE TAXPAYER IDENTIFICATION NUMBER**

The Board re -emphasized the need for the states to adopt the Unique Taxpayer Identification Number (U-TIN) rollout programme for proper identification of taxpayers.

5. e-PAYMENT

The Board welcomed the current e-payment policy of the Federal Government and implores States and Local Governments to adopt the same policy to enhance quality of governance and support improved tax payment compliance. It also noted the need for all e-payment solutions to be tax compliant and tax payments are to be remitted at the same time as other payments are real time.

6. MODERNIZATION OF REVENUE BOARDS

The Board noted the need for the Revenue Boards to be modernized to meet the dictates of the changing environment. It re-emphasized the need for the State Governments to grant full financial and administrative autonomy to their Boards of Internal Revenue Service, fund the Boards on the basis of cost of collection in line with the best practice, ensure professional and appropriate staffing in line with the provisions of the Personal Income Tax Act.

7. OVER SIGHT FUNCTIONS

The Board reiterated that all State Board of Internal Revenue should provide oversight function in all revenue collecting Ministries, Department/Agencies in their states. It also noted the need for the FIRS to discharge this responsibility with regard to Federal Ministries, Departments and Agencies as provided in the Federal Inland Revenue Service (Establishment) Act 2007.

8. INTERNATIONAL TAX CONFERENCE

The Board resolved that the International Tax Conference shall be held every two years with the next one coming up in the year 2010.

Ifueko Omoigui Okauru MFR
Chairman

Edgal F.E
Secretary

Joint Tax Board

KEY NOTE ADDRESS OF HIS EXCELLENCY, THE EXECUTIVE GOVERNOR OF SOKOTO STATE, ALH. (DR.) ALIYU MAGATAKARDA WAMAKKO (SARKIN YAMMAN SOKOTO) AT THE OPENING OF 120TH JOINT TAX BOARD (JTB) MEETING HELD IN GIGINYA HOTEL, SOKOTO

ON MONDAY 2ND MARCH 2009 BY 10:00AM

A'uzu Billahi Minasshaidanir Rajeem Bismillahir Rahmanir Raheem.

Protocols

1. I feel highly honoured to be here today to welcome you all to the Seat of the Caliphate, on the occasion of the120th Joint Tax Board (JTB) meeting. I am particularly proud that this meeting is holding for the first time in Sokoto during my Administration after 119 series of such meetings held in the different States of the Federation. Mr. Chairman and members, I am aware that the Joint Tax Board is a national body charged with the responsibility of advising the Government on policy matters relating to tax administration in Nigeria.

2. This meeting is timely due to the peculiar problem of our dear Sate when Pay As You Earn (PAYE) from Government employees is the major revenue earner, coupled with the lackluster attitude of taxpayers in fulfilling their civic responsibilities of paying taxes as and when due. As the world is currently facing economic recession, which has brought a decline in income and consequently a shortfall in revenue yields, the gathering of today would serve as an opportunity for you to deliberate using your expertise and wealth of experience as tax administrators to come out with a more reliable and effective tax policy that will enhance revenue profiles for our great country, Nigeria.

3. Distinguished ladies and gentlemen, in line with the seven point agenda of Mr. President, the State government will give priority attention to all sectors o economic development. This will only be possible through an enhanced revenue base. It is for this reason therefore that the State government in its

effort to boost agriculture and reduce dependence on oil revenue, has awarded contract for the Rehabilitation of irrigation Scheme in Wurno Local Government for 1200 hectares of land as well as Rehabilitation of Lugu Dam with a water reservoir capacity of 994 million cubic water meter. To this effect, the sum of 801 million naira, is to be expected for the two projects. It is our hope that when completed it will greatly increase our Revenue Generation from the land and water charges from individual farmers and organizations. These huge amount committed on these projects notwithstanding will yield more revenue, though a long term investment. It is the desire of government to similarly rehabilitate more irrigation scheme at Kware, Kalmalu, Tungar Tudu, Taloka and Kwakwazo in order to reduce poverty and attract more revenue. A toll gate will also be constructed at the main entrance of Wurno town to attract charges for vehicles coming into transport onions, carrots and other cash crops from the neighboring states.

4. Also, as part of the government effort to improve upon our revenue drive, contract for the construction of Independent Power Project has been awarded at the cost of 3.8billion naira. The project if successfully executed will supply 30mega watts of electricity. This will be sold to the public through Power Holding Company of Nigeria (PHCN). In this age of information Technology and nation's current policy on e-Government, this administration has engaged the services of a Consultancy firm, Infinity Segment, to provide an electronic banking system of revenue cycle management for an accurate and comprehensive data base system of revenue collection.

5. Mr. Chairman and members of the Joint Tax Board, I would like also to inform you that arrangements are also in the pipeline to renovate and refurbish the existing structure in Giginya and Shukura Hotels respectively to attract more revenue. At this juncture, distinguished ladies and gentlemen, I wish to assure you that the government will continue to give moral and financial support to the State Board of Internal Revenue towards discharging its statutory responsibilities.

6. I pray to Allah Subhanahu Wata' ala to guide and give you the wisdom in the course of your deliberations and hope that, the results of this meeting will be of immense benefits to our dear country, Nigeria.

7. It is now my honour and privilege to declare the 120th Joint Tax Board (JTB) meeting opened. I wish you a peaceful and memorable stay in Sokoto.

Thank you.

Wassalamu Alaikum

Joint Tax Board

WELCOME ADDRESS BY THE CHAIRMAN, JOINT TAX BOARD, IFUEKO OMOIGUI OKAURU, MFR

ON THE OCCASION OF THE OPENING OF THE 120TH MEETING OF THE JOINT TAX BOARD HOLDING AT THE GIGINYA HOTEL, SOKOTO,

FROM 2ND TO 4TH MARCH, 2009

Protocols

I am delighted to welcome you all to this 120th edition of the meeting of the Joint Tax Board which commences today 2nd day of March 2009, in Sokoto, the seat of Caliphate, a town of immense historical, religious and cultural importance in Nigeria.

We are greatly honoured to have in our midst the Executive Governor of Sokoto State Alhaji Magatakarda Wammakko and members of his executive council. Sir, the Joint Tax Board is grateful for your continual support and the critical role you have continued to play to ensure that members of the Board have minimal distractions as we carry out our unenviable task of collecting revenue for Government. In my personal capacity, I also thank the Executive Governor for his support to me as Executive Chairman of the Federal Inland Revenue Service (FIRS).

We feel privileged to have attended this opening ceremony, representatives of our highly esteemed royal father, his Eminence Alhaji Abubakar Saad III CFR, Mini, the Sultan of Sokoto. We thank His Eminence for the opportunity to pay him a courtesy visit in his palace and for his support and wise counsels. We are also pleased to have at this occasion the Speaker and members of the Sokoto State House of Assembly and top officials of the Sokoto State Judiciary. Your presence here is an indication of your commitment to partner with the Executive arm of Government to use taxation as a means of pooling the resources government needs to improve the quality of life and well being of the people.

We appreciate members of the press who have continued to partner with us, as we seek to market and sell this very unique product, "Tax" a product most

often disliked and misunderstood by many but which remains crucial to the development of any nation.

We are grateful to you all distinguished ladies and gentlemen, for being with us at this opening of the 120th Joint Tax Board meeting.

Introduction

Your Excellency, by way of introduction, the Joint Tax Board is a national body created in 1961 by the provisions of the defunct Income Tax Management Act (1961), which after a series of amendments over the years is now the Personal Income Tax Act cap P8, LFN 2004. The Board without doubt has continued to play a key role in the development of tax administration in Nigeria. The Board is comprised of the following:

I. The Executive Chairman of the Federal Inland Revenue who is also the Chairman of the Joint Tax Board;

ii. One member from each state and the Federal Capital Territory being a person experienced in Income Tax matters usually the Chairman of State Boards of Internal Revenue;

Iii. Co-opted member organizations whose roles are connected with revenue functions. These at present are the Revenue Mobilization, Allocation and Fiscal Commission (RMAFC), Federal Road Safety Commission (FRSC), and Federal Ministry of Finance (FMF)

The Board is administered by a Secretary, and a Legal Adviser, who is also the Legal Adviser to the FIRS.

FUNCTIONS OF THE BOARD

The Board meets on a quarterly basis to appraise the performance of the members and to deliberate on issues essential for the development of new strategies in carrying out its functions which include:

i. Effective implementation of the Personal Income Act;

ii. Using its best endeavours to promote uniformity both in application of the Personal Income Income Tax Act and in the incidence of tax on individuals throughout the country;

iii. Resolving areas of conflict on matters of Tax Jurisdictions among member states;

iv. Advising all tiers of government on tax matters, so as to evolve an efficient tax administration system in the country;

v. Imposing its decision on matters of procedure and interpretation of Tax matters on member states.

Your Excellency, ladies and gentlemen, the significance of this great city hosting the Joint Tax Board at such a time like this when Governments are seeking ways of generating enough funding to provide good governance is not lost on us. Sokoto was once the centre of an ancient empire that was known for its great influence that spanned across the west, north and central African region. This influence was achieved through a system of Government which was well oiled by an efficient tax machinery put in place by the Sultan and other royal fathers at that time. Our visit to the Waziri Junaid History and Culure Bureau in Sokoto, further revealed that we had a dynamic system long before the colonialists took over, that catered for the people. We made our clothes, our weapons, our food and provided security for our people, sustained through a meticulous and well documented tax system. Our challenge today, is recreating the self sustaining system we had for our people, using tax to develop our environment, without dependence on one source of revenue.

THE GLOBAL ECONOMIC MELTDOWN-THE FUNDING CHALLENGE

The current global economic meltdown which has led to the lowering of the demand for and price of crude oil has begun to have quite an adverse effect on the national income. Consequently, especially as we have historically depended significantly on this source of revenue, we are now seeing a tangible reduction in the amount of the centrally distributed revenue amongst the Federal, States and Local Governments (FAAC). In 2008, actual Federally collectible revenue distributable amongst the three tiers of Government amounted to N5.87 Trillion as against N5.13 Trillion budgeted.

To make the point closer home, the FIRS collected close to N3 trillion in 2008. N2 trillion of the N3 trillion collected was derived from Petroleum Profits Tax (PPT) and the balance from non- oil taxes-Companies Income Tax, Value Added Tax, Stamp Duties, Capital Gains Tax, Education Tax, Technology Levy and Personal Income Tax. In 2009 the reverse is the case.

The FIRS is expected to collect N2 trillion. Of this amount, about N600 billion is estimated from PPT and the balance from non-oil Taxes. Non oil Taxes are expected to grow by an unprecedented 45% in 2009 largely from improvements in tax base and general efficiencies. Even these projections are premised on assumptions of about $45 per barrel and oil production levels of 2.3mbd. Actual results in the two months of 2009 were closer to $38/bbl and 1.6mbd.

Accordingly, the reality is that this global trend of economic down turn is likely to continue for a while. The need for Governments at all levels to take urgent steps to restructure their cost and revenue base has never been so crucial. These are challenging times. Taxation remains the best option available to Government, as it is not only a more stable and reliable source of sustainable funding for its programmes and projects, but it also ensures that the citizenry contribute to the development of the nation a key step in putting in place the democratic society we desire.

Distinguished ladies and gentlemen, in essence, the current challenges of dwindling revenue for Government provides our nation a unique opportunity for Governments at the Federal, State and Local levels to restructure their cost and funding base such that even when oil prices revert, the foundation for diversifying revenue sources from oil would already have been laid and implemented.

Initiatives for improving government revenue through taxation

Your Excellency, the revenue profile of most States across the nation shows that beyond what is obtainable by way of allocation from Federation and VAT Pool Account, Internally Generated Revenue (IGR) within the States remains very low. Apart from Lagos, Delta and Bayelsa States, the annual average percentage of the Total Revenue for the States falls below 20 percent; most are as low 4-5 percent. The breakdown of the IGR also reveals that the Pay-As-You Earn source of revenue takes the chunk of revenue derivable from Personal Income Tax in most states.

Immediate additional revenue growth can be achieved by improving on proper Personal Income Tax administration, shifting away from a sole depended on the PAYE scheme to a more direct means of assessing tax payers as provided for in the Personal Income Tax Act.

In addition, Sir, the Joint Tax Board is convinced that growth in Tax revenue in 2009 and beyond is also achievable if Government commits to the following:

1. Realization that improvement in revenue generation is not so much about overtaxing citizens (more tax is actually a disincentive to investment) but rather realizing that revenues can be generated from an increase in services provided and generated through an expansion of the tax base (through amongst others ensuring full compliance with existing laws as well as encouraging new investments to the State), a review of fees, charges, penalties, interest income on value adding services provided;

i. Please also note that there is a whole range of services that can be provided from Food Processing, Waste Management to Tourism which have the added advantage of not just providing additional revenue for development but also creating jobs for the teeming unemployed adult population;

ii. For example, the Caliphate's rich history represents significant untapped wealth. The foundation for building a vibrant tourism industry in Sokoto that could attract domestic and foreign currency earnings is in place;

2 Attention to tax policy as part of an overall stimulus package to the Economy required to create jobs and a local production base. The revised draft of the national tax policy document with inputs from Federal, State and Local Governments as well as other stakeholders is being finalized;

3 Increased Public confidence in the way tax and other revenues generated are being utilized,

i. The more cost effective and efficient government is the more revenues are available for priority sectors of the economy;

ii. The more the use of revenues generated in visible and revenue supporting sectors, the more confidence in the tax system;

iii. Regular dissemination of information to the tax payer on how tax monies collected are applied has been proven to increase level of tax compliance;

4 Improved structure and focus on tax not just as a source of additional revenues, but more importantly as a critical if not the most critical Institution of Government to build the required capacity and systems for sustainable and enduring change;

i. It is important to stress that the use of non-traditional means for revenue collection such as may be proposed by commercially driven tax consultants, whilst looking attractive in the short run destroys the credibility of the tax system;

ii. We should take advantage of the current situation to truly build a strong and sustainable tax machinery including building the required linkages to other facets of government to enable direct access to data and information for more effective and complete assessments;

iii. In this regard, the Joint Tax Board commends his Excellency the Executive Governor of Sokoto State for his administration's commitment toward building an efficient State Revenue Authority and this is attested to by your signing into law in October 2008, the Sokoto State Revenue Law which amongst other things provides autonomy for the Sokoto State Board of Internal Revenue in the running of its day to day affairs. Whilst we await full implementation of the tenets of this law to achieve the desired objectives, we trust that all other stakeholders will ensure that the various challenges causing the delay in the full implementation of their laws will be surmounted;

5 Improved efficiency in tax administration resulting in growth in the tax base through:-

a. Strict implementation of tax laws - overt and explicit support through referrals of major cases to tax authorities (Federal and State) on a continuous basis and integration of tax "psyche" in the day to day business of government Please note that State andLocal Governments should get involved in growing revenues from non oil taxes as it is the case at the Federal Level and not just focus on what is collected at the end of every month or focus only on what happens at the State level;

b. Use of e-payment systems in all transactions this directly drives automatic and improved remittances and collections;

c. Use of technology and related systems in tax administration as well as in the way business is done e. g. cash registers, automated land registries, etc;

d. Improved collaboration rather than friction enhances tax yield between and amongst Federal, State and Local Government authorities. Areas for collaboration include:

i. National Tax Policy development;

ii. Information sharing For example, we suggest that every quarter, the Federal Executive Council (FEC), the National Economic Council (NEC) and State Executive Councils (SEC), should discuss matters pertaining to Taxation to cover quarterly progress reports on tax policy and administration matters and communiqués issued by the Joint Tax Board;

iii. Prompt and timely remittances/payment of penalties and interest;

iv. Taxpayer Education especially communicating the use to which tax Monie are used;

v. Joint review of tax clearance certificates for the identification of fake and forged certificates;

vi. Country wide adoption of the unique Tax Identification Numbering (TIN) system being coordinated by the JTB for improved information sharing. Current practice of FIRS and every State having its own taxpayer identification number does not achieve the desired goal. Every taxpayer in Nigeria (corporate/individual/enterprise) is expected to be issued with a unique TIN. A national committee on unique TIN implementation is in place with federal and state representation. States should support this platform through provision of funding, adoption of a common TIN framework and information technology infrastructure platform, as may be required.

The TIN system has numerous benefits which include;

A. Cost effectiveness, to achieve lower cost of compliance for both taxpayers and tax authorities;

b.) Widening and deepening of tax base to enable proper assessment and the taxation of undeclared income;

c.) Common and unified system for identification of taxpayers nationally especially given the "tax shopping" practices and mobile nature of tax payers.

Overall, there is a clear need for substantial changes in how revenue is generated in 2009 and we all collectively have that challenge to brace up and meet up with this expectation. A significant part of this meeting in Sokoto will be focused on how we can support each other in so doing. Insha Allah.

Conclusion

Your Excellency, distinguished, ladies and gentlemen, once again I express the profound gratitude of the Joint Tax Board to the Government and people of Sokoto State for all the resources and effort put in to ensure that this 120th meeting of the Joint Tax Board is a success.

Sir, on our part, we pledge that with your support we shall continue to creditably discharge our responsibilities as tax administrators and meet the expectations of Government. We trust and hope that by the end of this meeting, members of the

Board will be better placed to ensure that the revenue targets of Government are achieved.

Distinguished ladies and gentlemen, it is now my pleasure and privilege to invite the Executive Governor of Sokoto State, Alhaji Magatakarda Wamakko to deliver his address and declare open the 120th meeting of the Joint Tax Board.

Thank you and God bless.

Your Excellency Sir,

Ifueko Omoigui Okauru, MFR
Executive Chairman, Federal Inland Revenue Service
Chairman, Joint Tax Board

TAXATION AND STATE - BUILDING IN A DEMOCRATIC SYSTEM

by
Festus O. Egwaikhide
(Department of Economics, University of Ibadan)

This lecture examines the key ways taxation can affect state-building. It is argued that taxation can influence state-building through revenue generation improvement in tax administration, economic growth and tax-services exchange bargaining relationship.

1. Meaning of Taxation and State - Building

Taxation: To be very precise, taxes are compulsory payment imposed by legislation. Taxation is used to withdraw resources from the private sector of the economy for the government to cover th cost of providing public goods and services - law and order (security), healthcare, education, among others Revenue from taxation generally constitutes a substantial part of the total revenue of government and so taxation has occupied an important position in the specialized discipline of public finance.

Taxation imposes a burden on the taxpayers with reduced welfare as a direct consequence. This raises the concern regarding the distribution of tax burden. On this, two dominant approaches are generally emphasized in the literature. First, is the benefit principle of taxation which says that the tax obligation should be directly related to the benefits individuals derive from public goods and services. This is based on the price theory of public finance since it is quid pro quo terms. The second one is the ability-to-pay principle which states that each individual should pay tax according to his/her ability. Both principles have attracted several weighty criticisms. However, there are problems of measurement of benefit and ability-to-pay. For instance, ability-to-pay refers to individual's economic well-being that could be measured by income consumption and wealth. Even each of these indicators of welfare is beset with a myriad of problems.

From the foregoing, there are justifications for the sustained interest in taxation. When used properly, taxation, can serve as a potent instrument for resource mobilization and allocation. In particular, it is through the tax system that revenue can be generated to finance democratic governance. It is also clear that taxation purses and hurts the taxpayers and therefore, it is a burden. There is a third argument that is easily appreciated. Given the existing factor endowments and technology in a given society, the resultant income distribution may be Pareto-optimal, but not ethically and socially desirable. A good system of taxation is needed to promote social equity with respect to the distribution of income and wealth. As part of the budgetary policy of the government, taxation is an effective

tool for promotion economic growth and macroeconomic stability and State Building. The several characterization of state-building is not attempted here, but to keep the discussion simple by providing definitions particularly relevant to the current discussion. State-building is a social development process that takes a very long time. State-building has also been defined as partly involving the enhancement of the capacity of governments to interact constructively with the various interest groups in the society in order to galvanize support and mobilize resources from the groups for the pursuit of societal progress.

Perhaps, what is clear from the rapidly growing literature is that state building requires important institutions for the state to function effectively for the positive development of its entire people. Parliament (representative government), education, professional state bureaucracies system of justice, financial and capital markets among others are some of the numerous institutions needed for state building.

The European historical experience is repeatedly cited to illustrate the importance of taxation and state-building. On this, reference is often made to Schumpeter's memorable point that taxation created and formed the state in Europe. It should be recalled the ancient European monarchs financed wars through the imposition of direct taxation that was increased as the need arose. The tax which fell mostly on the nobles, was possible because of the continuos bargaining among the interest groups. State institutions (e.g. Parliaments or representative governments and more professional state bureaucracies such as professional civil service and tax authorities, expanded financial markets and the rule of law) developed as a result. These and other institutions made the state to be more capable of fostering development. Of course, the European experience has given rise to several testable hypotheses.

Only two are indicated here:

(I) European - war taxation hypothesis; and

(Ii) taxation - leads-to-representation or taxation influences the decision to deliver services to the people by the government hypothesis. The accumulating empirical evidence on the political economy of taxation hypothesis and state-building in both developed and developing countries is diverse and inconclusive.

Two striking point are evident from the above. First is that taxation involve bargaining between the state and taxpayers, and therefore, a social contract around taxation must be built for the long term development of the state and development of the state political scientist routinely tell us that a democratic system is a formalized system of bargaining. Second is the recognitions that taxation affect institutional developments and hence the capacity of the state. Increasingly, most countries have now embraced democratic governance in which power is sought by Govern.

The positive development of its entire people. Parliaments (representative government) education, professional state bureaucracies system of justice, financial and capital markets among others are some of the numerous institutions needed for state-building.

Of course, the European experience has given rise to several testable hypotheses.

Arising from this is the increased recognization that participation is a vital ingredient for democracy and good governance. This follows the claim that participation promotes greater transparency and accountability since there is strict adherence to the rule of law. Participation requires that all interest groups must be included in the bargaining process for a sustainable democratic development strategy. There is the plausible argument that popular participation implies that governments would increasingly face resistance in their use of force to collect tax revenues.

II. Tax Structure Development

A tax system passes through a number of stages in the process of economic development. This is true of both developed and less developed economies. Indeed, it has been argued that economic development has a very strong impact on the tax base of a country's economy. During the early stages of economic development, there is very limited scope for the use of direct taxes. This is because at this stage, the majority of the people who reside in the rural areas are engaged in subsistence agriculture and their incomes are difficult to assess. Tax assessment at the stage is based on presumptions that are subject to wide error. In other words, there is a high degree of tax evasion and tax avoidance. Moreover, taxes are difficult to collect because of the lack or even absence of skills and facilities for tax administration. Related to these is the absence of industries at this early period, and as such excise tax (an example of indirect tax) yields little or no revenue. Several retail outlets make a sales tax system difficult to implement and a multiple-stage sales tax system even more so. The large percentage of self-employment to total employment makes personal income tax unworkable. It is obvious therefore that effective taxation is limited to the wage income of civil servants and employees of large firms. Another important source of government revenue during this early stage is the foreign trade sector because exports and imports are readily identifiable. But it should be noted that the revenue generated from export duties and customs duties is not reliable because of the periodic fluctuation in primary products in the world market.

As economic development progresses, it brings with it an increase in the share of direct income tax becomes manageable as the share of employment in the industrial sector increases and the dominance of the agricultural sector

diminishes. Sales tax may be broadened because a great deal of output and income would tend to go through the money market as the economy becomes more monetized.

As Musgrave pointed out, at this stage, taxes may be imposed on firms or individuals, on expenditure or receipts, on factor inputs or product, among others. He further argued that the tendency would now be to shift from indirect to direct taxes. This development is accompanied by legal and institutional problems in which several expenditures are made and income received.

The legal requirements for effective tax administration changes with the level of development. This is because of the ever-changing incenses of the taxpayers by devising new forms of tax avoidance. Because a weak legal system exists at the early stages of development, the judicial support for tax administration is limited. This tends to improve and become more complex with time. A country preoccupied with national development must of necessity develop tax laws that will enforce sanctions for under porting and prosecute tax dodgers. What happens to dishonest tax officers? That tax laws must punish dishonest tax collectors. Otherwise, this becomes the accepted social norm.

It should be acknowledged that as development progresses, administrative and compliance cost rise due to the complexity of both the legal and tax systems. The growth of compliance cost takes a variety of ways such increased number of accountants, tax specialists and tax lawyers that work for individuals and businesses in order to prevent the government from acquiring the wealth of their clients via taxation. A simplified tax law is thus generally advocated. However, even when the tax laws are simplified for ease of interpretation and implementation, It should be recognised that taxation is a controversial political issue that requires continuous bargaining between the state and taxpayers. Therefore, the issue of taxation involving negotiated agreement should rank high in the social contract between the government and its citizens.

Taxes generally tend to be sickly as they are not changed frequently. A number of reasons explain this. An important one is the complicated tax laws that are passed by parliament. Tax legislations usually take a relatively long time before they are approved. Another factor is the generally low level of tax tolerance. A third explanation draws on The tax smoothing hypothesis. Taxation reduces the welfare of taxpayer. Empirical studies have shown that taxation creates distortions which reduce welfare and that the distortion cost of taxation rises with the level of tax. On the basis of this, argued that a welfare maximizing government should adopt a smooth path for tax payment. The basic logic here is that it is not optimal to impose low taxes at a given point in time and raise them at another time. This is because

the marginal benefit of lower may be less than the marginal cost of higher taxes. Thus, a government that wants to minimise the distortion costs of its tax policy must be at a constant tax rate for all periods. This says that tax smoothing minimises distortion costs.

The theoretical literature resented here says that taxation is influenced by the level of development and the degree of trade openness of the economy. Other factors now considered in the theory are rents and regime attributes. The conclusion also emerges that countries should move from a simple tax structure to a complex one. Additionally, countries are expected to move from a tax system that disports the allocation of resources to that which is more natural.

III. Ways Taxation Affect State-Building

Taxation can affect state-building through revenue generation improved tax administration economic growth and via constructive state-society engagement. For ease of appreciation, these are discussed in turn.

3.1 Taxation Revenue

The failure of the free market system to achieve efficiency in the areas of public goods for instance, has necessitated the intervention of the government in the economy by providing such goods. Public goods are those goods that once provided for one are provided for all as they manifested the principles of non-exclusion and non-rival in consumption. Taxation helps to underwrite the provision of such goods.

Statistics on tax revenue across the globe are particularly informative. Reference is made to Tables 1-2 and Figure 1. Evidently, this means tax-to-GDP was 15 per cent for Sub-Sanara Africa (SSA) in 2005. This figure does not compare favourable with that of the low income countries which stood at 18 er cent in the same year. At 29 per cent, the average tax ratio for the OECD countries was hightest in 2005. The tax ratios reported for two countries, Nigeria Seychelles, were relatively very high, fluctuating between 25 per cent and 38 per cent. Data shows that the DRC registered the least tax ratio, as it peaked at 8.4 per cent in 2006.

The tax ratio for Ghana which was static at 13.2 per cent in 1991 and 1994 rose steadily thereafter to stay at 22.4 per cent in 2006. A major factor responsible for this impressive record was the implementation Particularly notable among the tax reforms was the introduction of the Value Added Tax (VAT). This economic calculus was to bring many economic activities into the tax anti-VAT and increase revenue. Although, the VAT was resisted, as there were anti-VAT protests soon after it was introduced, it significantly boosted government receipt.

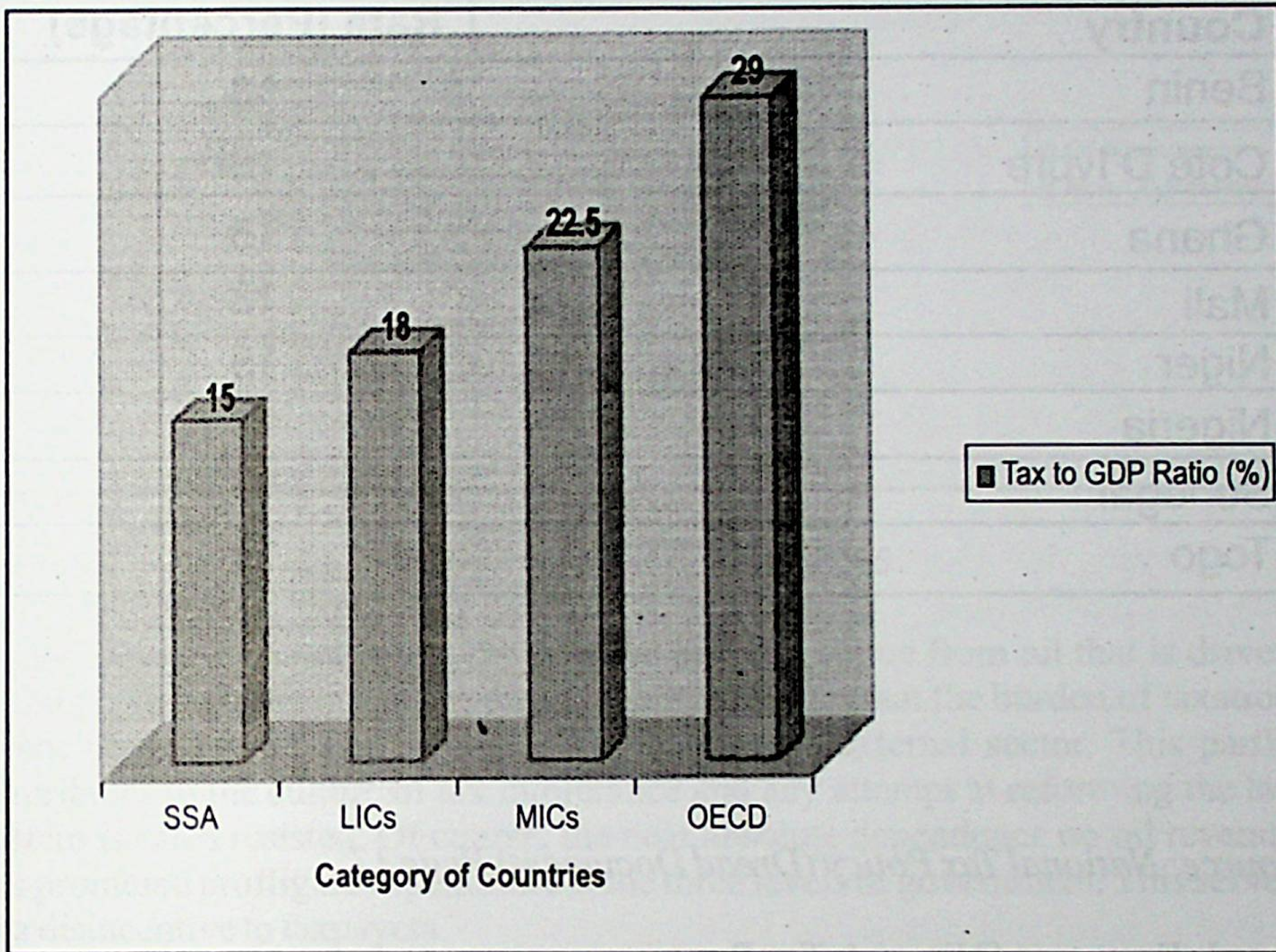
Table 1: Tax Revenue as a Share of GDP in Some African Countries for Selected Years. 1991 2006

Country	1991	1994	1997	2000	2003	2006
Algeria	-	26.69	31.61	36.93	31.36	-
Burundi	15.14	15.62	11.42	13.6	13.84	14.3
Cameroon	8.91	8.53	9.44	12.33	-	-
DRC	4.39	2.65	4.05	3.46	6.32	8.42
Egypt	14.9	19.05	15.97	14.59	13.65	14.88
Ghana	13.16	13.15	15.02	17.18	20.22	22.36
Ivory Coast	15.21	17.19	17.49	14.64	14.91	14.51
Kenya	17.62	14.94	16.06	16.83	16.05	16.87
Lesotho	37.10	42.79	37.79	32.44	35.85	41.74
Mauritius	21.53	18.98	16.84	18.2	17.43	18.15
Namibia	32.42	27.16	30.48	30.04	25.88	26.92
Seychelles	35.36	31.97	26.97	26.08	32.85	38.28
Sierra Leone	7.47	12.13	9.91	10.16	11.53	9.54
South Africa	-	-	-	23.96	24.18	27.5
Tunisia	20.38	20.76	20.25	21.31	20.59	21.28
Zambia	17.49	18.83	17.66	17.69	18.43	18.92
Average	17.54	17.90	15.62	15.66	17.99	23.06

Source: World Bank, World Development indicators CD-ROM (2008)

In Nigeria, following the report of the Study Group on the Nigerian Tax System and Administration in 1991, the federal military government introduced VAT in 1994. The VAT represented the most significant tax reform of the period. Revenue statistics show that the receipt from VAT has been rising from that period. Revenue statistics show that the receipt from VAT has been rising from N7.3 billion in 1994 to N108 6 billion in 2002 and by 2005, the figure had risen to N178 billion (see percentage contribution to total revenue in Table 1 in the Appendix). This may be considered a quibble. It has been argued that the cascading nature of the VAT raises total production calculus for the introduction of VAT is to raise revenue. It is anticipated that as further reforms on the VAT are pursued, government receipts from this source will not only be enhanced, but that simplicy greater neutrality and equity issues would be addressed. Reported in Box 1 are the features of Nigeria's tax revenue.

Figure 1: Tax - to - GDP Ratio, 2005



Source. OECD (2008)

Presented in Table 2 are the VAT rates for some selected countries in this table, Niger has the highest VAT rate of 19 per cent. The rate for each of these countries - Benin, Cots D'Ivore, Mali, Senegal and Togo - is the same, at 18 per cent. Ghana has a VAT rate of 15 per cent and the figure for Nigeria is 5 per cent, the lowest of the countries. In the draft National Tax Policy document for Nigeria, a gradual increase in the VAT rate is being contemplated, it would be recalled that there was an unsuccessful attempt to raise VAT to 10 per cent in the 2008 budget due to the strong resistance by labour unions and other interest groups. This suggests that a good tax system must sufficiently accommodate the interests of the government and the taxpayers for it to be successful.

Table 3: VAT Rates in Selected ECOWAS Countries

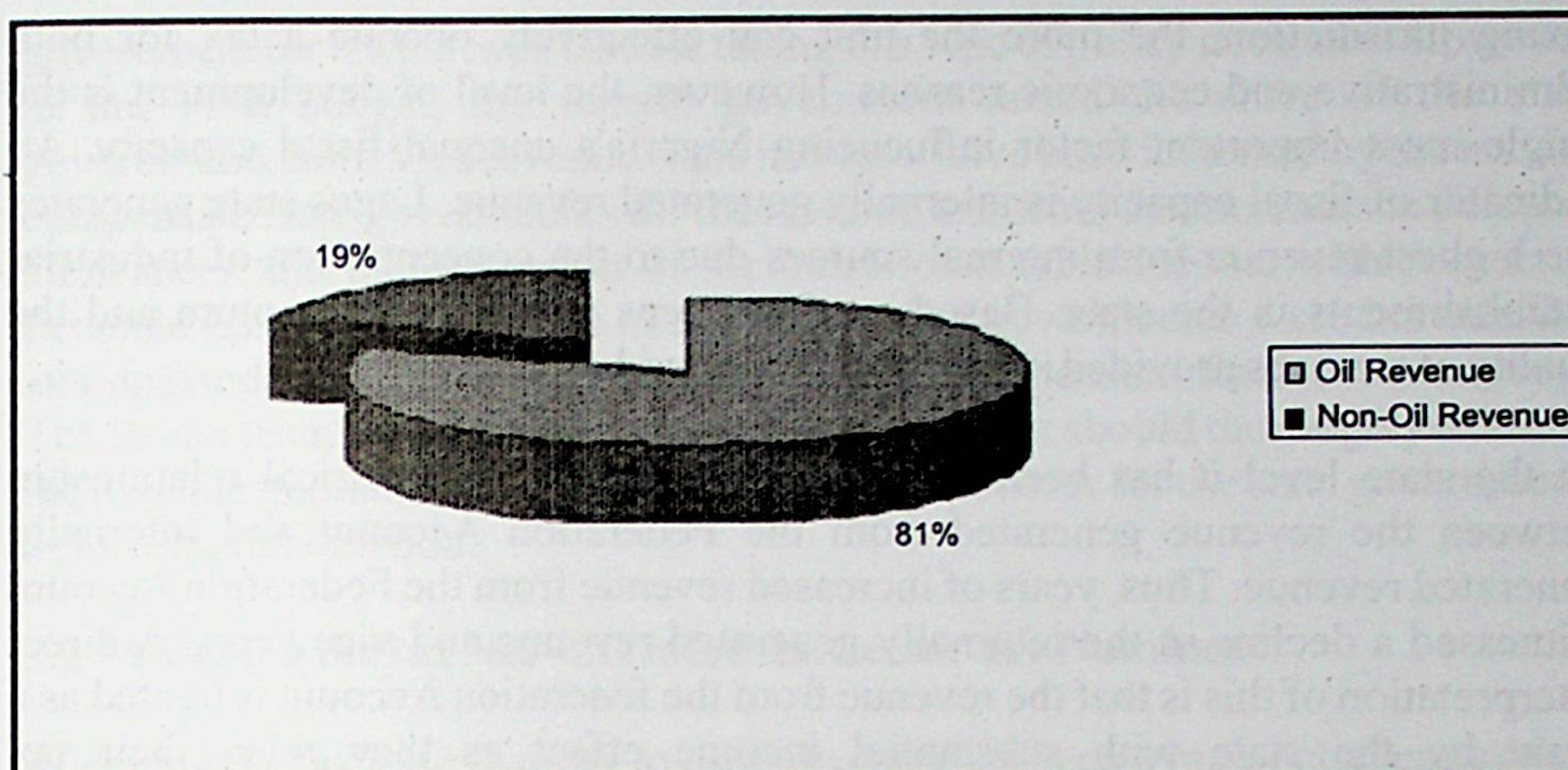
Country	Rate (Percentage)
Benin	18
Cote D'Ivore	18
Ghana	15
Mali	18
Niger	19
Nigeria	5
Senegal	18
Togo	18

Source: National Tax Policy (Dread Document) Page 17

Box 1: Features of Nigeria's Tax Revenue

Some key features are discernable from Nigeria's tax system. Only a few are pursued here. The tax system is dominated by oil revenue. Figure 2 shows this (also see Table 1 in the Appendix). This began in the mid-1970s following the oil boom. As a result of poor management both the resource government and seeding effects of the oil boom led to structural shift in government revenue from indirect to direct taxes. While this is in accordance with the theory of tax structure development, it negates the widely held view that indirect taxation dominates the tax system. The see-saw in oil revenue due to the price shocks in the world market has remained one of the greatest challenges to the Nigerian government.

Figure 12: Average Contribution of Oil and Non-Oil Revenue in Nigeria: 1994 2005



Source: Central Bank of Nigeria Statistical Bulletin, 2005

A closely related point is that the reliance on tax revenue from oil that is driven mainly by developments in the external sector implies that the burden of taxation is not borne by the domestic economy but by the external sector. This partly contributes to the culture of tax intolerance and any attempt at reforming the tax system is often resisted. Of course, the near absolute dependence on oil revenue has promoted profligate expenditure at the three levels of government. This serves as a disincentive to taxpayers.
Also revealing is the fact that the most buoyant taxes are assigned to the federal government. This has meant that the bulk of the tax goes to the Federal Government.

Revenue is collected by this layer of government (see Tables 2-3 in the Appendix). States and local governments are often advised to explore alternative sources of revenue by the federal government.

Consequently, since the early 1990s, multiple taxes became a striking feature due to new taxes and levies introduced by state and local governments. Some of the taxes are business premises, development levy, ground rent charge and parking charges. This has given rise to multiple taxes that severally impedes businesses. This is not in agreement with the national objective of using taxation as a potent instrument of fiscal policy to pursue rapid economic growth. There is hardly any interstate cooperation on tax matters and the role of the Joint Tax Board (JTB) is only advisory. Given the poor co-ordination among the various sub-national governments on taxation, the attainment of optimal tax structure will be difficult to realize.

Nigeria's fiscal federalism is characterised by unequal fiscal capacity- the so-called horizontal imbalance. This draws on the basic cannon that the larger the

taxing jurisdiction, the more the unit can effectively operate a tax for both administrative and economic reasons. However, the level of development is the single most important factor influencing Nigeria's unequal fiscal capacity. An indicator of fiscal capacity is internally generated revenue. Lagos state generates the highest revenue from internal sources due to the concentration of industrial establishments in the state. Based on this cetens paribus, the quantum and the quality of services provided is expected to vary widely across states.

At the state level it has been reported that there is asymmetrical relationship between the revenue generated from the Federation Account and internally generated revenue. Thus, years of increased revenue from the Federation Account witnessed a decline in the internally generated revenue and vice versa. A direct interpretation of this is that the revenue from the federation Account is treated as a grant by the state with substantial income effect as they relax their tax administration. It follows that the tax and tax policy of this sub-national government is largely pro-cyclical instead of being counter-cyclical. This fiscal behaviour is perverse and anti-theoretic.

Trade taxes dominate total revenue of several poor countries. Trade liberalisation represents a major reform in the economic recovery programmes of developing countries. Because of the fear at might lead to which trade liberation affects revenue depends on whether the tax rate is below or beyond the revenue maximizing rate - the Laffer curve explains this point clearly. Empirical evidence shows that trade liberalisation can enhance revenue, it can also be revenue-depleting or revenue natural. A major source of revenue to state governments in Nigeria is Personal Income Tax comprising Pay-As-You-Earn (PAYE) and direct assessment. However, most state government collect more revenue from PAYE than from direct assessment. Direct assessment is based on estimates rather than on returns and so, the assessment is subject to a wide margin of error. However, it is relatively more difficult to administer the tax because the of the tax evasion and avoidance game of individuals and business. There is a limit to which state government can raise revenue from personal income tax because of the 1975 Income Tax Management (Uniform Taxation Provisions) Act which imposed uniform Personal Income tax rates. Consequently there is little or no room for states to manipulate the tax rates for the purpose of generating adequate revenue since the federal government has the exclusive power to legislate on Personal Income Tax. Although, the federal government uses the PAYE as a fiscal handle, there is need to re-examine it so that it can also be used as a revenue-enhancing instrument for state governments. The policy decision of the federal government effects revenue generation from the Personal Income Tax. The federal government under its income policy does review wages and salaries, and allowances of workers in the country in order to provide relief. Under the structural Adjustment Programme (SAP), for instance all categories of allowances were revised upwards to give relief to workers. As a result less income was chargeable to tax and tax thus became less predictable. The federal government had never compensated state

government for the revenue loss for taking this type of policy decisions. However, in the 1998 budget, the federal government raised the share of the state governments from VAT revenue. This increase have been informed by the need to compensate state governments for the revenue loss from the increases in personal allowances and the expansion of the bands of taxable income with respect to Personal Income Tax. In spite of this, some state governments were not satisfied and demanded for more revenue allocation to compensate for the revenue loss. The lesson from this is clear. The federal government should thoroughly examine the revenue implication of its fiscal and income policies for the state governments before implementation.

3.2 Widening the tax Net - the informal Sector as a Nominee

Widening the tax base in order to raise revenue has been a major challenge of tax reform effort in developing countries. There is increased emphasis on the informal sector of the economy. Although, its relative size is unknown for lack of reliable data, the informal sector in developing countries is substantial. Taxation is considered as a major factor responsible for the existence of this sector. Drawing on well reasoned arguments from trade theory, its has been demonstrated theoretically that taxation tends to reduce the optimal output of the market economy when compared with that of the informal sector. Of course, this is good example of the disincentive effects of taxation. The existence of the informal market implies a loss of revenue to the government because the sector is difficult to tax. Consequently government expenditure from this sector falls, thus leading to reduction in the capacity of the government to provide social services. The existence of the informal sector, a striking feature of underdevelopment, distorts macroeconomic policy because tax evasion biases information. An example is that in which official statistics might indicate increased unemployment when in fact the supposed 'unemployed' workers were in fact employed in the informal sector of the economy. A first best solution is the genuine commitment to development by leaders of developing countries including Nigeria. The refusal to tax the informal sector unequivocally undermine tax morality. Therefore, the challenge to tax authorities in developing countries is to bring this sector into the tax net by pushing for a wider coverage of VAT- that is, broad based VAT. This will not only boost government revenue, it will also improve information and data available about the economy for effective macroeconomic management.

Further reform in VAT may be desirable in order to bring the informal sector into the tax net. Alan Tait's 1988 publication of Value Added Tax- international

Practice and problems discussed are :
(I) unsatisfactory system of existing sales taxes;
(ii) regional Integration demanding that border taxes should be eliminated;
(iii) a reduction in other taxes, and
(iv) dissonance between the evolution of the tax system and the level of

development. It should be acknowledged that in Nigeria, the VAT introduced in 194 was partly due to the dissatisfaction with the existing sales tax - as the VAT replaced sales tax.
The 2008 draft National Tax Policy for Nigeria proposes raising the VAT rate so as to lower the Personal and Company Income Tax rates and the need to harmonise the VAT legislation across the ECOWAS sub-region is also sought. Thus these factors are not only relevant to Nigeria, but also considered by may countries in VAT reforms.

In recent years, there is increased emphasis on urban property tax as an important source of revenue. Some tax administrators at the state level in Nigeria have expressed that property tax proves to be a buoyant tax if an effective and efficient administrative capacity is developed for it. For instance, Cross River state, one of the states in the south-south geopolitical zone of Nigeria, introduced urban development tax in 2005 that is backed by law. This was in recognition of the fact that the continued dependence on centrally-shared revenue would not sustain is development programme. In order to justify the imposition of this tax, the government has improved the provision of social infrastructure. The capacity to effectively administer this tax by the revenue authority is gradually being built. The urban development tax is expected to significantly raise revenue and boost the capacity of the state government to deliver public goods and services.

3.3 Improvement in Tax Administration

A tax slogan that has gained considerable currency in recent years is that tax administration is tax policy. A straightforward interpretation of this maxim is that tax administration and tax policy are closely interrelated. Measure designed to improve tax administration should help achieve the objectives of tax policies effectively. It is also expected that in the design of tax policy, attention should be paid to tax administrative constraints to ensure its success.

The general acknowledgment is that both the tax policy and tax administration affect the productivity of tax. For instance a tax policy that provide for substantial exemptions and deductions tend to reduce the tax base with low tax productivity as the inevitable concomitant. The tax exemptions and deductions may have been specified in the tax policy in order to achieve socio-economic and political objectives. The main preoccupation of tax rate administration is to collect maximum revenue from the various tax bases and tax rates statutorily established by tax legislation as efficiently as possible. A tax legislation which provides for several complex exemptions and deductions and multiple tax rates is difficult to efficiently administer and compliance by taxpayers in not easy. The simplification of the tax system is generally emphasized in tax reforms.

Given that efficient tax administration is a feature of a good tax system, the machinery for tax administration must be suitably designed. Tax administration should have fittingly trained staff, and material and financial resources to

effectively enforce tax compliance. The compliance and collection costs could be very high in an attempt to employ sufficiently well-trained professionals to cope with large taxpayers than justified economically. Yet, a country that wants to develop must endeavour to tax efficiently and effectively. While tax administrators are often quick to inform the public regarding how much revenue that has been collected, they tend to be mute about the collection cost. Efficient and effective tax-enforcing machinery covering a comprehensive tax base is stressed. However, tax administration can only cope effectively with a given number of taxpayers. Thus, when there is an improvement in tax administration, the coverage is further expanded. The expansion of tax coverage is not expected to continue indefinitely worthless. On the basis of revenue productivity alone, tax coverage should not exceed a certain limit. However, on equity grounds, tax coverage should be as comprehensive as possible including the group of taxpayers that generate low revenue productivity. Covering a large number of taxpayers may not be economically justified, but the information obtained from the taxpayers can be used for auditing purposes by the government.

In recent years, the need to strengthen tax administration has featured prominently at both local and international fora on tax reforms. In Nigeria for instance, both the federal and state governments have reformed the institution machinery for efficient tax collection and administration. Some of the measures taken included compilation of taxpayers' register, increased employment of professional staff and continuous staff training, computerization of operations and enactment of new laws to support the implementation of new sources of revenue such as the urban development tax in Cross river State mentioned earlier.

As part of the strategy to enhance tax administration, it is very important for tax authorities to develop good reputation and credibility so as to be trustworthy by the taxpayers (citizens). In this respect, tax authorities must be seen to be fair and just in carrying out their statutory functions; and this will enlarge the members of the honest taxpaying community. Periodic surveys should therefore be undertaken by the tax authorities to determine the perception of the taxpayers concerning the degree of fairness and burden of taxation. Being fair and reasonable fosters the integrity of the tax office in a society where the people are generally despondent and disillusioned with democracy, particularly on the important issue of taxation. Thus, good governance improves tax administration and raises the capacity of the state to deliver public services.

Tax authorities should respect the fundamental human rights of the taxpayers. Indeed this is a basic requirement of a good tax system. Some times, unrealistic revenue targets are set for the revenue collecting agencies which are unsupported by the tax base and/or without the administrative apparatus. This has led to the appointments of revenue consultants (privatization of tax collection) and special revenue task forces that employ the coercive apparatus of the state in the revenue

collection drive. The increased militarization of tax education and persuasion should be explored first before punishing tax offenders.

The establishment of Autonomous Revenue Authorities (ARAs) has been proposed. The actual debilitation of ARA is still unclear as they are still evolving. However, their defining feature is political autonomy to avoid undue influence from political office holders.

Examples of ARAs are the Uganda Revenue Authority (URA), South African Revenue Services (SARS), and Peri's National Super-interndancy of Tax Administration (SUNAT).

The establishment of an ARA can lead to rivalry and distrust between it and the Ministry used for self-entrichment by powerful pluralistic governance arrangement being advocated.

Arising from this is the conclusion that the tax system-changes overtime. That, at any point in time, the tax system designed by the government should consider the limitations of its administrative machinery and it must be politically acceptable for it to work effectively. All this presupposes that the burden of the tax system is equitably (vertically and horizontally) distributed.

3.4 Taxation and Growth

Taxes affect private economic agents allocative decisions. However this tax-induced distortion in economic behaviour results in a net efficiency loss to the whole economy commonly referred to as the "excess burden of taxation", even if the government engages in exactly the same activities and with the same degree of efficiency as the private sector with the tax revenue so raised. Thus, the higher the level of taxation, the larger is this efficiency loss. Moreover, the loss typically grows disproportionately with increase in the tax level in the presence of other tax distortions in the economy.

The structure of taxation could have important implication for growth and welfare. For instance, a relative shift from income to consumption taxation would reduce the disincentive to save and consequently, boost capital accumulation and a tax on consumption distorts labour-leisure trade-off. A heavy reliance on trade could impede an economy's capacity to absorb or develop new technologies, thus harming its growth prospects by reducing the exposure of domestic industries to international markets and competition.

Tax policy could also have a significant impact on both resource accumulation and technological progress brought about by the provision of tax incentives (also known otherwise as a form of tax expenditure). The goal of these incentives is to promote investment and research and development activities. Some of these incentives are tax holidays, reduced corporate tax rates, tax credits, investment

allowances, accelerated deprecation, double dedication of certain expenses for tax purposes, Personal Income Tax exemption on dividends paid out by companies receiving tax concession exemption from withholding taxes and exemption from import tariffs, sales, property and wage income tax. The desired multiplier effect of adopting these tax incentives is to enhance economic growth and increase the welfare of the citizens.

3.5 Tax-Service Reciprocity and Democracy

In the introductory part of this lecture, the point was made that the issue of taxation is pivoted around bargaining between the state and its citizens as it involves a quid pro quo. That is, the state provides public goods and services - examples are security, education, water, sanitation and roads - from the revenue collected from taxes. Apparently, this social contract means that the citizens have accepted the moral obligation to pay tax because of the benefits derived from public goods and services provided.

This reciprocity between the state and the citizens may not always balance for the simple reason that one of the parties could fail to deliver on its promises or bargains. The bargaining position depends on the balance of power between the state and taxpayers in turn, the balance of power is influenced by the degree of organisation of the taxpayers in a given society.

An example of imbalance between tax-service exchange is easily appreciated from the finding of the monumental empirical enquiry by the Centre for Tax System integrity in Australia "Surveyed results showed that most Australians were generally disillusioned with the poor democratic governance in the country during the period covered in part, this was because of the belief that the rich and powerful were those that controlled the decision making, while the poor had very little to say. However, only 15 per cent of the respondents expressed satisfaction in the manner the government spent tax revenue. In spite of this, it was revealed that most Australians still want to pay their taxes. The basic reasoning here is that in a society where the taxpayers are relatively satisfied with public service delivery, there is greater compliance with tax payment. Therefore it stands to reason that a government that wants to maxmise tax revenue must have the incentives to develop the institutional capacity with which to provide services to the people.

Michael Ross's analytical insights into the effect of taxation on representation (democracy) are illuminating. His argument is twofold. The first is that when taxation imposes a huge burden on the taxpayers it triggers resistance in the form of protests, engendering the people to demand for representation (democracy). The idea is that democracy would permit a negotiated tax system that is favourable to various partakers and interests. The benefit approach to taxation represents the second proposition that when the services provided by the government do not match the taxes paid by the people there is increased demand for representation.

On both counts, it is posited that the payment of tax gives rise to good democratic governance.

Democracy demands the involvement of the citizens in the activities of governments. Bargaining and negotiation between the government and her citizens over taxation can help build trust between the parties. As part of the social contract over tax - service exchange process, the citizes are expected to monitor the collection and use of taxpayers money. The citizens can even insist that they want to have a greater say in public policy decision making Juxtaposed with this is the widely referenced literature that countries which depend heavily on natural resource exports or foreign aid are hardly transparent and accountable to the people. Not only that these sources of rents tend to reduce the magnitude of the revenue generated from taxation by governments in developing countries the crowing out effect of taxation by foreign aid and natural resources.

In Nigeria the ruling elites are patently self-serving unprogressive and non-developmental. It is not surprising therefore that the country is littered with leaders who made promises but failed to deliver. So, government expenditure has been largely wasteful. With little doubt, if any, this partly explains why the citizens could be definant about taxation.
Digging further on defiance will certainly be beneficial. Braithwaite's discussion of defiance with respect to Australis is used as a guide.

Braithwaite identified two types of defiance, namely, resistant and dismissive defiance in Australis. According to him, the citizens that exhibit resistant defiance do not oppose the authority in exercising its power, for they are concerned about how the authority uses its power. He posits that resistant defiance does not threaten the existence of the authority but it might be "noisy, irritating, embarrassing and disruptive to an authority: and that it could be managed the existence of the authority. This is because those dismissively defiant do not respect the authority since they do not believe it would ever transform into a public institution that would be beneficial to the society. It is further argued that the authority must battle for its survival when the citizens are defiant in the context of taxation. Braithwaite expressed that while taxation might be a threat to taxpayers but those dismissively defiant threaten the existence of the tax authority. Both types of defiance were reported for Australia. This suggests that there should be constructive state society dialogue on the issue of taxation. Good governance can establish the confidence of the people about the state and facilitates the tax-services exchange process.

IV. Concluding Remarks

This lecture has attempted a politically contentious issue of taxation and state-building for good governance. A striking conclusion from this discourse is that there is a high correlation between taxation and good governance indeed. It is better when the relationship is bidirectional, which is one of mutual causation. A government that has the courage to impose tax on its people must be prepared to be

responsive, transparent and accountable. What this implies is that a tee-a-tere of taxation must necessarily mean a discussion about good governance.

Clearly a social contract over taxation makes revenues more predictable and the budget relatively stable. There is a simple, but very powerful, rule in public finance which says that the revenue from taxation is used prudently relative to foreign aid or rents from natural resources and so, the quality currently? It is hard to answer the question on the affirmative. This is because Nigeria's democracy is characterised by all manners of inventiveness. For instance, the electoral process is totally defective with allotment of elective posts as a major attribute. Of course, this adversely affects the quality of service delivery at the three levels of government. The solace is that democracy develops piece-meal, (that, is in parts) and so Nigeria's democracy will surely come of age. Building the institution that will deliver services to the people will foster tax-service exchange in Nigeria and elevate democracy.

A social contract should be built around the important issue of taxation in Nigeria Cheerfully, Chapter Three (pp. 9-12) of the draft National Tax Policy discusses the roles of the various stakeholders in the Nigerian tax system. The stakeholders identified are the three arms of government, the various tax and revenue authorities and the taxpayers. This chapter concludes with the emphasis on strong linkages among the stakeholders in the tax system. The linkages and understanding will certainly, be better through continous bargaining and negotiation among the stakeholders. The staff National Tax Policy document should be courageous to make such a clear statement.

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Appendix

Table 1: Contribution of the main Taxes (as percentage of Total Tax Revenue)

Year	Oil Revenue	Non-Oil Revenue	Company Income Tax	Custom & Excise Duties	Value Added Tax (VAT)
1994	79.3	20.7	6.1	9.1	3.6
1995	70.6	29.4	4.8	8.1	4.5
1996	78.1	21.9	4.2	10.5	5.9
1997	70.5	29.5	4.4	10.7	5.8
1998	70.0	30.0	7.2	12.4	8.0
1999	76.3	23.7	4.9	9.3	5.0
2000	83.5	16.5	2.7	5.3	3.1
2001	76.5	23.5	3.1	7.6	4.1
2002	-71-1	28-9	5-1	10.5	6.3
2003	80.6	19.4	4.5	7.6	5.3
2004	85.6	14.4	3.3	5.5	4.1
2005	85.8	14.2	2.9	4.2	3.2

Source: Central Bank of Nigeria's Statistical Bulletin, vol.16.2005

Table 2: Internally Generated Revenue (IGR) Expressed as aPercentage of Total Revenue of State Governments in 2003

States	IGR as % of Total Revene
Abia	4.7
Adamawa	4.4
Akwa Ibom	9.8
Anambra	14.2
Bauchi	4.7
Bayelsa	1.3
Benue	3.9
Borno	4.2
Cross River	6.8
Delta	9.6
Ebonyi	1.9
Edo	8.8
Ekiti	3.2
Enugu	9.5
Gombe	10.3
Imo	10.6
Jigawa	2.2
Kaduna	22.9
Kano	6.8
Katsina	6.0
Kebbi	3.8
Kogi	11.0
Kwara	14.9
Lagos	64.3
Nassarawa	6.7
Niger	3.8
Ogun	16.2
Ondo	10.1
Osun	14.4
Oyo	17.7
Plateau	19.2
Rivers	12.0
Sokoto	8.9
Taraba	3.4
Yobe	3.2
Zamfara	10.1
Average	10.1

Source. Central Bank of Nigeria Annual Report and Statement of Accounts 2003

Table 3: Nigeria's Major Taxes, 1990

Type of Tax	Jurisdiction	
	Law	Administration and collection
1. Excise Duties	Federal	Federal
	Federal	Federal
2. Import Duties	Federal	Federal
3. Export Duties	Federal	Federal
	Federal	Federal
4. Minning Rents and Royalties	Federal	Federal
	Federal	Federal
5. Petroleum Profit Tax	Federal	Federal
6. Companies Income Tax	Federal	Federal
7. Capital Gains Tax	Federal	Federal
	Federal	Federal
8. Personal Income Tax	Federal	Federal
(Other than those listed in 9)	States	Federal States
9. Personal Income Tax Armed Forces, External	States	States
Officers, Non Residents of the FCT and Nigerian	States	States
Police Force	States	States
10. License Feeson Television and Wireless Radio	States	States
11. Stamp Duties]	States	States
12. Capital Transfer Tax (CTT)	States	States
13. Value Added Tax		Local
14. Pools, Betting and other Betting Taxes		
15. Motor Vehicle and Drivers'License		
16. Entertainment Tax		
17. Land Registration and Survey Fees		
18.Property Taxes and Rating		
19. Market and Trading Licenses and Fees		

Notes:* The peculiar status of the Federal Capital Territory has not been taken into consideration in respect of this table. ** Listed but no longer imposed
Source: Constitution of the Federal Republic of Nigeria and legislation to Date.

Endnotes

1 Political scientists inform us that we have several concepts of state building. For instance, Zartman considers state building as "Transfering a sense of belonging from the group to the managing state until. According to Zartman, state building is one of many facets of governance. In other words state-building is a problem of governance and so, if governance. State building expresses the relationship between nation and state. Nation-building then, is about how to liberate and harness the energies and loyalities of subnationalism to the health of the state (Onyeozin 2001 39). When state elites or cultural groups have access to power and privilege, there can not nationa-building. This is because marginalised cultural groups will mobilise against the state. An example is the ongoing militancy in the Niger Delta of Nigeria.

2 See Brutigam (2006)

3 Details are in Fjeldsad and Moore (2007)

4 This point is obtained from Brautigam (2006 3)

5 Some of these and others have discussed. For eaxmple see Acemoglu, Johnson and Robison (2001), Centeno (1997), Rose (2004) and Thies (2005)

6 A comprehensive literature on taxation and state-building can be found in Brautigam (2006)

7 This is drawn from Brautigem (2004)

8 See Fjeldsted and Moore (2007)

9 On this see Hinnicks (1966) and Musgrave (1969). Also see De Navarrete (1964)

10 Tax avoidance occurs when a taxpayer explores the tax laws (legal loophole or when the law or rule is ambiguously stated) to reduce the amount he/she has to pay as tax. Tax evasion is a criminal offence. This is because it involved illegal means of reducing the tax payable say through false declaration. For details, see Peacock and Shaw (1982).

11 Hinricks (1966, chaps 3-7)

12 See Musgrave (1969-127)

13 See Musgrave (1969:127-128)

14 On this see Musgrave (1969)

15 This insight suggests that the ratio of tax revenue (T) to output measured by gross domastic product (Y) should be constant from one period to another. That is T = Y Y

16 A summary of the literature on each of the factors are contained in Brautigam (2006)

17 See Philips (1995)

18 See the 2008 draft of National Tax Policy, P 16

19 The analysis of the structural shift in government is pursued by Egwalkhide (1988)

20 See Phillis (1995)

21 This takes the form of tariff liberalization, tariff consolidation and simplification reductions in tariff exemptions, reduced impediments to exports among others.
22 This point was made in Egwaikhide (2004)
23 This point is articulated by Cullis and Jones (1998)
24 See Cullis and Jones (1998)
25 See Fieldstad and Moore (2007)
26 See Tait (1988) for these factors
27 His section partly draws on Faria and Yucelk (1995)
28 Tax productivity refers to tax yield and it is concept decomposed into tax two, namely buoyancy and tax elasticity. Tax buoyancy is the change in revenue yield arising from the change in the tax base, while tax elasticity deals with the revenue yield due to a change in the tax rate and or extension of its coverage.
29 On this see Faria and Yucelk (1995)
30 See Fieldstad and Moore (2007)
31 This point is clearly made by Fieldstand and Moore (2007) and Therkildsen (2004). On Tuesday, October 14, 2008, Business Day (page 17), a Nigeria business newspaper reported that the Lagos State Tax Enforcement Team sealed 20 companies and 41 shops because of their refusal to remit over N1.4 billion to the government. This amount is in respect of personal income tax collected from their employees.
32 ARAs are discussed in Therikidsen (2004) and Brautigam (2006)
33 This point can be found in Tanzi (1997)
34 Brautigam (2006)
35 This is reported in Brathwate (2007) covering the period 1999 - 2005
36 See Ross (2004)
37 See a clear statement on the social contract between the government and taxpayers see OECE (2008)
38 These findings are in Moore (2004)
39 A few member of the ruling elite are progressive however.
40 See Appendix Four of the 2008 draft National Tax Policy for the disgrammatic representation of the linkages.

GOVERNMENT TAX REVENUE AND ECONOMIC MELTDOWN

By Moshood Oyeleke, FCTI

As the global economic melt down is becoming a reality, the impact is being felt in the emerging countries including Nigeria. Efforts are therefore made by various governments to address the problem in a way to cushion the effect on their citizens.

The melt down according to experts will last for a minimum period of four years at the best and people should be ready to brace up for much longer period.
Government has focused on taxation as an area where the shortfall in oil revenue will be met. The taxes are customs and excise duties, Petroleum Profits Tax and Companies Income Tax in the main. The situation of the international oil market and security situation in the Nigeria oil producing Niger Delta region affect the profitability of oil producing companies, which in turn affects Petroleum Profit Tax.

Taxation on other non-oil producing companies is being intensified to garner increased revenue. To achieve the goal of government, these companies must produce to their optimum level or capacity. It is by doing so that profits will be available for assessment to profits tax. Companies that contribute significantly to government tax revenue are in categories of Oil and Gas, Manufacturing, Banking and Conglomerate.

Policies of government and relevant agencies have to align or be in tandem in the direction to sustain the tempo of increased taxation revenue for government.
Conflicting policies that are not harmonized by the respective arms of government could cause unplanned or unexpected reduction in the envisaged or budgeted government revenue from taxation.
If it is assumed in that profits of banks are not stagnant and are increasing progressively going by the results shown in their published financial statements, then the revenue expected by government from the banks through company income taxation will be high as long as the tax does not reduce.

Though the policy contemplated by the Central Bank of Nigeria as the apex bank and the regulatory and the supervisory bank in Nigeria, that all other banks must have uniform accounting date of December annually, will result in loss of revenue expected from the banks to the tune of between ten to twelve percent of taxation revenue within the three years of implementation in comparison with taxation revenue previously earned. This loss of revenue through the proposed decision of Central Bank of Nigeria is better explained from the analogy below while a comprehensive detail could be found in the Chartered Institute of Taxation of Nigeria.

Tax Practice Series Number 5 tittled: "Commencement Cessation and Change in Accounting Date of Business Entities".
The imposing order that all Nigeria banks must have a uniform accounting date of December each year is definitely going to erode government in taxation revenue within the three years of implementation, since most Nigerian banks have their existing accounting dates in the earlier month in the year than December, the financial year of government.

The thinking behind the uniform accounting date for Nigeria banks could be plausible but there is need for discussions and dialogue on other implications such as revenue to government on such policy decision. The reason for the suggested uniform accounting dates for banks appears supported by various commentators. However, such reasons adduced should not be at the expense of government generated revenue. There are two sides to a coin. The loss to government in revenue will be gain to the shareholders of banks, since the saved company income taxation will be available for the distribution to the shareholders as script issues or dividends to cushion the loss of capital gains currently in the capital market due to the economic crisis.

A policy decision by the Central Bank of Nigeria, a part or arm of government should be seen to tilt towards increasing legitimate revenue to government and not otherwise.

A typical example in numerical terms of a change from existing accounting date of banks to December annually is as follows;

"Dealer Bank" with Accounting date of March changes its financial year to December in 2009. Taxable profits are:

March 2009 N40 billion, December 2009 N2.5billion
December 2010 (Projected)-N7.5billion; December2011 (Projected) N8.5billion.
Total Taxable profits between March 2009 and December 2011 amount to N22.5 billion.

By the operation of Nigeria tax laws taxation will be assessed on N20 billion taxable profits. N2.5billion will escape government taxation, which is about 11 per cent of the aggregate taxable profits of the bank. The same goes for other banks in the category that make profit. Majority of Nigeria banks will fall into this category.

If the reason and need to have a uniform accounting date for Nigeria banks are overwhelming, then the chosen date could be in the early part of the year, say January or February instead of December. By choosing either of these dates the reverse of the analogy above will take place, since most Nigeria banks have their

accounting date in the middle or late part of the year.

The outcome of such is a policy decision will cause such banks to pay tax lawfully twice on part of the same profit! It is a confirmed Technical tax computation in line with the tax in operation in Nigeria. A numerical example of such scenario is as follows:
QRST Bank makes up accounts to February each year after each year after changing from September accounting date. The projected taxable profits are September 2009 N1.8 billion, February 2010 No.55 billion and February 2011 N2.5 billion.

The aggregate taxable profits for the period of September 2009 to February 2011 is N4.85 billion. Taxation will be assessed for the same period on taxable profits of N6.7 billion taxable profit of N1.85 billion will be assessed to tax twice which is about 27.6 per cent of the aggregate taxable profit for that period. Government will benefit and shareholders will lose.
The other aspect arising from the order by the Central Bank of Nigeria on banks to change their accounting dates to December of each year appears controversial and could be left to the jurisdiction of the court of law. Should the apex bank as the regulatory and supervising bank have authority over the shareholders of commercial bank in choosing accounting date for their company (bank)?

Banks are companies in the first instance before doing business, and are registered under the Companies and Allied Matters Act. If shareholders should refuse through a special resolution in a general or extra ordinary meeting a change in accounting date imposed by the Central Bank of Nigeria, what options are open to the apex bank in its oversight function? A persuasive advice/authority is an option more especially if the government does not have controlling shares in such a bank.

A compulsory or imposing change in accounting date of banks from their previous financial year end to December year end to coincide with government financial year will reduce government earnings from company taxation, going by the present accounting date of most Nigerian banks.

Will government want to generate more revenue to prosecute its agenda or lose revenue to the gain of shareholders of banks, who form a proportion of the citizenry to whom government agenda is aimed at alleviating their suffering?

In line with the provisions of the Companies and Allied Matters Act and the respective memorandum and Articles of Association of most companies as registered with Corporate Affairs Commission, the shareholders of private or public companies have the last say in effecting a change in accounting date of their companies among other statutory obligations despite the provision of Banking and other Financial Institutions Act and the regulatory and supervisory functions of Central Bank of Nigeria on commercial banks and financial institutions.

PROPERTY TAXATION AND REVENUE GENERATION IN NIGERIA

By Ade Ipaye[1]

Introduction

Property and Taxes

In a general sense, property is that which is peculiar to anyone: that which belongs exclusively to him.[2] It could be money, land, personal chattels or incorporeal (intangible) property. In this sense, most taxes may rightly be regarded as a public charge on private property. In Nigeria, as well as most other countries of the world, the income of the subject, which is no doubt his property, is the primary base of tax. In other words, what is appropriated from an individual by way of tax is determined by the output of his income generating assets or the level of income from his enterprise. The higher he earns, the more the tax he is required to pay.

In some cases, the income comes infrequently; not out of regular labour or other productive effort, but out of the disposal of a capital or investment asset. It is then described as capital gain and assessed to Capital Gains Tax. That tax is, in the final analysis, an appropriation of personal property, but it is not property tax.

Also, most countries have one form of inheritance tax or the other. Once property of any type passes, by way of gift or inheritance, from the owner to another, a proportion of it is requisitioned by the state. In Nigeria, it was referred to as Capital Transfer Tax. Until 1996 when it was abruptly abolished, that capital transfer tax was largely ignored as it sat uneventfully on our statute books. However, taxes of this nature are not normally referred to as property tax, as they are levied on the transfer (not on the ownership per se) of property.

Even expenditure taxes cannot be entirely removed from a proprietary base, but they are also not in the category of property tax. Unlike an income tax which charges what is contributed to society, an expenditure, or consumption tax charges what an individual takes out of the economy.

In a given period. However, even though the money expended, which forms the base of consumption tax, is property, the ensuring tax is not a property tax.

Property Tax Scope of the Term

In strict terms, the expression "property tax" only describes taxes that are imposed

primarily on lands and buildings, i.e., on real property (as distinguished from personal property). Real property means land, and generally whatever is erected or growing upon or affixed to land. It covers terms like tenements or hereditaments; that which is incidental or appurtenant to land.

It is important to note at this stage that by adopting the foregoing description, we are actually confining our thoughts to the Nigerian situation. In some countries like United State of America, property tax is also levied upon business and farm equipment and inventories.

In other places, the tax extends to automobiles, jewelry, furniture, and even to such intangibles as bonds, mortgages and shares of stock that represent claims on, or ownership of, tangible wealth. In these cases, the board coverage is justified by the argument that the tax would otherwise be discriminatory among types of consumption and investment.

Historical facts indicate that most of the early New England colonies started out with a general property tax. By the mid 19th century it had become the principal source of revenue in all the states of America. However, taking account of intangible property and personal chattels became extremely difficult and the tax was eventually trimmed down to a charge on real property in most states.

Today, property tax has grown to be a worldwide phenomenon, usually for the finance of local authorities and neighbourhood improvement. In earlier times, it had a more expansive purpose. In 18th century France there were strong arguments for the adoption of land tax as the major source of public revenue. Following in that line, a 19th century American writer, Henry George argued persuasively for a single tax on land and the abolition of all other taxes. One of the major justifications for this is in the fact that land values necessarily reflect the infrastructure and development projects (including roads, hospitals, schools, refuse disposal system, etc) provided by government. Also property based taxes tend to ensure more efficient use of land.

In some countries, certain dedicated taxes are charged and collected per property and based on some valuation of the property. For instance, in the Canadian City of Vancouver, education tax and city tax are collected from property owners and constitute 93% of the city's budget. This is not to say that property owners fund the city exclusively. Rather, the tax is substantially passed on to tenants and other occupiers by way of increased cost. Also in Calgary, Canada, the city collects on behalf of the Province for the Public School Board and on behalf of the Catholic School Board. These are examples of property taxes being charged for specific communal and essential utilities like schools.

In all cases, property taxation tax has the potential of providing a steady source of revenue for local authorities. As infrastructure improves, property values rise and the tax

payable reflects the increase. With proper administration of the tax, government revenue is sure to grow gradually with increased responsibilities and inflation.

Property taxes are also thought to be fair, as property ownership is a good indicator of ability to pay. This attribute ties into the welfarist characteristics of the tax. Inevitably, owners of more valuable properties pay more, even though poorer residents often benefit more from the public schools, hospital facilities and other government-provided infrastructure.

Property tax distinguished from income tax

In view of our earlier assertion that all taxes are a charge on private property, care must be taken to further particularize our topic and to avoid confusion. Real property often yields income, but property tax is not the tax on such incomes. As between property tax and other available forms of tax, the distinguishing factor is in the fact that the amount payable as property tax is based on the gross or ratable value of the property, not on the actual net income from the property. In fact, to become liable to property tax, a property owner need not have derived any financial benefit from the property. He pays even if he leaves the property empty for years on end. The tax nudges him towards a more efficient use of the property, but, in the final analysis, the choice of what to do with his property is his.

The Constitution of the Federal Republic of Nigeria confers the power to charge tax on income, profits and capital gains on the National Assembly to the exclusion of State Houses of Assembly and Local Government Councils.[3] To this end, two major statute s have been made by the federal legislature to govern income taxation. The Companies Income Tax Act covers corporate bodies while the Personal Income Tax Act takes care of individuals, groups and unincorporated associations. Remarkably, all of these statutes put income from real property within the income tax net. Section 3 (c) of PITA charges to tax any gain or profit including any premium arising from a right granted to any other person for the use or occupation of any property.

Similarly, section 8 of CITA provides that tax shall be payable on companies' income accruing in, derived from, brought into, or received in Nigeria in respect of rent or premium arising from a right granted to any other person for the use or occupation of any property.

These taxes on income arising from ownership or use of property are outside the strict connotations of property tax. Rather, property taxes are, more often than not, charges on the ownership, use or occupation of real property. In fact, the best representation of property tax in Nigeria is the tenement rate charged by local government authorities across the country under their respective Tenement Rate Laws.[4] Tenement Rating can in turn be traced back to the assessment and Rating (Public Utility Corporation) Act, Cap 16 of 1956[5] and subsequently, several states made provisions in their Local Government Laws conferring powers on the local

authorities to levy a 'general rate'.[6]

Legislative Source for Property Taxation in Nigeria

For tax purposes, the 1999 Constitution recognizes two legislative authorities[7] and three collecting authorities[8] nationwide. The two legislative authorities are the National Assembly, which imposes tax on income, profits and capital gains, and state Houses of Assembly, which may impose any other tax fee or rate.

(outside of those exclusively reserved or the National Assembly). In terms of collection the federal and state executives are joined by the local government authorities with the result that each of the three tiers of government has some tax collection capacities guaranteed by the Constitution.

The particular case of property taxation can be traced back to section 7 of the Constitution, which subjects Local Government Authorities to the legislative jurisdiction of State Houses in the following terms:

"The system of local government by democratically elected local government councils is under this Constitution guaranteed; and accordingly, the Government of every State shall subject to section 8 of this Constitution, ensure their existence under a law which provides for the establishment, structure, composition, finance and functions of such councils."

Under this provision, all the legislative instruments for the establishment and sustenance of Local Government Councils are to be enacted by the relevant State House of Assembly.

Further to the foregoing provision, Item D(9) of the Concurrent Legislative List (Schedule 2 to the Constitution) provides specifically for taxes as follows:

"A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a local government council."

Section 7(5) and schedule 4 to the Constitution also confer direct tax collection functions on local government councils, including:

"(J) The Assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State"

It is clear from all these that the Constitution envisages a State Law on property or tenement rating, which will be administered substantially by local government authorities. Hence, in Nigeria as well as in most other countries, state legislative

authorities determine the design and structure of property taxes while local authorities take charge of the administration and collection. The latter process includes the identification and valuation of taxable property, application of tax rate, issuance of demand notices, tax collection and complaints and appeals administration.

Property Tax and Revenue Generation

There is no doubt that the 1999 Constitution envisaged an ambitious role for Local Government Authorities throughout the country. Among other functions, LGAs are to construct and maintain roads, street, street lightings, drains and other public highways, parks, gardens, public facilities, etc. they are also to provide and maintain public conveniences, sewage and refuse disposal.[9] As we all know, LGAs across the country had fallen far short of these expectations, mainly for lack of funds and administrative efficiency.

Statutory allocation to LGAs is clearly insufficient, even for the payment of salaries. Tenement rates, which traditionally provided the bulk of their internally generated revenue, yield very little. Over the years, the database and valuation employed by these LGAs had become grossly outdated, hence assessments were much lower than they should be. Also the administration and collection of the rates are riddled with inefficiency and corruption in most cases.

With these outdated property values, the World Bank estimated in 1997 that Local Government Authorities were collecting less that 25% of possible Tenement Rate revenues. On the average, the yield constituted only 7.6% of their total liability.

With no extra cash of capital projects, LGAs could not fund a fresh valuation and enumeration exercise, so they got trapped in the vicious cycle. Without updated property values they could not increase their tenement rate yield and without increased yield they could not fund a fresh evaluation.

This inability to generate revenue for their services explains the backwardness of our towns and cities when compared with their counterparts abroad. But that as it may, we shall go on now to review the legislative framework for property taxation in Nigeria and, in view of its nationwide prevalence, the Tenement Rate Law (which is substantially the same in all the states) shall be used as the basis of our discussion on the administration and collection of property taxes.

Valuation and Assessment

In medieval Europe and the old America colonies, taxes were originally based on area rather that on value. Later on, gross output from the land came to serve as the tax base.[10] In modern times three main methods of assessment have become prevalent for property taxation worldwide, rental value, capital value, and market

value. Where, as in most Asian countries, the annual rental value is used, the tax is determined by reference to the average gross-rental income, which the property is ordinarily expected to generate under prevailing market conditions. The capital value approach in vogue in Europe is more closely related to the actual amount spent to acquire the property in question. The new Land Use Charge Law of Lagos State[11] adopts this concept. The third, i.e., the market value method is based on the current price of the property in the open market.

That is not to suggest, however, that these three are constant models. Several countries use different variation or expressions, yet they take into consideration several common factors. In fact, only the relevant law in each case can reveal the actual basis of calculating the charge. For instance, in the USA, the assessed capital value is preferred; in Ghana, the replacement cost; and in South Africa, on site value of the land. A few countries take quite a distinct approach, as in Korea where the aggregate value of all plots owned by an individual throughout the country is used as basis for calculating his property tax liability.[12]

It is noteworthy that the adoption of one method or the other does not necessarily determine the weight of the tax burden. It is the applicable rates differ, depending on the zonal location of the property in question or its type and user. In some Asian countries a fixed amount is simply charged, based on a particular unit of land measurement.[13]

For the purposes of the Tenement Rates Law, all properties within a state territory are valued by reference to their gross value. In making their Determination, Appraisers are free to consider the actual rent passing on the tenement; or the rent of comparable tenements within the vicinity (open market rent). The Rateable value is however determined by deducting the amount of all outgoings that will be incurred to earn the gross value.[14]

Where the tenement cannot be valued by reference to a direct rent by reason of the special nature of the property or due to the paucity of rental evidence for such tenement in the particular area, the appraiser is allowed to use the "Depreciated Replacement Cost" method or any other relevant method.[15]
The Depreciated Replacement Cost is arrived at by first determining the Current Replacement Cost of the tenement and then deducting an amount from the Current Replacement Cost as to allow for age and obsolescence.[16] to obtain the rateable value, the resultant Depreciated Replacement Cost further devalued by deducting an amount to reflect the outgoing incurred on the property.[17] Under a special provision, assessment of tenements occupied by public utility corporations (other than those used for residential purposes) is done by the Depreciated Capital Value or Depreciated Replacement Cost Method.

To ensure uniformity of assessment, the appraiser is required to consider the level

of rent prevailing in the relevant locality for the particular type of tenement or of the building costs in the locality for that particular class of tenement.[18] The concepts of Gross Value and Replacement Cost therefore involve a comparative analysis of rental or purchase transactions involving properties in the same locality. Where a property cannot be valued by the comparative method because it is never let, then it must be valued by either the Contractor's Method (embracing the Current Replacement Cost) or the Profits Method.[19]

Valuation List and Property Assessment

In Nigeria, the Various Tenement Rate Laws[20] provide for the establishment of a valuation office, which is charged with the assessment of all rateable properties in the State. Zonal Offices are also provided for each Local Government Area and constitute the exclusive rating authority for their respective areas of jurisdiction.[21] These offices are responsible for the identification, survey and valuation of rateable properties in the State and the compilation of a valuation list. The office is also charged with the duty of nominating or appointing and supervising professional valuation advisers and appraisers. The law specifically stipulates that appraisers must be qualified Estate Surveyors and Valuers registered by the Estate Surveyors and valuers Registration Board of Nigeria.[22]

Appraisers

Under section 5 of the Law, an appraiser is empowered to require any person to give information, which may affect the assessed value of the tenement. He may also call on any taxpayer to produce any accounts, receipts for rent or other documents connected with the valuation of a tenement and to enter into and take measurements and other particulars that may be necessary for the purpose.
The Tenement Rate Law envisages the reassessment of properties at least once in every five years.[23] Following each assessment or reassessment, the valuation office issues a list of the affected tenements and their respective valuation. The list, which must first be submitted to and endorsed by the director of valuation, is however, subject to alteration by the Assessment Appeal Tribunal or a Magistrate Court .[24] Notice of every valuation list or amended valuation list is publicized to property owners in the official Gazette of the relevant State or in any of the widely read daily newspapers. The notice also gives information as to the place at which the list may be inspected, and allows a period of 21 days for such inspection. In addition to the general notice, every property owner must be given an individual notice showing the current assessed value of this property.

Apart from the general valuation and revaluation exercise, new properties must be valued as they come up. Also, existing tenements may be revalued where, by an alteration of its structural condition (either by building, modification or

demolition), the assessed value has been increased or reduced. Particular revaluation may also be carried out upon the written request of the property owner for re-assessment. [25]

After the valuation process, the rating authority has the specific function of demanding and collecting tenement rates from owners or occupiers of tenements and building after due notices of demand have been sent to them. Where the occupier is not the owner, the Rating Authority may call on him to furnish the name of the owner.[26]

Exemptions

The following classes of property are exempted from assessment and rating under the Tenement Rate Law:

(a) all Land and buildings used exclusively for the purpose of public worship

(b) cemeteries and burial grounds;

(c) registered institutions which are certified to be non-profit making;

(d) any tenement specifically exempted by the Governor by notice in the state official Gazette as authorized by the State Executive Council;

(e) all palaces of recognized Obas and chiefs in the state.[27]

Partial relief may also be granted to buildings of poor construction, very low value or of transient or temporary nature.[28]

The trend, as can be seen from the exemption list, it is to give relief to public institutions of a religious or charitable character. It is likely that the governor and the State Executive Council would keep to this trend even when exercising powers granted under sub-section 13(2)(d) above. However, with the recent introduction of privately owned and commercial oriented cemeteries in Lagos, it is likely that the width of exemption granted under section 13(2)(b) will be reviewed by the legislature in the near future.

Objections

Objection to the valuation list may be any owner or occupier or the tenement. Notice of Objection is to be addressed to the director of Valuation, stating the grounds upon which the objection is made. A copy of the Notice must then be served on the relevant Local Government Council.[29]

To maintain his case, the objector of the Notice must then be served on the relevant Local Government Council and required to deposit with the Local Government Council a sum equal to 50% of the amount of rate due, pending the determination of the objection. Such deposit would be credited to the rate-payer's account of the objection. [30]

The Appeal Process

The Assessment Appeal Tribunal has jurisdiction to hear and determine appeals in respect of objections to the valuation list only. Each Tribunal consist of three members with one of them appointed as chairman. The Tribunal has the powers of a regular court and may issue summonses, examine witnesses, require and enforce the production of necessary documents and administer oaths and affirmations.[31]

Appeals against the valuation list should be brought within 30 days after the service of the relevant notice of assessment[32] and the onus of proving that a valuation of a tenement is excessive lies on the owner or occupier. Once a valid Notice of Objection has been lodged, the Tribunal issues a notice to the objector and to the Director of Valuation giving the date and place of hearing.[33] In its judgment, the Assessment Appeal Tribunal has wide powers to confirm, reduce, increase, alter or annul the valuation.

An objector who is not satisfied with the Tribunal's decision may appeal further to a senior Magistrate's or a Chief Magistrate's Court depending on the amount involved. Presumably appeals also lie directly to the State High Court in appropriate cases. Section 32 anticipates that further appeals would come mainly at the instance of property owners. The rating authority is entitled to a fixed minimum.[34] The usual preconditions for appeal are applicable here. The appellant must give notice of appeal in the amount disputed with the rating authority.

Constitutionality of the Part Payment Requirement

It is noteworthy that the requirement of depositing 50% of the rate due features as a precondition both for lodging an objection to valuation[35] as well as for making an appeal to the Tribunal.[36] The same condition features in the Lagos State Land Use Charge Law[37] and has been the subject of much controversy. The question that arises is whether the required payment of 50% deposit of the contested assessment as a precondition to an appeal against the assessment does not amount to a denial of the property owner's right to fair hearing guaranteed under section 36 of the 1999 Constitution and an unjustified restraint of his right of unrestricted access to the courts.[38]

To start with, there can be no issue of fair hearing here as the complaint does not relate to the composition, procedure, conduct or a determination of the Valuation Office or Appeal Tribunal. On the contrary, the Appeal procedure is meant to ensure that the property owner gets a fair hearing. The question is, therefore, as to what he has to do to be heard.

As regards the issue of access, the Supreme Court has put it beyond conjecture that a condition precedent to the enjoyment of right of access to courts, which is

stipulated by a competent legislative authority, is not unconstitutional.

Indeed, there are always some conditions precedents to the right to be heard in a law court or tribunal. These include the charging of court fees and other non-refundable payments, preliminary applications for permission to enforce some civil rights, statutorily prescribed pre-action notice to Defendants, etc.

In the case of taxes, it is a common requirement that taxpayers pay a proportion of the tax assessed as precondition for challenging the assessment.

This deposit is, however, neither a fee nor a fine, but a payment towards the appellant's possible tax liability. The court may order it to be refunded if it is found that no tax, or lesser amount of tax, is due from the appellant, it has thus been judicially determined that a condition precedent ordered to be satisfied before a litigant is entitled to sue, by reason or the provision of some statute, is not an ouster clause and not a device adopted by government to prohibit judicial review.

It is very well known that the maintenance of government depends on its ability to collect taxes from its subjects. Daily maintenance of government personnel, infrastructure and institutions, as well as sundry social services; depends substantially on the uninterrupted flow of tax revenues. Without the power to levy and collect taxes, all advantages of having an organized and democratic society would be lost. This is why the power to tax is a universal attribute; it also goes further to allow the confiscation of private property in the course of tax enforcement.

Also, when a taxpayer disputes his assessment, three possibilities are open to the assessing authority, the best of which is the part payment option. The option of suspending the taxpayer's liability until the tribunal of court resolves the issues in dispute is certainly the worst, as it would inevitably encourage frivolous appeals and starve government of funds. The second option is to insist on full payment on due date with the condition that the taxpayer would be refunded any part of that payment which a court finds to be unjustifiable. This is also not suitable as it is unfair to the taxpayer. Clearly, the best option then is to require the taxpayer to pay the undisputed portion of the tax assessed or such a reasonable proportion of it as fixed by the relevant Law.

That approach has always been adopted in Nigeria and much of the world. Apart from ensuring a minimal interruption of revenue flow, it balances the interest of both sides and discourages frivolous tax appeals. Were the mere filings of a tax appeal to operate as a suspension of tax liability, government would find it impossible to plan and many more taxpayers would take refuge in the appeal process, which in Nigeria could take as long as twenty years to finally get resolved at the Supreme Court.

In the United Kingdom, for instance, a pending tax appeal does not suspend the appellant's liability to pay. Rather, the tax charged by an assessment or amended assessment falls due and payable as if there had been no appeal.[39] Also in South Africa, no person liable for rates is entitled to defer payment beyond the due date on the pretext that he has lodged an objection against the Valuation Roll or that an appeal is pending in respect of that objection.[40] The deposit requirement is therefore a justifiable condition precedent to the exercise of the complainant's right of access to the courts. It is obvious that, in the absence of such condition, the tax authority would expend more of their time on complaints, appeals and court proceedings than on tax assessment and collection.[41]

Demand and Collection of Rates

As indicated earlier, the rating authority is required to give notice of every rate demanded by it. The notice must specify the day on which the fate becomes due and payable and it may be served by affixing a copy in a public or conspicuous place within the area of jurisdiction of the rating authority or by publishing a copy in one or more daily newspapers circulating within the area.[42] Where any rate remains unpaid for three (3) months from the date it became due and payable, a surcharge calculated from the day following the expiration of the three (3) months period is made by the Rating Authority at the rate of 10% per annum for each month for which the rate remains unpaid.[43]

Liability to pay Tenement Rates

Section 36(1) of the Law places the liability to pay rates on occupiers or subsequent purchasers of a tenement. The real owner, if different from the foregoing, is secondarily liable. Off course, where the owner is in occupation, he retains the primary liability. This approach avoids the problem of the elusive, no-occupier landlord and affirms the principle that property taxes are charged for the benefit of the locality and its residents.

However, there are instances of properties with several occupiers where collection of rates from each of them would be problematic and uneconomical. In that case, the Rating Authority can choose to make the owner primarily liable.[44]

Security for Due Rates

With the exception of government owned properties, every rate levied on a tenement constitutes a charge on the tenement itself. The amount due becomes a debt and the property automatically becomes security for the payment of that debt. However, such charge will rank accordingly and should not supersede fixed charges on the same property which might have been executed before the

tenement rate became due.

The primary claim against the person must however be distinguished from the charge against the property. The latter operates only after the failure of the former. As far as claim against the person is concerned, section 39 of the Law specifically provides that due rates shall rank prior to all other claims against the person, except claims by the State or Federal Government. Hence, if deductions were to be made from the general assets of a property owner, due tenement rates would be deducted first before any other debt.

Use of Rate Collectors

Rate Collectors are person vested with authority to collect due rates and surcharge within a defined area. They are consequently required to make returns and furnish information on the amounts to be collected and pay over all collections to the rating authority.[45] As agents, Rate Collectors must comply with the direction of a rating authority in the performance of their duties under the Law.[46]

The Law allows each rating authority to appoint Rate Collectors. These Rate Collectors can be independent contractors or consultants and need not be employees of the Council. This is not to say, however, that Council employees cannot be appointed as Rate Collectors. Indeed, section 37(2), merely provides that a person shall not be appointed a rate collector without his consent, except he is an employee of the rating authority.

This provision, which allows for the appointment of independent tax collectors, was superseded in 1998 by the Taxes and Levies (Approved List for Collection) Decree No. 21 of that year. Section 2(1) of the Decree provides that:

"Notwithstanding anything contained in the Constitution of the Federal Republic of Nigeria, 1979, as amended, or in any other enactment or law, no person, other than the appropriate tax authority, shall assess or collect, on behalf of the Government, any tax or levy listed in the schedule to this Decree."[47]

Section 4 of the Decree defined 'tax authority' to mean:

(a) The Federal Board of Inland Revenue, the State Board of Internal Revenue or the Local Government Revenue Committee, or

(b) A Ministry, Government department or any other Government body charged with responsibility for assessing or collecting the particular tax.

However, with the coming into force of the 1999 Constitution, the Taxes and Levies Decree can only have limited application. The Decree is deemed to be an Act of the National Assembly and remains valid as such[48] only to the extent that it is not inconsistent with the Constitution.[49] For State and Local Government taxes, which are imposed by the virtue of

residual powers[50] of states, method of administration can only be determined as stipulated by the relevant State Law. It is clearly unconstitutional now for the Federal Government to specify the method of collection for taxes charge by State Houses of Assembly.

Recovery of Rates

Where a person fails to pay a rate, for which he is liable, on due date, the rating authority may take him to the Valuation Court (which is retained as a standing tribunal for this purpose) and obtain judgment against him.[51] The Valuation Court has the jurisdiction of a Magistrate's Court and is presided over by a legal practitioner of not less than 5 years experience.

A judgment of the Valuation Court directs the rate-payer to pay within the next 21 days and empowers the relevant Local Government to distrain any property belonging to the defaulter in satisfaction of the claim if he continues to default. The judgment also empowers the Council to recover the rate due as a civil debt, together with any attendant surcharge and costs. Appeals from the Valuation Court goes a Chief Magistrate's Court.

Problems and Prospects of Property Tax Administration

The success of property tax in many jurisdictions around the world is quite astounding. For instance, in cities in the United States, property taxes account for as much as 75% of the internally generated revenues, while in Lagos, Nigeria, it accounts only for 7.6%. in Toronto, which is reputed to have on of the highest qualities of life of any city in North America, property tax dollar and user fees help maintain 6,200kms of roads, 1,500parks, 28,000 housing units, 46,000kms of water mains, 10,000kms of sewers, 10,300 streets and 400 bridges.

Property tax in Johannesburg (South Africa) constitute 20% of revenue and is complemented by direct user charges (e.g., for waste disposal water and sewage) on property owners and occupiers amounting to 65%. Thus Johannesburg, which has only 1/8 of the population of Lagos has revenue three times that of Lagos State.

Similarly, in Rio de Janeiro (Brazil), property related taxes constituted 29% of revenues and is complemented by service tax, which brings in 6%. In Toronto and Vancouver (Canada), property tax constitutes 32% and 52% respectively of total revenues.

In Nigeria, there is a tendency to focus on and criticize the tax collection process. However, it should be noted that property taxation has some intrinsic problems.

For instance, unlike other capital assets that attract tax only when they yield income, property tax is not on actual income earned on a building. Yet the amount payable is related to the value of the building. Sometimes also, the tax payable may be disproportionately high when compared to the rental yield, especially in areas when government has fixed the maximum rent payable on residential properties.

In this way, the authorities simply assume that owners of more valuable properties can afford to pay higher taxes. But that is not necessarily so. The owner may have little by way of liquid cash to meet the recurrent liabilities of property tax. He may be occupying his property all by himself or with his dependants. He may even have inherited the property. If his real income is low, he may be unable to cope with the demands of an annual property charge and may, in extreme cases, be forced to dispose of the property. This is a clear negation of the ability to pay principle.

However, the more prominent problems of property tax administration is that of procuring the cost, personnel and equipment to achieve better mapping and get more accurate property description and valuation. Updated data on values would immediately yield more realistic revenue potentials. In this regard, it is only a permanent professional valuation staff, selected and promoted on merit basis; free from favouritism, corruption and political pressures that can do the job. All of these cost a lot in terms of the capital investment required is well beyond the immediate capacity of the local authorities.

In a bid to deal with these issues, the Lagos State House of Assembly consolidated all property taxes in the State into one Land Used Charge, which is being centrally administered by professional consultants under an agreement that guarantees to each LGC its due share. The philosophy behind this move is that it is easier and more efficient to fund single tax collection machinery than for each of the 20 local government authorities to maintain 20 different and parallel facilities for the same purpose. This is more so since the state government also has some property taxes, which are charged on the same properties as tenement rates.

Scope for State Administered Property Taxes

The foregoing raises the issue of whether property taxes are not the exclusive preserve of local government authorities. In other words, can states validly impose and collect property taxes?

In view of item 9(d) of the Concurrent Legislative List[52] quoted earlier, it is actually a state legislature that can impose and provide for the collection and administration of any tax, fee or rate that has not been mentioned.

tenement rates is constitutionally reserved to Local Government Authorities.

Whether the State Government can actually assess or collect on behalf of the LGCs

is another issue, which has been dealt with by our courts. In Bamidele. Commissioner for Local Government (Lagos State)62, the court of Appeal considered the Constitutional functions of Local Government Councils and declared (per Uwaifo ICA) that,

"...It will be unconstitutional for any other person or authority to purport to exercise that function on the state of the law. The function has been given to the Local Government. It has a duty to perform it. It may do so directly or by lawful delegation. It cannot be deprived of it nor can it surrender it."

This dictum suggests unequivocally that a local government function, such as the collection of rates, can be lawfully delegated. Delegation in this sense does not import a total loss of the relevant power. Neither does it amount to a deprivation or surrender. As defined by Chamber's encyclopedia,63

> "Delegation in general signifies the process of handing over powers to others to exercise on one's behalf, the term does not imply complete surrender, for the power delegated can be recalled but it does imply that the person or body to whom the power is delegated can exercise it fully unless some qualifications have been placed upon him."

This rule of lawful delegation was not at play in Knight Frank & Rutley (Nig) v. AG Kano state64 where, in the absence of express delegation, the Kano State Government appointed Consultants to undertake valuation of properties within the metropolis. That action on the part of the State Government was described as an illegitimate intrusion or interference. The court correctly held that the State Government did not possess concurrent jurisdiction with the Local Government Councils in Kano Metropolis over the functions set out in the Fourth Schedule.65 In the absence of a delegation of the function by the Local Government to the State Government, the action of the State Government was clearly unconstitutional.

In contrast the Lagos situation is one in which the Constitution expressly authorizes the legislature to confer tax collection functions on the Local Government Authorities and to set the conditions for the administration of such taxes. Acting under these powers, the state legislature has properly designated the Local Government Authorities as collecting authority and given them the option of doing so by themselves or allowing the State Government to collect centrally on their behalf.

For the avoidance of doubt, the delegation must be in writing. If any particular Local Government Authority refuses to do so or having done so, revokes the authority, then Land Use Charge would either not apply or cease to apply as the case may be. In that case, the Local Government Authority will continue to operate the tenement rate system and the State Government will only have the jurisdiction to collect other property based taxes within that local territory.

The concept of voluntary delegation is not antithetical to federalism. Rather it widens the scope of cooperation between state and local authorities. Even now, there are numerous fields of activity in which the States act on behalf of their component local government authorities. The ability of one tier to expressly and voluntarily delegate its functions to another, or indeed to non-government agency where such would be the most efficient strategy, can only strengthen the spirit of cooperation, which is required in federal systems, and ensure efficient use of government resources.

Indeed, if delegation proves impossible, a Local Government Council would have had to construct and maintain roads, provide and maintain public conveniences, sewage and refuse disposal etc all by direct labour of its employees. It would also have to establish and maintain cemeteries, burial grounds and home for the destitute or infirm all by itself. In that case, the residents would be worse.

Surely, the main reason why our Constitution confers on Local Government Authorities the power to assess and collect tenement rates is to assure them their steady and autonomous source of revenue. If that end is better served by commissioning consultants or delegating the collection to some central agency, there should be no legal impediment in that regard.

Also it is important to note that there are other property related charges that State Governments can impose and collect. In Lagos for example, a number of land based rates and charges, including development charge, ground rent and premium, are payable under the Land Rate Law. The State Government also collects Neighborhood Improvement charges. In fact, the Land Use Charge Law was introduced in June 2001 to consolidate all these charges and rates.

Conclusion

It is clear from all the issues discussed that property tax in all its ramification has great revenue potentials, especially for local and state authorities. All over the world, it has been the mainstay of neighbourhood development and, because its yield naturally grows as inflation and infrastructure developments push up property values, it is best suited for that purpose.

The tax has not succeeded in Nigeria for reasons already outlined. However, it has become obvious that if local authorities are to live up to the expectations of our constitution, they have to review and restructure their administrative rules and processes. In this regard, we are likely to see more cooperative efforts among local authorities and between local authorities and state governments, if only in the short run, as means of achieving the level of investment and efficiency now required to resuscitate property taxation throughout the federation.

FOOT NOTES

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[2]Black's Law Dictionary, 5th ed. West Law Publishing Co.

[3]See section 4 and item 59 of Schedule 2 to the 1999 Constitution.

[4]See Cap 186, Laws of Lagos State, 1994.

[5]Rabiu, S. A., Property Taxation and Taxation Aspect of Liquidity Management in Nigeria (paper presented at a Seminar on 'Risk Management and Taxation in Nigeria' organized by the Nigeria Institute of Taxation, 1st 3rd November 1989 at Ogun State Hotel, Abeokuta, Ogun State.

[6]See for instance sections 135 and 136 of the Lagos State Local Government Law, Cap 91 of 1959.

[7] Id id.

[8] See particularly the paragraphs 7 to 9 of the Concurrent Legislative List. The List has Collection of Taxes as item D.

[9] see Schedule 4 to the 1999 constitution.

[10] Encyclopedia Britannica. See also International Tax Summaries coopers & Lybrand International Tax Network, John Willey & sons Inc (New York) 1993..

[11]No. 11 of 2001.

[12]International Tax Summaries op. cit.

[13] For instance, Laos collects a specific amount per square metre of land while west Malaysia collects a fixed amount per 1,000 square feet.

[14] Section 14 of the Tenement Rate Law of Lagos State.

[15] Section 15(2)

[16] Section 16

[17] Section 16(3)

[18] Section 18

[19] Section 17

[20] See for example the Tenement Rate Law, Cap 186, Law of Lagos State 1994

[21] section 1(1) to (4) of the Tenement Rate Law.

[22] Section 4 of the Law.

[23] Section 7.

[24] Section 8.

[25] Section 11.

[26] Section 6.

[27] Section 13(1).

[28] Section 13(2).

[29] Section 22(2).

[30] Section 22(3).

[31] Section 30.

[32] Section 27.

[33] Section 23.

[34] N600, but that has become grossly obsolete now Section 32(b).

[35] Section 22(1)(3).

[36] Section 33(c)

[37] Section 15(c) Land Used Charge Law No. 11 of 2001 (Lagos State).

[38] These were arguments raised by the Plaintiffs' counsel in the case of Shell Petroleum Development Company Limited & anor v. The Governor of Lagos State & ors Suit No. M/721/2000.

[39] Section 55 of the U.K. Taxes Management Act of 1970

[40] Section 28 of the Local Authorities Rating Ordinance No. 11 of 1977

[41] See Osinbajo, Yemi, Property Taxation as Catalyst for Development, vol 22 JPPL, pp. 1-22.

[42] Section 34(2)

[43] Section 35(3).

[44] Section 36(2)

[45] Section 38(1)(a) to (c)

[46] Section 381)(d)

[47] Schedule I, II & III the Decree list taxes to be collected by the Federal, State and Local Government respectively.

[48] Section 315(1)(a), 1999 Constitution.

[49] Section 4(5) of the Constitution.

[50] Section 4(7)(c) of the Constitution.

[51] See generally section 40.

[52] Schedule 2 to the 1999 Constitution

[53] (1994) 2 NWLR (pt 28) p. 568

[54] vol. 4, p. 426

[55] See Us CJN at p. 27 Bailey v. Drexel Furniture Company 259 U.S. 20, 66 LED S17 (1922) cited by the Plaintiffs at p. 18 of their argument. That was a case of peremptory encroachment of the U.S. Congress on the sphere of a State legislature, which the U.S. Supreme Court rightly overruled.

CONSUMPTION TAX ON GOODS CONSUMED IN HOTELS, RESTAURANTS AND EVENT CENTRES IN LAGOS STATE

Background

The Lagos State House of Assembly recently passed the Hotel Occupancy & Restaurant Consumption (HORC) Law, which imposes a five per cent tax on goods and services purchased from hotels, restaurants and event centres across the state. The new law provides that a consumption tax be imposed on any person who pays for the use of any hotel, hotel facility or event centre or purchases consumable goods or services in any restaurant whether or not located within a hotel in Lagos State.

The HORC Law is designed to support Lagos State Government's revenue drive for improved infrastructure, security and development as well as serve as a way of redistributing wealth in the state, and it is opined that the tax would be of immense contribution to this.

1. High points of the law

i. Liability to tax

The concept of the HORC Law is such that hotels, restaurants and event places will be exempted from payment of sales tax, while their customers would be made to pay the new five percent (5%) tax on every service derived from using the facilities provided. The law defines the amount taxable to be "the total cost of facilities, consumables or personal services supplied to a consumer in, by or on behalf of the hotel, restaurant or event center," adding that "the rate of tax imposed by the law shall be five per cent of the total bill issued to the consumer excluding VAT."
For the purpose of this review of the consumption tax, a consumer is a hotel guest or any person who makes use of a hotel, restaurant, event centre or hotel facility for a fee; an event centre is defined as hall, auditorium, field and places designated for public use for a fee, while hotel facility is a room, suit, hall, open space or resource centre which may be let out for a fee within a hotel.

The following are however exempted from consumption tax:

- Facilities / transactions covered under the new consumption tax but not previously subject to sales tax.
- Traditional and customary eating place are exempted from consumption tax e.g. "*Bukas*".

The bill has been passed into law by the Lagos State House of Assembly, and would take effect in its totality from 1st of August 2009.

It is not entirely clear how the following outlets will be treated under the HORC Law:

- Rooms in private residence where events take place (naming ceremonies, engagements, birthday parties, etc);
- Events in public spaces where the patron brings his own chairs and tables;
- Staff canteens including but not limited to in-dining facilities on ships/rigs within Lagos State;
- Company guest houses.

We will engage with the Lagos State Government to obtain clarity on these matters in order to ensure that the burden of the tax falls only on the category of taxpayers envisaged by the lawmakers.

ii. Collecting Agents

Owners, controllers or managers of any business / supplying goods and services chargeable under this law fall under the category of collecting agents. They are to register within 30 days of the commencement of the law / commencement of business affected by the law, whichever is earlier.

Agents are to effect payment of taxes collected in a preceding month on or before the 20th day of each calendar month, and for this purpose, they are required to keep and maintain records of all chargeable transactions. Failure to remit tax within time allowed 5% per annum above prevailing CBN minimum rediscount rate shall be charged in addition to the penalty. Penalty, for this purpose is ten percent (10%) of the amount of tax due. Any director, manager or employee of a collecting agent, or any other person covered under this law who fails to comply would be liable on conviction to six months imprisonment or fine of N2million or both.

iii. Transfer of Qualifying Property

In the event of a transfer of a hotel / restaurant / other facility, the transferee is required to confirm that consumption tax due to LIRS has been fully settled by the transferor i.e. on production of receipt. Where non-compliance is established, transferee is to deduct outstanding tax due to LIRS from purchase price / consideration for transfer. Default by transferee would result in payment of amount due to LIRS.

iv. Appeal Process

A person who is aggrieved by an assessment is required to notify the LIRS within seven days requesting for a review or an amendment. The LIRS may reconsider, amend the assessment or refuse to amend an assessment.

When notice of refusal is served, a complainant may institute an action at High Court of Lagos State. Failure to contest the assessment within 7days makes the assessment final and conclusive.

2. According to the Lagos State governor, His Excellency, Babatunde Raji Fashola (SAN), the state government enacted the law to developmental projects embarked upon by the state government.

Explaining the rationale behind the taxation, Governor Fashola said that the state, with a 2009 budget of N405 billion, can barely function economically with its total yearly earnings in terms of internally generated revenue and federation account revenue grossing about N240 billion, thus making borrowing the only option left.

He explained further that even when the state decides to borrow, such loan must be repaid, adding that what is generated is still a far cry from what is needed, when Lagos as a state has the capacity to implement a trillion naira budget. According to him:

"Lagos State's population has risen from five million in 1975 to 18 million with all the facilities remaining the same. We have articulated a plan to bridge infrastructural gap and citizens must help out with this. The new tax regime is not targeted at the poor and would in actual fact help in income redistribution given that the target taxpayers consists of people in the middle and upper class as well as those on sponsorship who lodge in hotels"

It may then legitimately be posited that the main driver for the new law is revenue generation in favour of the Sate Government.

3. The Hoteliers Association of Nigeria, has reacted to the new law, on the basis that it constitutes double taxation vis-à-vis the VAT Act.

The Nigeria Labour Congress (NLC) and the National Union of Food Beverage and Tobacco Employees (NUFBTE) jointly issued a press statement on 21 July 2009, describing the law as a "draconian consumption tax".

4. CITN Position

We agree with the necessity for the State Government to source for additional sources of revenue for financing its projects. It is recognised that new taxes should

constitute one such source of the much needed revenue. However, it is our view that adequate consultation and research is required to ensure that such new taxes do not constitute additional taxation on the citizenry or impose hardship on sectors of the economy that also require protection and government action to nurture.

We recognise that the scope of the new HORC Law is already covered in the existing VAT Act of the Federal Republic of Nigeria in the following manner:

Charge of 5% consumption tax on the total cost of facilities is the same scope as a charge of 5% VAT on rental or other form of supply of goods and services comprised in such facilities;

Charge of 5% consumption tax on personal services enjoyed at such hotel, restaurant or event centre is the same as charge of 5% VAT on the same services;

Charge of 5% consumption tax on consumables (including food and drinks) is the same as 5% VAT on the same subject matter.

In the case of consumables such as basic food items which are exempted from tax under the VAT Act, the effect of the consumption tax may unwittingly levy tax on a matter within the scope of the VAT Act, which was specifically exempted from VAT as an incentive or a benefit to the taxpayer. It therefore imposes a duty to pay tax where a Federal law has evinced an intention to exclude from tax.

The Federal Courts as well as the Lagos High Court have held in several cases that the VAT Act has already covered the field so far as tax on consumption is concerned and that any State law on the same subject matter is unconstitutional.

a. Mama Cass Restaurant Limited & 2 Ors v. Federal Board of Inland Revenue and Attorney General of Lagos State (unreported, 2006, FHC), where the Lagos State Government demanded sales tax on the same items on which VAT had already been remitted to the Federal Government. The learned judge decided that the rightful authority to remit the tax to is the FIRS.

Attorney General, Ogun State v. Aberuagba (1985) 1 NWLR Pt 3 Page 260 where it was held that where there are identical laws passed by the National Assembly and a State House of Assembly, it would be more appropriate to invalidate the identical law passed by the State House of Assembly on the ground that the law passed by the National Assembly has covered the whole field of that particular subject matter.

b. Lagos State Board of Internal Revenue (LSBIR) v. Nigerian Bottling Company & Anor. (unreported) Suit No. ID/454/2002.

We recognize that in several countries, taxing powers are distributed amongst federating units such that the same or similar tax or charge can be levied on the same subject matter by different taxing powers.

The current state of constitutional law in Nigeria does not seem to permit such concurrent exercise of taxing powers on the same subject by the federating units, as has been repeatedly underscored in the decisions of the Nigerian courts including the ones cited above.

Essentially, whilst it is within the powers of the appropriate federating unit to impose double or additional tax on the same subject matter, it does not appear to be legitimate for other federating units to intervene on a matter legislated upon by a higher federating unit, with the federal legislature having primacy in the event of such conflicts. Clearly, the exercise of federating units at the same level may also work injustice in the case of cross border movement of goods, services or people and the Constitution appears to vest in the Federal Legislature the power to make legislation on such matters, for the sake of protecting the continuing well being of commerce and trade.

Until our constitutional law develops to the point where parallel exercise of taxing powers are permitted and the doctrine of "covering the field" is updated or amended, it would be inappropriate for a State government to impose a double tax on a matter where a federal law has either imposed or exempted from tax. The basis upon which the Lagos State Government has determined that the appropriate HORC tax rate should be 5% has not been made clear.
By setting the tax rate at 5% as is the case with the VAT Act, there is a strong suspicion that the Lagos State Government is merely replicating income from VAT on selected items.

We do not think there should be anything sacrosanct in setting the threshold for consumption tax at 5%. As Jenkins Alumona pointed out in his article "The New Lagos Hotel Tax" published in Thisday Newspapers on 7 August 2009, the additional tax thus imposed is relatively insignificant for purchase of goods and services at the lower end of the market, which is a significant relief and ensures that the tax is less onerous on those of our citizens already living at or below the poverty line. However, it does vest significantly on people at the middle-income to high-income levels, which is the exact section of the society that already carries a disproportionate tax burden by virtue of the income tax laws and the VAT Act. Rental of an auditorium for an Annual General Meeting or Board Meeting, or for a wedding, birthday party, etc, along with cost of personal services including food and drink may be at a budget of at least N3.5million in most commercial locations in Lagos State. The patron would have to pay VAT at 5% of N175,000 plus HORC tax of the same amount, totaling consumption tax of 10% of the cost of rental. Multiplied at every purchasing level in the Lagos State economy, this additional cost is not trifling in the least.

We would recommend that studies be done to determine the funding deficit as well as expected yield of the new tax relative to the economic impact on the businesses likely to be affected thereby vis-à-vis their tax paying ability and profitability margins. Can the margins on these businesses sustain the additional tax and to what degree? Studies should also be conducted to analyse and predict the likely behavioural impact of the new tax especially to ensure that the risk of a reduction in economic activity is minimised.

A study into the likely yield from the HORC Law may provide active information that may enable the rate of tax to be set at below 5% or, indeed, above 5% as the case may be. This will enable the Government calibrate the tax to the yield expected to bridge the funding gap without resulting in waste or altering consumption patterns in a way that is potentially deleterious on the State economy

The deductibility of the new tax cost from the ultimate income tax payable by the taxpayer should also be investigated.

We would advise that the Lagos State Government considers alternative funding sources to bridge its budget deficit. Many State governments in the developed world are now increasing public funding by charging rates as close as possible to commercial rates on public services provided. For instance:

The government can tie implementation of its yearly infrastructure budgets to a charge on consumers/beneficiaries of commercial rates for usage, e.g. toll fees on roads, commercial water charges, commercial electricity charges and the like. There is no principle that requires all State interventions to be provided to the citizenry for free.

The government can consider cost optimization procedures to identify and eliminate waste in public spending. A value for money audit of its policies and processes would be recommended.

The government should continue to empower the Lagos State Internal Revenue Service to expand the income tax net in the State and bring into the net such persons as are currently not tax compliant. In this wise credit must be given to the LSIRS for increasing tax yield from about N600million monthly in 1999 to about N14billion monthly in 2009 through well articulated tax enforcement policies with the support of the State government.

The government should encourage further and better liaison between the LSIRS and federal tax agencies in order to identify and block avenues for income tax evasion in Lagos State. An atmosphere of collaboration rather than confrontation in this regard will be of immense benefit.

5. Conclusion

In conclusion, we agree and support whole heartedly, the policies and objectives of the Lagos State Government which require additional attention to additional sources of internally generated revenue for the State. In this light, we have proposed steps that can be considered and implemented by the State in this regard.

However, we would recommend that further consideration and consultation be undertaken with respect to the new HORC Law to remove or, if not, to ameliorate the additional tax burden thereby imposed on the economic activities targeted by the Law.

FOREIGN TAX NEWS

SWITZERLAND AND FRANCE REVISE TAX TREATY

Swiss President Hans Rudolf Merz met with French Minister for the Economy, Industry and Employment Christine Lagarde on August 27 to amend the double taxation agreement the two countries share to provide for greater transparency and the exchange of information in tax matters in line with the OECD's internationally agreed standard.

Since the Swiss Federal Council's decision on March 13, 2009, France is the third country which Switzerland has signed a DTA which includes the extended administrative assistance clause in accordance with Article 26 of the OECD Model Convention, after Denmark and Luxembourg. In order to be removed from the "grey list", issued by the OECD Secretariat on behalf of G20 countries as a result of its April 2 meeting, twelve agreements which include the OECD standard have to be signed.

Up until now, Switzerland had negotiated DTAs with thirteen countries that include an extended administrative assistance clause in accordance with Article 26 of the Model Convention. Along with the agreement already signed with Denmark, Luxembourg and France, there are agreements with Norway, Mexico, the USA, Japan, the Netherlands, Portland, the Uk, Austria, Finland and Quatar. The latter have been initialed but are not yet signed. The Federal Council has given the go ahead for DTA's to be signed with Denmark, Luxembourg Norway, France, Mexico, and the United Kingdom. The other initialed DTAs will be submitted to the Federal Council shortly for approval to be signed.

This additional agreement replaces the protocol signed on January 12, 2009, which was renegotiated in line with the parameters decided by the Federal Council on March 13, 2009. Along with extending administrative assistance, the negotiations with France were also used to carry out other amendments. Along with other issues, the additional agreement specifically regulates the tax treatment of second pillar lump sum benefits to recipients resident in France and pension institutions covered by the agreement, thereby making them eligible for the reduction of withholding tax on dividends and interest. With the introduction of a clause on abuse, the additional agreement contains more favourable solutions that was previously the case for economic interests in Switzerland. In addition, an arbitration clause has been included in the revised DTA.

making sure that their Board knows exactly the type and size of book losses that will not result in a tax loss and at what point a tax loss may be triggered.

This should not come as an unpleasant surprise during financial reporting, or worse, when cutting a cheque for the taxman .The tax department needs to have good systems in place to monitor differences between book and tax losses and changes in the accounting and tax treatment of these losses in different territories. Maximizing tax losses may be too simplistic a target, it is efficient utilization that should drive strategy. The rules for utilizing tax losses in the period in which they arise may be more flexible. Losses carried forward, however, may be restricted in use; they may, for example be restricted to percentage of profits, or expire after a specified period . In certain circumstances, it may in fact be beneficial for losses to be deferred where possible and triggered only when they can be effectively used. Those tax losses that cannot be recognized for accounting purposes should not necessarily be forgotten. Corporation's unprovided losses may yet be available for use as forecasts change, and protection of these losses should be no less closely monitored. Some companies are actively compiling potential tax planning strategies and techniques to increase the benefit of losses sustain but not recorded. As the review and analysis of these transactions is completed, it might be possible to increase the benefit recognized for financial statement purposes.

Tax credits…. Or are they? Although the discussion so far has focused on taxes on profit, It is important to remember taxes withheld at the source. These will often continue to be levied regardless of a business being in a loss-making position, as they are calculated and withheld on gross income [interest, dividends], rather than profit.

Previously, withholding taxes may only have been considered a cash flow disadvantage for many profitable businesses, as these taxes could generally be credited against the main corporate tax liability, due to losses there may be a real and full tax cost arising from withholding taxes. Businesses should therefore be examining taxes withheld at source and ensuring these are minimized where possible. Efficiency in this area cannot be achieved by the tax department alone. Whether tax is deductible at source will depend on the exact nature of the contract or transaction entered into. A product structured to achieve a return by way of interest income may be subject to withholding tax, where as a product providing again or loss on maturity may not. Therefore, clients facing management must be educated in this area and effective withholding tax management included within commercial targets.

Aligning transfer pricing: Transfer pricing is not just a stick for tax authorities to beat businesses with in times of profit, it can also be used to challenge losses, both in absolute terms or in the relative allocation of losses on a give transaction amongst group participants.

With the unprecedented speed with which markets are changing, it is vital that transfer pricing models are re-examined to ensure they are not based on pricing models that are no longer relevant.

The CFO and tax director must ensure that the group's transfer pricing keeps pace with developments in the market or either risk lengthy disputes with tax authorities further down the line or risk missing out on opportunities to ensure tax efficiency today. Data previously considered comparable, may be unreliable and out of data. Moreover, with increased potential regulation may come new increased disclosures about financial transactions and results, so tax directors may have to consider data from new sources to evaluate the arm's length result. It is crucial that the CFO supports the tax department to drive changes in transfer pricing policy to ensure internal pricing keeps pace with external. In recent years transfer pricing models may only have needed minor annual adjustment, now they may require wholesale review. Is the return to capital still sufficient, give the increased risk evident in the market today? Should banking groups which are increasingly charging significant fees to external customers be replicating this with group entities? Should interest rates be aligned to ratings of individual borrowers, or should guarantee fees be considered? There are many new questions to be answered about inter-company funding and treasury functions.

A thorough review of the group's transfer pricing policy now, in conjunction with commercial management, should not just protect against future challenge by tax authorities, but provide an opportunity to ensure that losses are efficiently utilized as the business recovers. Given the opportunities in the current environment, some entities will have considerable losses so substantial that they will have significant valuation allowances raised against those losses. Therefore, the profit on a transaction will be treated in one of three ways;

1. Profitable companies will recognize a tax expense in their financial statements and pay cash tax.

2. Loss companies that do not have any valuation allowance will still recognize a tax expense in their financial statements [reducing NOLs], but will not pay any cash tax.

3. Loss companies with a large valuation allowance [a Deep Loss company] will neither recognize any tax expense [as the NOLs are not recognized as assets] nor will they pay cash tax Therefore when evaluating any potential transactions, a Deep Loss company would enjoy a larger gain on the bottom line than a profitable company.

Assessing the same transaction and lower per-tax profit than a profitable company, while still enjoying the same or better return below the tax line. In general, most front offices are compensated on a per-tax basis, and as such, the potential benefit highlighted above may be missed. However, analysts used post-

Tax numbers in analyzing performance, and as such, any benefits that can be received through exploiting the above should have a positive impact on the share price. Now may also be the time to consider the internal restructuring that was commercially desirable, but previously considered tax inefficient. Transactions to achieve internal efficiencies that may previously have been put on hold due to potential for triggering taxable gains or profits on fair market value transfers, should now be revisited. These gains may be significantly reduced or eliminated in the current environment and now may be the time to reconsider the corporate structure.

Conclusion:

Although ETR has been a useful tool for monitoring whether tax was being efficiently managed, it should never be the only measurement. Other key performance indicators that have perhaps been considered less important should now be re-examined. Effective tax management for a loss making business must be measured over an extended period and book losses match, and in fact this may not always be efficient. Quick wins such as loss carry-back should be implemented swiftly where possible, thus providing a more immediate cash benefit. The eventual ability to use tax losses is key, and the importance of minimizing the risk of future challenge by tax authorities cannot be underestimated. Tax risk is as great an issue now as during high tax-paying periods.

Finally, the tax opportunities available to businesses during a loss period, such as the potential to implement stalled internal restructure plans, should not be missed. As such , it remains as vital as ever today that tax departments ensure that they keep the focus of their CFOs, and that CFOs consider how best to monitor and evaluate their tax departments.

Acquisitions and divestments; The tax impact of the current financial crisis is that many financial institutions have already begun significant restructuring programs to help restore them to profitability However acquisitions, divestitures ,and other capital raising activities can have a major impact on the tax efficiency of an organization. In recent months we have read a great deal about how many banking groups are going through divestment and restructuring programs with a view to restoring investor confidence and enabling a return to sustainable business models.

Recent example include Citigroup in the US and RBS in the UK who have both announced significant divestment and restructuring programs. As result, tax departments will be concerned with the management of these divestment and restructuring programs and ensuring that these programs are executed in a tax efficient way. Furthermore it will also be important for banks to understand the tax

issue associated with any participation in government financial stability schemes. Acquisitions over the last 12months there have been a number of high profile acquisitions involving US and European banking groups. This in itself has brought particular challenges and placed additional resource demands on bank tax departments.

Tax strategy and governance will need to be developed for the enlarged banking groups including stakeholder communication, tax risk policy, key performance indicators and tax group organizational structure.
Tax departments will also need to support the business in post acquisition restructuring and integration as well as the disposal of non-assets. This is in addition to the normal responsibilities of the tax department in supporting the business, ensuring that all statutory and compliance deadlines are met and dealing with tax accounting matters as part of the post acquisition reporting process. Good bank /Bad bank. Against the background of acquisitions and capital raising number of banks have started to implement restructuring and divestment strategies and the term 'Good bank /Bad bank' has been used in this context. In a broad sense a Good bank / Bad bank restructuring involves the separation from the Good bank of 'toxic' assets [or assets where there is significant uncertainty over valuation] into a separate Bad bank.

This separation could be a virtual separation for internal and external reporting purposes or could involve the creation of a separate Bad bank vehicle. The assets that are separated out into the Bad bank could also include assets or businesses that are not toxic but have been identified as being non-core.

In any variation it will be important for banks to understand the tax issues associated with implementing a Good bank /Bad bank reorganization strategy. For example, achieving tax neutrality on intra group transfers to a Bad bank entity in the current environment may be more about securing effective tax relief for losses rather than deferring unrealized gains. In addition, the ability to effectively utilize tax losses incurred by a separate Bad bank entity against profits of the Good bank will depend on the way in which the Bad bank is structured. Asset Protection Schemes [APS] one of the areas where new thinking will be required is in connection with assets to be covered by government financial stability scheme including the UK governments.

Asset Protection Scheme

The UK Asset Protection Scheme is similar to schemes also announced in Switzerland and the Netherlands for example. For all of these schemes, it will be important to consider where the assets are currently booked and whether the assets will be placed into a special purpose vehicle or single group entity. In the case of a

Good bank / Bad bank restructuring, the assets to be covered by the APS are likely to be part of the Bad bank and it should be straight forward to match any guarantee or similar fee payable under the scheme with the underlying assets if the assets are in a separated Bad bank vehicle. However, if the assets to be placed into the scheme remain on the balance sheets of different entities throughout the group, the analysis is less straight forward.

We would expect the asset protection will be pushed down to the asset holding entities from an accounting and regulatory perspective possibly through the use of internal group back to back arrangements. Where the asset protection is pushed the guarantee fee would also be expected to pushed down. Where the fee is pushed down to subsidiaries and foreign branches, there may be challenges on deductibility of the fee and the transfer pricing arrangements from the relevant tax authorities.

Transfer pricing

The change in strategic direction by the banks towards core business areas and markets, increased focus on risk management, and a change in remuneration policy to align with this strategic change should also drive change to the group's transfer pricing approach and policies. Banking groups can expect challenges from tax authorities where assets are transferred from overseas jurisdictions or where overseas activities are closed as banks move out of non-core markets given the difficulty in collecting comparable markets data.

Where overseas branches are closed, banks may also be challenged on the profit attribution approach on the transfer of assets from the closed branches back to head office jurisdictions.

Disposal of non-core business and assets

As part of the restructuring programs banks may also be looking to sell non-core businesses and asset portfolios. Instead of structuring these disposals to minimize any tax costs, such as ensuring capital gains are realized tax free [e.g. under participation exemption regimes or similar], banks will be more likely aiming to secure value for tax losses attached to loss-making businesses and write downs on asset portfolios. In this respect conventional thinking on business and asset transfers will need to be turned on its head. For example banks may look to sell assets instead of share as a way to realize value for tax losses and write downs as buyers will be reluctant to pay for tax losses given most jurisdictions have restrictions on the use of tax losses following a change in ownership. Tax risk management with an increased focus on risk management we would expect there will be an increased focus on achieving certainty on tax deductions for write downs, utilization of losses, and the tax treatment on acquisitions disposals. Recent experience in the UK has been that HM Revenue & Customs are increasingly willing to engage in discussion on transactions on a real time basis given the current market environment.

Additional focus on taxation of banks: As a result of recent events there has been an increased focus on the regulation of banks including the use of off-shore financial centers and tax havens. In the UK, HMRC are expected to publish a draft code of practice on taxation for the banking sector, so that banks can comply with not just the letter but also with the 'spirit' of the law and what effect this will have on the way bank currently operate. It is unlikely that many banks would consider themselves as operating outside of the spirit of the law. When applying a particular statutory provision the UK courts generally take a purposive construction of the provision, and therefore many tax planning schemes that go through the courts and that go against the purpose of the law fail. However, not all tax law has a clear purpose embedded in it [or at least, the purpose contented in court by HMRC]. Where the purpose really is not clear, where is the spirit? Additional scrutiny on entities operating in tax havens has been a high priority under the new administration. Among the things being contemplated are the treatment of foreign corporations managed and controlled primarily within the US as domestic for income tax purpose, the imposition of new rules on transactions and entities involving "offshore secrecy jurisdiction", and a codification of the economic substance doctrine, Tax capacity and tax accounting. Tax losses that become trapped as a result of restructuring may not be available for a significant period of time or lapse entirely .Change in ownership and change in activity following a restructuring can also lead to the risk of losses carried forward being restricted.

The ability to plan and manage the timing of deductions and jurisdiction in which deductions are realized is increasingly important in the current environment .Issue around the recognition of deferred tax assets for losses have arisen particularly where activities have been discontinued as a result of business restructuring. The uncertainty over the level of further write downs and losses means that additional resources will continue to be required in forecasting tax capacity and in supporting the recognition of deferred tax assets.

Overall this is a very challenging time for bank tax departments, both in terms of resource requirements and the technical issues that are coming out of the current economic environment, and in particular with regard to banking divestments and restructuring.

Compensation and reward

Tax tactic The public and political scrutiny of financial institution bonus structures has put pressure on organizations to reshape their approaches to compensation. Tax burdens can have a significant impact on each of these new strategies and must be considered carefully before making a change to compensation.

Nobody can doubt the seismic changes affecting major financial institutions across the globe or the fundamental impact on the quantum and structure of executive compensation. These changes come from a combination of factors:

Plummeting revenues, profits and share prices which reduce the capacity of major organizations to raise pay levels while fall in equity values has further undermined the total compensation being received. Greater governmental ownership and asset protection have created political pressures for more regulation in affected organizations.

Legislation that has placed restrictions on the deductibility of payments and the ability to design flexible arrangements.

SINGAPORE GETS NEW TAX ACADEMY

A new accreditation body for local tax practitioners, The Tax Academy, is being set up in Singapore. The academy is a non-profit organisation established by the Inland Revenue Authority,
the big four accounting firms, the Institute of Certified Public Accountants of Singapore (ICPAS) and the Law Society.

The planned accreditation body is expected to be set up by the fourth quarter of this year, and become operational by the first quarter of next year.

It is aimed at raising the standard of technical competence and capabilities of tax practitioners there. The Minister of State for Trade and Industry Lee Yi Shyan said the move will improve tax compliance in Singapore, reduce compliance costs and create a more business friendly operating environment.
Tax professionals do not have to get accredited, but it is expected that many will do so voluntarily. Participants in the new programme will earn the titles of Accredited Tax Practitioner or Accredited Tax Advisor.

They will also have to fulfill 30 hours of continuous professional education annually to ensure they are kept abreast of the latest tax changes.

A new International Tax Programme has also been introduced to help professionals develop expertise in tax advisory work for Asia Pacific firms.

TORONTO WINS IN TAX DISPUTE WITH DEVIL

A movie director in the United States, M. Night Shyamalan has decided to move production of his new thriller Devil from his hometown of Philadelphia to Toronto because Pennsylvania can not guarantee his film will get a tax credit. The state's budget, which includes new tax legislation, has been tied up in the Democratic-controlled House and Republican-controlled Senate for nearly two months.

Toronto Film Commissioner, Peter Finestone has given the movie director assurances that Toronto's tax credit situation would not change. The only event

that might keep Shyamalan in Philadelphia is if the publicity over the move causes a break in the Pennsylvania budget impasse. Shyamalan lives near the Philadelphia suburb of Malvern and has filmed eight of his nine movies in Pennsylvania, including The Sixth Sense, starring Bruce Willis.

In July, Ontario Finance Minister Dwight Duncan announced that the province was sweetening its film tax credit by $80 million to stop productions from moving to Quebec, which also offers generous film tax credits.

Devil might not be the only bonus for Toronto flowing from Pennsylvania's budget uncertainty. Another film, Destination Home, about a wealthy family facing adversity during the recession, has cancelled plans to start production in Philadelphia in September.

FRENCH SECURE TAX DEAL FROM SWISS

French tax authorities will be allowed to request information on suspected French tax dodgers with accounts in Switzerland without having to provide the name of the bank. The terms of the bilateral tax deal have not been disclosed but it would involve unprecedented cooperation from the Swiss.

Under the tax deal French fiscal authorities could demand information of Switzerland on the basis of simple suspicion of fraud.

In some cases, it would then be up to Berne to conduct an investigation to determine in which bank the suspect client had accounts. It would be recalled that French President Nicolas Sarkozy has declared that 'the time of bank secrecy is over'.

Under pressure from the G20, Switzerland, the world's biggest offshore banking centre, agreed in March to relax its prized bank secrecy and agreed for the first time to share certain bank client data with other jurisdictions, once bilateral tax treaties are ratified.

The Alpine country has initialed new tax treaties with 13 countries -- including the United States and Britain -- and the deal with France will be the third it has signed. In August Switzerland agreed to reveal the names of about 4,450 wealthy American clients of UBS AG to U.S. authorities in a tax dispute settlement that pierced its vaunted bank secrecy.

Swiss authorities - who have always maintained they would not conduct 'fishing expeditions' for foreign tax authorities -- could be forced to divulge the names of hundreds or thousands of French with Swiss-based accounts.

Legal Battle Looms Over Japan's Low-Tax On Beer

The Japanese have been protecting their domestic brewers in breach of international trade rules. According to an expert in Japanese law, Luke Nottage, an Associate Professor at Sydney University's Law Faculty, "by allowing Japanese brewers such as Kirin and Asahi to make a type of low-tax beer called Happoshu, the Japanese government is effectively creating a trade barrier against foreign brewers of regular lager."

Japan's alcohol tax system is based on malt content and so Happoshu, which is a beer-like drink with a malt content of less than 67pc, attracts a lower tax rate. Traditional lagers made by foreign brewers such as Singapore's Tiger or Denmark's Carlsberg (which have a malt content of more than 67pc) are subject to a higher tax rate, which obviously puts off some consumers, in breach of World Trade Organization rules, says Nottage.

He points out that the WTO rules state that "the products of the territory of any Member shall not be subject, directly or indirectly, to internal taxes or any other internal charges of any kind in excess of those applied, directly or indirectly, to like domestic products".

Nottage concedes that "there is probably not enough financial reward for potential beer exporters to Japan to encourage their home governments to sue Japan". He thinks it unlikely that beer-exporting nations such as Australia, Mexico, Singapore and Thailand would jeopardize their trade relations with a country as important as Japan over such a small issue. However Trade Minister's note he does believe these countries could use the issue as leverage in any further trade negotiations.

The context of all this is the ongoing liberalization of Japan's alcohol industry. Nottage also notes that beer vending machine operators in Japan are now taking the deregulation process a step further by blocking the in-built ID card readers to ensure that anyone, regardless of age, can purchase a drink.

Surely, it is just this kind of forward-thinking approach that Japan needs to drag itself out of its long-term economic slumber.