

Evolution and Legal Implications of Revenue Generation in Nigeria

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Abstract

Government is faced with varieties of difficulties to source adequate revenue. This paper focuses on the evolution and legal implications of revenue generation in Nigeria economy. The problems of revenue generation are cogwheel to the smooth running of government administration. Thus, the objective of the research was to find out the extent to which revenue generation had affected the development of the general economy. The following were some of the findings which included the following; there is a significant relationship between revenue generated and developmental effort of government, poor development of the areas, lack of basic social amenities to the rural people and lack of revenue to maintain the existing infrastructures. The researcher therefore recommended that the government should provide basic amenities of high quality. By doing so, the people's interest would be geared towards giving their maximum support to the local government which would lead to the development of the rural areas.

Keywords: Development, projects, revenue, generation, government

1. Introduction

Internally generated revenue (IGR) as a concept is one that enjoins government at all levels to look inward with a view to generating or realizing appreciable revenue with which it can discharge its responsibilities to its citizenry. It is one thing for government to desire to improve and maintain her infrastructural development and another thing to have enough funds to finance it. Although there are several sources of revenue, IGR is one source which every state is expected to fully exploit to complement their

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revenues. According to R. Babalola¹, the provision of public schools, public health and public infrastructure require huge government spending, especially in these modern times. Also, state government incurs expenditure for the provision of adequate security, fulfills its commercial functions and administration. Therefore, the need for adequacy of revenue at all levels of government has become imperative, given the expenditure profile of government aimed at reducing poverty, generating employment, boosting growth and creating wealth. State governments now face more challenges in terms of struggling to be less dependent on the Federal government for financial resources.² Though, the revenue allocation system mandates that a certain fraction of the Federation Account be allocated to state governments, these funds are not enough to meet expenditure requirements.³ This is because the size of the account is proportionate to revenue from oil which is subject to fluctuations and the expenditures of state governments far exceed available resources.⁴ The problem of lack of fiscal transparency as a result of mismanagement of funds, corruption, poor internal control and lackadaisical attitude to government work and properties still abounds and add to the diminishing or fluctuating revenues. It is in that regard that B.D. Kiabel and N.G. Nwokah⁵ posited that the need for state governments to generate adequate revenue from internal sources has therefore become a matter of extreme urgency and importance.

Commenting on the importance of IGR in infrastructural financing, the former President of Nigeria – Dr. Goodluck Ebele Jonathan⁶ said that:

¹ Babalola R., 'Boosting Government Revenue through Non-Oil Taxes' in iProject (ed), *Evaluation of Internally Generated Revenue and Economic Growth of Kano State from 1999-2014* <https://iproject.co.ng> accessed January 10, 2018

² Anyanwu J.C., 'Fiscal Relations Among the various tiers of Governments in Nigeria' NES Conference Paper, 1999.

³ See particularly section 162(3) of the 1999 CFRN (as amended) which provides that "Any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the local government councils in each States on such terms and in such manner as may be prescribed by the National Assembly".

⁴ Despite the numerous sources of revenue available to the various tiers of government as specified in the 1999 CFRN (as amended), over 80% of the annual revenue of the three tiers of government still comes from petroleum and has been so since the 1970s. However, the serious decline in the price of oil in recent years has led to a decrease in the funds available for distribution to the states.

⁵ Kiabel B.D. and Nwokah N.G., 'Boosting Revenue Generation by State Governments in Nigeria: The Tax Consultants Option Revisited' *European Journal of Social Sciences*, Vol. 8, No. 4, 2009.

⁶ In his speech during the 1st International Tax Conference held in Abuja on 27th October, 2008.

There is no better time but now for Nigeria to put the issue of diversification of revenue away from oil on the front burner...for a nation to carry out basic functions of government, pursue and implement her development programmes like our 'vision 2020' (...) it requires a stable, predictable and sustainable source of revenue. This leaves us with a very limited choice other than to subscribe to international best practices and make 'IGR' (taxation) the primary source of revenue of government...this is crucial in view of the fact that the so called diversification from dependence on oil as the principal source of revenue is applicable to the three tiers of government as State and LGAs should henceforth depend less on handouts from Federal Account Allocation Committee (FAAC) and intensify their IGR drive.⁷

U. Akpo⁸ further highlighted the importance of using IGR to fund infrastructures, thus:

IGR does not develop hyper-inflation, it is free and does not carry any burden of repayment and interest like domestic borrowing and loan; through tax, IGR serves as the nerve centre of the social contract, it makes government more responsible and more responsive to the needs of the people, it serves as a tool for economic development, it is an important consideration in the planning of savings and investment and a powerful fiscal weapon to plan and direct the economy. IGR also serves as a tool for social engineering, it goes a long way to keep the society moving, because as government gets more revenue and commission more projects, more money is put in circulation, more employment opportunities

⁷ Ibid.

⁸ Akpo U., 'The People as Government: Imperatives of Tax Payment' A Paper Presented at the 1st Akwa Ibom State Revenue Summit, 2009.

*arise and more business opportunities are created which impact positively on generality of the society. And above all it serves as tool for infrastructural development.*⁹

Bearing the aforesaid in mind, the importance of IGR in infrastructural development of any state cannot be over emphasized. IGR is wider in nature than taxation. IGR encompasses all aspects of revenue generation while taxation is an aspect of IGR. Taxation is however the main source of IGR.

2. Conceptual Framework:

2.1 Taxation

Taxes are imposed under the authority of the legislature, they are levied by a public body and they are intended for public purposes.¹⁰ According to A.M. Kontagora,¹¹ taxation means a monetary charge imposed by government on persons, entities, transactions, or property to yield public revenue. He stated further that the term embraces all governmental impositions on person, property, privileges, occupations and enjoyment of the people and include duties, imposts, and excises. It is often pecuniary in nature. Tax was defined as a compulsory extraction of money by a public authority for public purposes.¹² In *United State v Butler*¹³, tax was defined simply as an exaction for the support of the government. In *Michigan Employment Sec. Commission v Patt*¹⁴, tax was defined a non-voluntary or donation, but an enforced/compulsory contribution, exacted pursuant to legislative authority.

According to Egwa and Udu and G.A. Agu¹⁵, tax was defined as a compulsory payment made by each eligible citizen towards the expenditure of the state. K. Agyei¹⁶, defined tax as the transfer of

⁹ Ibid.

¹⁰ Abdulrazaq M.T., ., *Principles and Practice of Nigerian Tax Planning & Management*, (2nd Edn., Stirling – Horden Publishers Ltd. 2015). 1.

¹¹ Kontagora A.M., 'A Review of Income Tax Enforcement Procedures Under The Nigerian Tax System', Thesis in Fulfillment of the Requirements for the Award of Ph.D in Law of the University Of Abuja, 2017. 1.

¹² See the case of *Mathew Chicory Marketing Board* (1935) 60 CLR, 263 at 276.

¹³ [1935] 2229 US 1 at 61 per Mr. Justice Roberts.

¹⁴ 4 Mich-App 224 14 N.W 2nd 663.

¹⁵ Egwa and Udu and Agu G.A., *New System Economic: A Senior Secondary Course African* (FEB Publisher 1999).

¹⁶ Agyei K., *Principles of Personal Income Taxation* (West Africa Book Ltd. 1983).

resources from the private sector to public sector in order to accomplish some of the nation's economic and social goals. For I.I. Okpe¹⁷, tax is the transfer of resources and income from the private sector to the public sector in order to achieve some of the nation's economic and social goals. Furthermore, M. Anyanwaokoro¹⁸ also defined tax as a compulsory payment imposed by the government on individuals and corporate bodies in governed area for which no direct goods or services are given in exchange of the payment made. In a comprehensive definition of tax in Nigeria by Anwornde¹⁹, he stated that tax is a compulsory contribution made by companies, individuals residents in Nigeria and non-residents or person having earning or deriving taxable income in Nigeria. Tax has been defined as 'a monetary charge imposed by the Government on persons, entities, transactions and properties to yield revenue'.²⁰ Cicero called taxes the sinews of the state.²¹ That is the primary way the society allocates the burden of government to its people. Tax is a powerful tool for achieving economic and social policy objectives of government and it is a means of transferring resources from the private to the public sector.²² A standard definition of tax: 'a compulsory exaction from a taxpayer paid in cash or in kind to the government to provide for the public services of common interest without particular regard to the particular benefit received by the taxpayer.'²³

The researcher defines taxations as compulsory levies imposed by government on people, goods and services within its territorial jurisdiction. For a levy to qualify as tax it must be legislated upon.

2.2 Internally Generated Revenue

As previously stated, internally generated revenue (IGR) in normal day to day parlance refers to those revenue sources that are

¹⁷ Okpe I.I., *Personal Income Tax of Nigeria* (New Generation Book 1998).

¹⁸ Anyawuokoro M., *Theory and Policy of Money and Banking* (1st Edn., Hosanna Publication 1999).

¹⁹ Anwornde (1982) in Chinwendu E. J., 'Effectiveness of Taxation as an Instrument for Control of Money in Circulation', A Project Submitted in Partial Fulfillment of the Requirement for the Award of Masters Degree in Accountancy (MBA), Department of Accountancy Faculty of Business Administration, University of Nigeria, 2012, p. 9.

²⁰ Dike M.A.C., 'An Overview of The Nigerian Tax System: Implications for Foreign Investors' At the Nigerians In Diaspora Organisation (NIDO) UK South Investment Conference on the 17th – 18th March 2014. 2

²¹ *Ibid.* 3

²² *Ibid*

²³ *Ibid*

generated by the Federal, State and Local Governments.²⁴ Internal generated revenue can also mean revenues generated internally apart from subventions, allocation, and grants from governments.²⁵ These are revenues generated from sources other than crude oil. According to M.T. Abdulrazaq²⁶, ‘the classical function of the tax system is the raising of the revenue to meet government expenditure.’

In government terms, revenue is the entire amount received by the government from sources within and outside the government entity.²⁷ Revenue therefore encompasses the entire gamut of government income which is realized and available for expenditure by government within a particular fiscal year or period. Owing to the foregoing, it can be deduced that taxes are a sub-component of government revenues, but they are not the only revenue item which is internally generated by government. Other sources of internal revenue include fees, rates, levies, fines, tolls, penalties, charges and sales of public assets by way of privatization programmes. Taxes are, however, a major contributor to government revenue and ideally present a major source of revenue.²⁸

2.3 Legal Framework

Legal framework is a broad system of rules that govern and regulate decision making, agreements, laws, etc.²⁹ For each project to extract natural resources from the ground, there are rules that govern the rights and responsibilities of governments, companies, and citizens. Together, these rules are called a legal framework, or legal architecture.³⁰ Who is involved in making these rules and what documents they use to define them differs from country to country. Legal frameworks comprise a set of documents that include the constitution, legislation, regulations, and contracts.³¹ Modern fiscal

²⁴ The Initiatives, ‘Internally Generated Revenue (IGR) and the Challenges of National Development’ A Presentation on the Occasion of the First National Roundtable for Good Proactive Laws and Governance, International Conference Centre, Abuja, 2008.

²⁵ Nigeria Governor’s Forum, ‘Improving Revenue Generation Through Taxation in Nigeria’ Workshop Communiqué, Abuja, DFID, 2012. 2.

²⁶ Abdulrazaq M.T., *Op cit.* p.2.

²⁷ Nwanne T. F. I., ‘Effects of Tax Policy on the Expenditure of Local Government Councils in Imo State’ *European Journal of Accounting, Auditing and Finance Research*, Vol. 3, No. 12, 2015. 80.

²⁸ *Ibid.*

²⁹ TransLegal, ‘The World Law Dictionary Project’ <https://www.translegal.com> accessed January 20, 2018.

³⁰ NRG1 Reader, ‘Legal Framework Navigating the Web of Laws and Contracts Governing Extractive Industries, Natural Resource Governance Institute’, 2015. [https:// resourcegovernance.org](https://resourcegovernance.org) accessed January 20, 2018.

³¹ *Ibid.*

systems emerged in Western Europe and North America during the half century that followed the American and French Revolutions.³² Although modern income and turnover taxes did not yet exist, by the middle of the nineteenth century the basic legal framework for raising these taxes had been established and with it the foundation for the spectacular increase in tax revenue that would occur almost a century later during and after World War I (WW1). In general, the basic legal framework calls for taxation according to the rule of law.³³ The fundamentals of this framework are that:

- a. *A tax can be levied only if a statute lawfully enacted so provides,*
- b. *A tax must be applied impartially, and*
- c. *Revenue raised by a tax can be used only for lawful public purposes, not for the prince's private ends.*³⁴

The rule of law contemplates that these principles will be enforced by independent courts.

3. Evolution of Internally Generated Revenue (IGR) in Nigeria

This chapter will not be complete without a proper understanding of the evolution of IGR in Nigeria. What is known today as IGR started in an unconventional and unorganized way and then metamorphosed into a conventional manner with the advent of organized society settings. There is no organized society setting where there is no form of IGR and so Nigeria is not an exception.

3.1 Pre-Colonial Era

The various communities before the colonial era in Nigeria were exposed to variety of levies as dictated by paramount rulers or agreed upon by heads of families³⁵ at that time. The various traditional rulers all created their various forms of taxes and levies

³² Vanistendael F. and Thuronyi V., 'Legal Framework for Taxation' International Monetary Fund, Vol. 1, 1996.1. < <https://www.imf.org/external/pubs/nft/1998/tlaw/eng/ch2.pdf>> accessed January 20, 2018.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ As applicable in the south eastern region of the country then.

which were used in boosting the various economies of the region.³⁶ S.M. Adeola³⁷ posited that:

*Economic history of Nigeria has shown that people in Nigeria paid taxes before the British administration, especially in the Northern part of Nigeria. The organized forum of Emirs' administration and the spirit of Mohammedism made it possible for the people to contribute towards clarity, which laid a sound foundation for direct taxation in Nigeria.*³⁸

Prior to 1904, there were number of levies and forms of taxes on agricultural products and livestock like the Zakat, Kurdin Kasa, Sukkashukka, Jangali and Kharaj in Northern Nigeria. These taxes were imposed and collected by the Emirs without any existing product in mind. The collections were easy and possible due to the highly organized and efficient administration of the Emirs.³⁹

In the south western part of Nigeria, taxes were collected in form of tribute, tolls, levies, fine and fees etc. However, taxes were so perplexity, varied and complex in the Northern region that is in 1800's the problem was not how to introduce new tax system but how to simplify the existing tax form.⁴⁰

The Pre-Colonia Era in the North as it relates to IGR had the benefit of a centralized system of government due to the emirate caliphate that was in place before colonialism. The history of IGR in Nigeria can easily be traced to the Northern part of Nigeria where there was a reasonably systematic form of taxation there and this was due to the fact that the Emirs had a more organized system of administration unlike in the other parts of the country. The Islamic religion also preached stringent adherence to payment of taxes as one of the principles of forthrightness in the religion and this brought about a more stringent enforcement of payment of taxes and levies in

³⁶ TheTaxProf, 'History of taxation in Nigeria: Understanding Nigeria Tax' <https://www.taxprof.com.ng> accessed January 23, 2018.

³⁷ Adeola S.M., *Income Tax and Administration in Nigeria* (University Press Ltd, 1998).

³⁸ *Ibid.*

³⁹ Chinwendu E.J., 'Effectiveness of Taxation as an Instrument for Control of Money in Circulation', A Project Submitted in Partial Fulfillment of the Requirement for the Award of Masters Degree in Accountancy (MBA), Department of Accountancy Faculty of Business Administration, University of Nigeria, 2012. 10.

⁴⁰ *Ibid.*

that part of the country, more so that the organized structure assisted in no small means in effective tax administration in the region.⁴¹ Zakat was levied on Muslims for spiritual, religious and educational purposes. Kudin-kasa was levied as a form of tax on land utilization, from farm produce and Jangali was a tax levied on cattle rearers⁴².

IGR in pre-colonial era in the south was not as organized as in the northern part of the Country. However, in the south western part of the Country, there was Isha-Kole which is also a form of agricultural/land tax payable to Obas, Chiefs, Heads of Community. There was Owo-Ori which is the tax paid by individuals in return for services rendered. There was war tax which was a tax paid by a defeated town after a war to the victorious town. There were also community tax that was payable by all adults in a community to carry out projects in the community.⁴³

All these formed parts of the IGR during pre-colonial era of Nigeria. A more organized IGR system emerged with the colonial government in Nigeria.

3.2 Colonial Era

At the beginning of Lord Lugard's⁴⁴ Administration as the British High Commissioner for Northern Nigeria, he attempted combining the different levies and taxes into a simple understandable and collectable direct tax in order to maintain an acceptable canon of equality, certainty, convenience, economy, etc.⁴⁵ Lord Lugard passed many laws in Northern Nigeria to enable him collect the taxes. The notable ones are:

1. *1904 Land Revenue Proclamation: The proceeds of this tax were collected by the traditional rules and shared among them and their government.*
2. *1906 Native Revenue Proclamation: This replaced the 1904 proclamation and aimed at unifying all existing forms of taxation.*

⁴¹ The Tax Prof, *Op cit.*

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ His full name is Frederick John Dealtry Lugard also known as Sir Frederick Lugard, with titles such as 1st Baron Lugard GCMG, CB, DSO, PC.

⁴⁵ Chinwendu E. J., *Op cit.* 10 – 11.

3. *1917 Native Revenue Ordinance: This replaced the 1906 proclamation and regulated the imposition of collection of taxes from natives. The 1917 ordinance was imposed on both the north and south but it was grudgingly accepted in the south.*^{46 47}

Taxation was relatively unknown in the eastern part of the country before the colonial authority and so it was difficult in introducing it to the men let alone women. For instance, an attempt to include women into the tax bracket by the colonial authority in the Eastern part of Nigeria led to the women protest which is popularly tag ‘Aba Women Riot of 1929’.

S.S. Amechina⁴⁸ in reviewing Lord Lugard’s tax laws of the colonial era stated thus:

*In 1937, both the native direct taxation (colony ordinance) and non-native income tax (protectorate ordinance) were passed, out of those ordinance initiated discrimination in direct taxation by the direct taxation 12 ordinance 1904 and income tax ordinance of 1943 which consolidated all earlier ordinance and attempted of unity direct taxation in the country.*⁴⁹

The essence of the Native Revenue Proclamation was to harmonize all pre-colonial tax rates by defining which rates should apply to what, the various methods for collection and what penalties should accrue to defaulters.⁵⁰ This move by Lord Lugard brought about a more effective system of taxation and what could be said to lead to the drivers of modern tenets of taxation in Nigeria.⁵¹

The amalgamation of the North and Southern Protectorates in 1914 resulted in the revenue of the Southern Nigeria protectorate

⁴⁶ *Ibid.*

⁴⁷ Before all that, he first introduced the Stamp Duties Proclamation of 1903.

⁴⁸ Amechina S.S., ‘The Effectiveness of Clearance Certificate as a Measure against Tax Evasion and Avoidance in Nigeria’ M.Sc Thesis. Department of Accountancy, UNILAG, 1998. p.7.

⁴⁹ *Ibid.*

⁵⁰ The Tax Prof, *Op cit.*

⁵¹ *Ibid.* The 4 core principles of: what to pay, where to pay, when to pay and whom to pay to (www) were clearly defined.

falling from 2.5 million pounds to 0.2 million pounds as most of its revenues accrued to the central government (that of Northern Nigeria was 0.5 million pounds), by making possible the integration of the economies of both parts of the country, an impetus was given to trade and development.⁵² The value of domestic exports rose from 6.78 million pounds in 1913 to 14.5 million in 1919 (an increase of 214%), while the value of imports increased from 6.28 million to 10.8 million pounds (an increase of 172%) during the same period.⁵³ The idea of the whole being larger than the sum of the constituent parts remains with us today as tensions continue to exist as to whether States should handle fiscal issues on their own or whether we should do so as one working together for the interest of the other⁵⁴. Some of the issues related to this, pertain to the unresolved issues of revenue allocation and how this should be handled justly for the benefit of all⁵⁵.

After amalgamation various laws were enacted to consolidate and cleanse the pre-colonial tax system of its imperfections, as well as to provide a source of revenue for both the government and the native authorities. Direct tax became the financial foundation on which the native authority system was built. According to A. L. Ayodele⁵⁶:

*After the amalgamation in 1914, the Native Revenue Ordinance was enacted in 1917 in the North and in 1918 in the South (first applicable in Abeokuta and Benin). The ordinance was not in existence in the East until 1928 which subsequently resulted in the Aba Women's Riot of 1929 that kicked against tax payment. Other laws enacted in 1937 were the Native Direct Taxation Ordinance and Colony Taxation Ordinance. They were all replaced by Direct Taxation ordinance (1940) providing for taxation of Nigerians.*⁵⁷

⁵² *Ibid.*

⁵³ *Ibid.*

⁵⁴ The Initiatives, *Op cit.*

⁵⁵ *Ibid.*

⁵⁶ Ayodele A.L. *The Principles and Practice of Nigerian Personal Income Tax* (El-Toda 2004).

⁵⁷ *Ibid.*

Some of the important laws in that era includes the below:

1. *Native Ordinance Cap 74 of 1917 which was re-enacted in 1929 in Eastern Nigeria.*⁵⁸
2. *The Non-Natives Protectorates Tax Ordinance of 1931 which was later repealed and merged into Tax Ordinance, No 4 of 1940 and subsequently re-enacted as Income Tax Ordinance of 1943.*⁵⁹

A supplementary and more comprehensive Income Tax Ordinance was introduced in 1943 to cover all parts of Nigeria, including Lagos, providing for taxation of foreigners and companies.⁶⁰ Nigeria became a Federation of three (3) regions in 1954 with regional jurisdiction over taxation of personal incomes of Africans, under the Macpherson Constitution of 1954. According to J.A. Arogundade⁶¹, the Eastern and Western regions had the Finance Law, 1956 (repealed by the Finance Law, 1962) and the Income Tax Law (No. 16 of 1957) but these were limited to the taxation of Africans. It is instructive to note that the well touted Western regional policy of free education was funded by taxation. In 1958, the Raisman Fiscal Commission was set up to look into fiscal issues in the country to solve problems of inconsistency and confusion inherent in the existing laws.⁶² The Commission recommended the introduction of uniform basic principle of taxing incomes of persons order than limited liability companies throughout the country.⁶³ The recommendations were embodied in the Nigeria (Constitution) Order in Council 1960 and formed the basis of the tax system in Nigeria to the present day. The Commission's recommendations culminated in the enactment of five (5) legislations⁶⁴, namely:

1. *The Petroleum Profit Tax (PPTA), 1959 – a Federal law dealing with the taxation of petroleum producing and*

⁵⁸ The Aba Women Riot of 1929 was caused by the features of this law which imposed tax on women.

⁵⁹ The Initiatives, *Op cit.*

⁶⁰ *Ibid.*

⁶¹ Arogundade J. A., *Nigerian Income Tax and its International Dimension* (Spectrum Books Ltd. 2005).

⁶² The Initiatives, *Op cit.*

⁶³ Chinwendu E. J., *Op cit.* 12.

⁶⁴ The Initiatives, *Op cit.*

marketing companies in Nigeria. This was enacted given the discovery at the time of Oil in Oloibiri

2. *The Stamp Duties Act (SDA), 1959 – a Federal law for the assessment and Collection of duties on ‘instruments’ at both Federal and State levels*
3. *Companies Income Tax Act (CITA), 1961 – a Federal law enacted for the collection of income tax from corporate bodies by the Federal Government through the then agency of the Federal Board of Inland Revenue (FBIR)*
4. *Income Tax Management Act (ITMA), 1961 – known as the Principal Act, enacted to bring some uniformity on the taxation of Personal Income in Nigeria as a whole, particularly in the areas of rates of tax; types of reliefs and quantum of reliefs.⁶⁵*

3.3 Post-Colonial Era

The uniformity notwithstanding, tax was administered by the regional governments and used to drive development within the region. For instance, Personal Income Tax Lagos Act (PITLA) 1961 dealt with the taxation of residents of the Federal Territory of Lagos, the armed forces, the police, officers in the foreign service and non-residents. However, with the incursion of the military into politics and the creation of Lagos State in 1967 along with eleven other states, PITLA was simply adopted by the new Lagos State while the Federal Government enacted the Income Tax (Armed Forces and Other Persons) (Special Provisions) Act No. 50 of 1972 to accommodate the categories of those who had been automatically removed from the tax jurisdiction of Lagos as a State. The Federal Territory as well as mobile workers had always been treated differently. Other tax legislations enacted include the Capital Gains Tax Act 1967 and the Capital Transfer Tax Act (Repealed in 1986)

⁶⁶.

⁶⁵ *Ibid.*

⁶⁶ *Ibid.*

4. Various Reforms of Nigerian Tax Policy on Internally Generated Revenue

The Income Tax Management (Uniform Taxation) Act 1975 which took effect from 1st April 1974 brought uniformity to the taxation of individuals throughout the Federation. The 1978 Task Force on Tax Administration by Alhaji Shehu Musa brought in the following changes:

1. *The introduction of the withholding tax regime*
2. *The imposition of a special levy of 10% on the excess profits of Banks*
3. *The imposition of a turnover tax of 2.5% on building and construction companies.*

The 1979 Constitution of the Federal Republic of Nigeria made all State Income Tax laws unconstitutional. The import of this was that only the Federal Government could legislate in matters of taxation. Specifically, section 4 of the 1979 Constitution provided that:

- (1) *The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.*
- (2) *The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.*

Subsection (3) of section 4 vested exclusive jurisdiction in the National Assembly with regards to matters contained on the Exclusive Legislative List which was Part I to the Second Schedule to the Constitution. Section 4 (6) vested legislative powers of a State in the House of Assembly of each State and by subsection (5) any law passed by a State House of Assembly which was inconsistent with an Act of the National Assembly was to be null and void to the extent of its inconsistency. By subsections (4) (a) and (7) (b) both the National Assembly and the States Houses of Assembly could make laws on matters on the Concurrent Legislative List which was Part II

to the Second Schedule of the Constitution. Customs, excise and export duties were listed as items 15 and 22 under the Exclusive Legislative List. Also, stamp duties, taxation of incomes, profits and capital gains were listed on the Exclusive Legislative List under items 57 and 58. Items 7, 8, 9 and 10 of Part II of the Second Schedule (Concurrent List) provided that:

7. In the exercise of its powers to impose any tax or duty on:

(a) capital gains, incomes or profits of persons other than companies; and

(b) documents or transactions by way of stamp duties, the National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a State or other authority of a State.

Two study groups were set up in 1992 to further improve on the tax system. One focused on the Nigeria Tax System and Tax Administration and was headed by Professor Emmanuel Edozien, whilst the other– the Study Group on Indirect Taxation, was headed by Dr. Sylvester Ugoh.⁶⁷ Recommendations arising from this process resulted in:

- a. The Companies Income Tax Act No. 3 of 1993 – codified all income tax laws into the Companies Income Tax Act (CITA) Cap. 60 Laws of the Federation of Nigeria (LFN) 1990. The Act established FIRS as the operational arm of the Federal Board of Inland Revenue (FBIR).*
- b. The Personal Income Tax Act No. 104 of 1993 – codified all personal income tax legislations into one uniform Personal Income Tax Act. The Act also established the Internal Revenue Service (IRS) as the operational arm of the State*

⁶⁷ *Ibid.*

Internal Revenue Board (SBIR) of each States. In the same vein, the Act introduced the Joint Tax Board consisting of the Chairman of the Federal Board of Inland Revenue (now the Federal Inland Revenue Service) as the Chairman of the Joint Tax Board and one member from each State being a person experienced in income tax matters, to amongst others, “use its best endeavours to promote uniformity both in the application of the Act and in the incidence of tax on individuals throughout Nigeria”

- c. *Value Added Tax (VAT) Act No. 102 of 1993 – introduced VAT and significantly moved the country into the regime of indirect and consumption tax. It also repealed the Sales Tax Act No. 7 of 1986 administered by some States in a move to improve the overall revenue base of the country and achieve improved efficiency in administration*
- d. *The Education Tax (ET) Act No. 7 of 1993 – introduced a special tax on corporate income specifically to fund the upgrading of infrastructure and facilities in the education sector.*⁶⁸

According to A. Odusola⁶⁹, Nigeria’s fiscal policy measures have been largely driven by the need to promote such macroeconomic objectives as promoting rapid growth of the economy, generating employment, maintaining price levels and improving the balance-of-payment conditions of the country. Although policy measures change frequently, these objectives have remained relatively constant. Until the mid-1980s, tax policies, for instance, were geared to achieving such specific objectives as:

⁶⁸ *Ibid.*

⁶⁹ Odusola A., ‘Tax Policy Reforms in Nigeria’ United Nations University – World Institute for Development Economics Research (UNU-WIDER) (Research Paper) 2006.

- a. *Ensuring effective protection for local industries;*
- b. *Encouraging greater use of local raw materials;*
- c. *Enhancing the value added of locally manufactured and primary products;*
- d. *Promoting greater geographical dispersion of domestic manufacturing activities; and*
- e. *Generating increased government revenue.*⁷⁰

Since the implementation of the structural adjustment programme (SAP) in 1986⁷¹, however, taxes have been used to enhance the productivity and competitiveness of business enterprises. Consequently, attention has been focused on promoting exports of manufactures and reducing the tax burden of individuals and companies. In line with this change in policy focus, many measures were undertaken. These involved, among others, reviewing custom and excise duties, continuing with the reduction of company and income taxes, expanding the range of tax exemptions and rebates, introducing capital allowance, expanding the duty drawback scheme and manufacturing-in-bond scheme, abolishing excise duty, implementing VAT, monetizing fringe benefits and increasing tax relief to low-income earners.⁷²

In 1998, to address the issue of clarifying and delineating responsibilities between the Federal, State and Local Government Authorities, the Taxes and Levies (Approved List for Collection) 1998 was promulgated.⁷³

The 1999 Constitution retained the supremacy of the Federal Government on matters of legislation on Taxation but reintroduced some flexibility in administration. Under the concurrent legislative list, a provision was added that the collection of any such tax or duties or the administration of the law imposing it may be delegated to a state or any authority of a state by a law of the National Assembly.⁷⁴

⁷⁰ *Ibid.* 2-3.

⁷¹ It was an economic loan policy of the World Bank and IMF offered to developing countries which the then military government of President Ibrahim Babangida implemented.

⁷² *Ibid.*

⁷³ The Initiatives, *Op cit.*

⁷⁴ *Ibid.*

In 2002, a Study Group on the review of the Nigeria tax system headed by Professor Dotun Philips was set up to address the need to place more importance on taxation in the face of a decline in focus on taxation and oil as a source of revenue. The report of the Study group was further subjected to a Working Group setup in 2003 and headed by Mr. Oluseyi Bickersteth. The outcome of both reports were largely consistent but with significant differences in the manner in which tax should be administered nationwide. Whereas the Study group recommended a more centralized system of administration, the Working group recommended a centralized tax administration system with Fiscal federalism implemented through the way revenues were allocated and distributed. In harmonizing both reports, the major areas of agreement were adopted and issues of a central administration of taxes deferred for further consideration at a later date given the rejection of the proposal by the State authorities. This notwithstanding, it was agreed that a harmonized system was still very much desirable to ensure both Federal and State tax authorities benefited from synergies arising from such a harmonized system with improved efficiencies.⁷⁵ It was also agreed that the tax system should be simplified to reduce the incidence of multiple taxation and at the same time improve the mode of revenue distribution should more equitable resulting in a clause in the VAT Amendment Act entrenching a minimum percentage of derivation as a basis for distributing VAT proceeds as is the current practice but with room to improve on the percentage as may be desirable. The outcome of this latest effort at reform resulted in the following enactments:

1. FIRS (Establishment) Act 2007
2. Companies Income Tax (Amendment) Act 2007,
3. Value Added Tax (Amendment) Act 2007
4. National Automotive Council (Amendment) Act 2007

5. Current Internally Generated Revenue (IGR) Policy and Administration in Nigeria

The research approaches the subject matter from the stand point of current tax policy and tax administration. This is because

⁷⁵ *Ibid.*

IGR is principally realized through taxation. The Nigeria tax system, like any tax system, is a tripartite structure which comprises of: Tax Policy, Tax Legislation and Tax Administration⁷⁶. Tax policy forms the basis for tax laws while tax administration is the implementation of the tax laws. This shows that in a bid to establish an effective and efficient tax system that will make taxation the pivot for national development, appropriate tax policies and legislations should be put in place and adequately implemented.

Objectives of a Tax System are:

- a. To promote fiscal responsibility and accountability
- b. To facilitate economic growth and development
- c. To provide the government with stable resources for the provision of public goods and services
- d. To address inequalities in income distribution
- e. To provide economic stabilization
- f. To correct market failures or imperfections⁷⁷

5.1 Current Tax Policy

A revised National Tax Policy (NTP) was approved by the Federal Executive Council (FEC) of Nigeria on 1 February 2017. The approval is an aftermath of the submission made by the NTP Review Committee, set up by the Minister of Finance in August 2016 for the review of the old NTP that was initially issued in 2012. The committee, headed by Prof Abiola Sanni submitted its report in September 2016⁷⁸.

The National Tax Policy is a document which sets broad parameters for taxation and ancillary matters connected with taxation⁷⁹. It is a clear statement on the principles governing tax administration and revenue collection. It therefore, provides a set of guidelines, rules and modus operandi that would regulate taxation in Nigeria⁸⁰.

⁷⁶ Dike M.A.C., *Op cit.* 3.

⁷⁷ *Ibid.*

⁷⁸ Deloitte, 'Inside the New National Tax Policy' *Tax & Regulatory Services*, 2017. <https://www.blog.deloitte.com.ng> accessed January 20, 2018.

⁷⁹ Dike M.A.C., *Op cit.*

⁸⁰ *Ibid.* 4.

5.2 National Tax Policy (NTP) Objectives

The National Tax Policy provides the fundamental guidelines for the orderly development of the Nigeria tax system⁸¹. The Policy is designed to achieve the following specific objectives, among others:

1. Guide the operation and review of the tax system;
2. Provide the basis for future tax legislation and administration;
3. Serve as a point of reference for all stakeholders on taxation;
4. Provide benchmark on which stakeholders shall be held accountable; and
5. Provide clarity on the roles and responsibilities of stakeholders in the tax System.

5.3 National Tax Policy (NTP) Guiding Principles

All existing and future taxes are expected to align with the following fundamental features -

1. Equity and Fairness: Nigeria tax system should be fair and equitable devoid of discrimination. Taxpayers should be required to pay according to their ability.
2. Simplicity, Certainty and Clarity: Tax laws and administrative processes should be simple, clear and easy to understand.
3. Low Compliance Cost: The financial and economic cost of compliance to the taxpayer should be kept to the barest minimum.
4. Low Cost of Administration: Tax Administration in Nigeria should be efficient and cost-effective in line with international best practices.
5. Flexibility: Taxation should be flexible and dynamic to respond to changing circumstances in the economy in a manner that does not retard economic activities.
6. Sustainability: The tax system should promote sustainable revenue, economic growth and development. There should be a synergy between tax policies and other economic policies of government.⁸²

⁸¹ Oyedele T., 'Nigeria's New National Tax Policy: A New Dawn or Another False Start?' <https://www.pwc.com> accessed January 21, 2018.

⁸² *Ibid.*

5.4 Key Highlights of National Tax Policy (NTP)

For the purpose of the Policy, “tax” is defined as any compulsory payment to government imposed by law without direct benefit or return of value or a service whether it is called a tax or not. This definition is important to distinguish between tax and non-tax payments to government or its agencies which are sometimes wrongly referred to as tax. Also, it means that government or its agencies cannot hide under the pretense of nomenclature such as “levies” or “charges” to impose tax without complying with the Policy.⁸³

The new Policy outlines the key provisions under Chapter 2 of the 1999 CFRN that contains fundamental objectives and directive principles of state policy which are relevant to tax policy. These include honest declaration of income and payment of tax; fiscal responsibility and accountability; promoting a planned and balanced economic development; securing maximum welfare, justice and equity; and so on.

Specifically, the Policy contains measures designed to:

- a. Address multiplicity of taxes and multiplicity of Revenue agencies.
- b. Reduce income tax rates and compliance burden for Micro, Small and Medium Enterprises
- c. Improve Nigeria's ranking on the global ease of paying taxes index from the current position of 181 out of 189 economies to top 50 by the year 2020.
- d. Encourage diversification, expand the country's tax base and improve Tax to GDP ratio.

Reacting to the making of NTP for the country, T.F.I. Nwanne⁸⁴ stated as follows:

Indeed, the NTP creates awareness on the importance of the role which taxation can play in securing a stable flow of revenue for even the local government councils. In an era when Nigeria is regarded as a single product economy due to its

⁸³ *Ibid.*

⁸⁴ Nwanne T.F.I., *Op cit.*

*significant dependence on oil revenue for over four decades, taxation has been identified as a more dependable source of revenue due to its perpetual nature. Hence, the tax policy provides a shift in paradigm from non-tax revenue to tax revenue by governments at all levels of the Nigeria political and economic system. With this renewed focus, the tax policy and related legislations seek to resolve issues that have hitherto impeded tax administration in the country, such as those of who collects what, how it is collected, who controls what is collected, how what is collected is shared, who is responsible for spending what is realized, and who ultimately is responsible and accountable to the tax payers for the revenue collected and its expenditure.*⁸⁵

The 2017 Budget of the Federal Government of Nigeria and the 2017-2019 Medium Term Expenditure Framework have no specific proposals to increase tax rates or impose new taxes in 2017⁸⁶. The budget speech was silent on key tax policies but stated a commitment to align fiscal, monetary and trade policies. There are plans to revive the Export Expansion Grant Scheme⁸⁷.

Government is focusing on measures to discourage imports, with the resultant effect on import duties and waivers being revised. Already we have seen a revision in some duty rates announced towards the end of 2016 partly designed towards the implementation of the new ECOWAS Common External Tariffs regime. It is counter-intuitive that many politicians play politics with revenue generation by placing political considerations ahead of professionalism. Unfortunately, many lawmakers, administrators and policymakers lack proper understanding of the tax system. This, coupled with undue political interference and vested interests, mean that tax revenue will continue to be disappointingly low. There is ongoing review of tax incentives which when completed should have

⁸⁵ *Ibid.* p.80-81.

⁸⁶ The 2018 Appropriation Bill (Budget) is still undergoing legislative deliberations at the National Assembly and thus the research can only limit itself to the 2017 Budget.

⁸⁷ Oyedele T., 'Tax & Fiscal Policy Prospects' 2017. p.1 <https://www.pwc.com> accessed January 23, 2018.

a positive impact on government revenue if it addresses current abuse and block existing leakages⁸⁸.

6. Current Tax Administration

The administration of tax now requires competent and effective human resources in order to make sure that all taxes due are collected promptly and correctly. For this reason, it is necessary to professionalize all the tax Agencies in the country.⁸⁹ The Federal Inland Revenue Service (FIRS) and States Internal Revenue Services (SIRS) are established at the centre and in all the states of the federation, respectively, for purposes of systemic and aggressive tax system. The third tier of government which is the local government councils are statutorily required to have Local Government Revenue Committees.⁹⁰ The administration of taxation in Nigeria is vested in the various tax authorities depending on the type of tax under consideration.⁹¹ Broadly, there are three categories of tax authorities, namely:

1. Federal Inland Revenue Service,
2. State Internal Revenue Service, and
3. The Local Government Revenue Committee.

The enabling law in respect of each type of tax will normally contain a provision as to the body charged with the administration of the tax⁹². Each of the above-mentioned tax authorities has its distinct composition, powers and functions⁹³. It was in connection to the above that G. N. Ogbonna⁹⁴ stated thus:

For the purpose of clarity, there are three relevant tax authorities in Nigeria with capacity to collect various designated taxes: the Federal Inland Revenue Service (FIRS) collecting taxes on behalf of Federal Government; the State Boards of Internal

⁸⁸ *Ibid.*

⁸⁹ Oseni M., 'Sustenance of Tax Administration by Information and Communications Technology in Nigeria' Archives of Business Research, Vol. 4, No. 1, 2015. p.49

⁹⁰ *Ibid.*

⁹¹ Dike M.A.C., *Op cit.* 7.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ Ogbonna G. N., 'Burning Issues and Challenges of the Nigerian Tax Systems with Analytical Emphasis on Petroleum Profits Tax' Unpublished Mimeograph, 2010.

*Revenues (SBIR) collecting State taxes and the Local Government Revenue Committee (LGRC) which serves the Local Governments. Consequently, similar to the other tiers of government, Local Governments have constitutional power to assess, impose or levy taxes; collect, account for such taxes and utilise same for the administration of government activities as stipulated by the constitution.*⁹⁵

He stated further that:

*Tax administration involves all the principles and strategies adopted by any government in order to plan, impose, collect, account control and co-ordinate personnel charged with the responsibility of taxation and it includes the effective use of tax revenue for efficient provision of necessary social amenities and other schemes intended to improve the welfare of tax payers.*⁹⁶

In summary, it may be said that tax system begins with tax policies, progresses to the development of tax laws and culminates in the administration which bothers on actual implementation⁹⁷.

As taxes are no longer being administered as in those days when the rule of thumb was the order of the day and the services of the governments are more challenging, the use of modern tools in technology is of paramount importance⁹⁸.

Tax administration/tax system entails processes which are involved in:

1. Tax legislation;
2. Administration/enforcement of tax laws;
3. Collection, allocation, distribution and expenditure of tax revenue; and

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

⁹⁷ Nwanne T. F. I., *Op cit.* 83

⁹⁸ Oseni M., *Op cit.*

4. Other ancillary matters related to the effective and efficient performance of tax functions and the tax system⁹⁹.

The very nature of taxation requires participation by several parties, including those who are being taxed (taxpayer), those collecting the tax (tax authorities), those who utilize the tax (government, ministries, departments, agencies, etc.), those who create the laws on the basis of which the tax is collected (legislature) and ultimately those on whose behalf the tax is collected and for whose benefit it is utilized (the entire citizenry)¹⁰⁰.

7. Operational Issues

There are several operational issues that impact tax administration which cut across policy, legal and operational fields¹⁰¹. In the emerging system of tax administration which is being implemented, several initiatives are at various stages of consideration and implementation by the FIRS¹⁰². These include modernization of tax administration which includes automation, introduction of electronic processes and tailored made projects to address specified areas of the tax system such as:

- a. Project FACT (Factual Accurate Complete Timely) - an integrated electronic system of tax registration, tax payment and accounting which has been concluded
- b. U-TIN (Unique Taxpayer Identification Number) Project – being overseen by the Joint Tax Board and funded by FG/States, it is an electronic system of tax identification, involving the assignment of a unique identifier to every taxable person in Nigeria and development of National Tax Database linking all revenue authorities and major stakeholders
- c. ITAS (Integrated System of Tax Administration) includes, Business Process Reengineering, Systems Development, Change Management and automation of Finance and Accounts Function

⁹⁹ Okauru I. O., 'Emerging Issues in Tax Administration: The Way Forward for Nigeria' The Lead Paper at the 4th National Conference of the Department of Finance Faculty of Business Administration University of Lagos, 2011. p.4.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*p.7.

¹⁰² *Ibid.*

- d. HR Reengineering and Automation
- e. Finance and Accounts Reengineering and Automation
- f. Reengineering of Facility Management and Procurement
- g. E-Library and E-Learning
- h. Tax Clearance Verification
- i. Tax Refund Application Software
- j. Contact Management Centre
- k. Electronic Platform for Automatic Tax Payments
- l. Electronic Platform for Mobile Banking and Electronic Payments
- m. Several others¹⁰³.

It should be noted that modernization is cost intensive and there is a need for sustained funding of tax authorities if we are to have a truly modern tax system.

VAT collection has improved partly due to the impact of the government social welfare scheme of conditional cash transfer and increased enforcement of compliance by FIRS but it is still performing below its potentials. The aggressive stance by the current government at all levels has continued to intensify. In addition to imposition of stiff penalty and interest there is likely to be criminal prosecution¹⁰⁴.

The FCT Internal Revenue Service has made some progress towards the full implementation of its mandate. T. Oyedele¹⁰⁵ is of the opinion that adoption and implementation of e-tax systems by various tax authorities has continued to be slow and ineffective. However, it will be a welcomed idea for more stakeholders to exploit the necessary provisions of the Freedom of Information Act to request for relevant information on tax administration, spending and expenditure control. This will keep the various tax administrators on their toes. Some of the initiatives by the FIRS such as joint audit and use of consultants has continued to face implementation hurdles and unlikely to yield any major results. A number of tax authorities are looking towards introducing tax amnesty in order to expand the tax

¹⁰³ *Ibid.* 7-8.

¹⁰⁴ Oyedele T., 'Tax & Fiscal Policy Prospects' *Op cit.* 2.

¹⁰⁵ *Ibid.*

net and encourage voluntary compliance¹⁰⁶. It is hoped that as the tax administration improves on areas where it is currently failing, all of the challenges highlighted above will be overcome.

8. Conclusion

With dwindling revenue from crude oil, there is no better time than now for all stakeholders to look inward in terms of revenue generation. IGR is wider in nature than taxation. IGR encompasses all aspects of revenue generation while taxation is an aspect of IGR. Taxation is however the main source of IGR. The researcher defines taxations as compulsory levies imposed by government on people, goods and services within its territorial jurisdiction. For a levy to qualify as tax it must be legislated upon.

Legal frameworks comprise a set of documents that include the constitution, legislation, regulations, and contracts. Prior to 1904, there were number of levies and forms of taxes on agricultural produce and livestock like the Zakat, Kurdin Kasa, Sukkashukka, Jangali and Kharaj in Northern Nigeria. For instance, Zakat was levied on Muslims for spiritual, religious and educational purposes. Kudin-kasa was levied as a form of tax on land utilization, from farm produce and Jangali was a tax levied on cattle rearers. In the south western part of Nigeria, taxes were collected in form of tribute, tolls, levies, fine and fees etc. For instance, there was Isha-Kole which is also a form of agricultural/land tax payable to Obas, Chiefs, Heads of Community. There was Owo-Ori which is the tax paid by individuals in return for services rendered. There was war tax which was a tax paid by a defeated town after a war to the victorious town. There was also community tax that was payable by all adults in a community to carry out projects in the community. The colonial era brought about a more organized IGR system in all parts of the country and the Nigerian government of the post-colonial era merely consolidated on the legislative framework on IGR of the previous eras.

The country's legal framework on IGR has witnessed several reforms and there are still rooms for more reforms and innovations to meet the challenges of an ever changing modern society.

¹⁰⁶ *Ibid.*