

**THE COMPLEXITIES OF NIGERIAN TAX SYSTEM – FEDERAL, STATES
AND LOCAL GOVERNMENTS): IMPERATIVE FOR JUSTICE AND
HARMONIZATION**

A PAPER PRESENTED

BY

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OBJECTIVES

At the end of this session, participants should be able to:

- Understand the complexities of Nigerian Tax System
- Gain knowledge and appreciate the content and context of Taxes and Levies (Approved List for Collection) Amendment order 2015 and other matter arising,
- Appreciate the need for justice and harmonization of process and practices of tax administration in Nigeria.

OUTLINE OF PRESENTATION

- Overview of the Nigerian Tax System
- Schedule of Taxes and Levies (Approved List for Collection) Act 21 of 1998 & 2015 Amendment order
- Justice and Harmonization – process and practices
- Challenges and Prospects
- Conclusion.

THE COMPLEXITIES OF NIGERIAN TAX SYSTEM – FEDERAL, STATES AND LOCAL GOVERNMENTS): IMPERATIVE FOR JUSTICE AND HARMONIZATION

1.0 Overview of Nigerian Tax System

1.1 The Nature of a tax –

Tax is described simply as “a charge imposed by governmental authority upon property, individuals or transactions to raise money for public purposes” – New Webster’s Dictionary of English Language.

However, in rather appealing language, Black’s Law Dictionary describes a tax” as a retable portion of produce of the property and labour of the individual citizens, taken by the nation, in the exercise of its sovereign rights, for the support of government, for the administration of the laws, and as a means of continuing in operation of the various legitimate functions of the state.

1.2 General Outline of the Nigerian Tax System

The Nigerian Tax System stands on a tripod of Tax Policy, Tax Laws and Tax Administration.

1.3 Tax Policy

The National Tax Policy provides the fundamental guidelines for the orderly development of the Nigerian tax system. The policy is expected

to achieve the following specific objectives, among others:

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

Tax Policy is also expected to provide a framework for a sustainable system that would ensure reliable of revenue to government and support the economic development of the nation.

1.4 Guiding Principles of Nigeria Tax System

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

- Equity and fairness
- Simplicity, certainty and clarity
- Convenience
- Low compliance cost
- Low cost of Administration

- Flexibility
- Sustainability

1.5 Taxation as a tool for Economic Management and Development

The tax system should support sustainable growth and development at all times. In this regard, the tax system should be geared towards meeting the following goals-

- Wealth creation and Employment

The tax system should be designed to promote social, political and economic development. Accordingly,

- i. tax policies shall promote employment, export and local production;
- ii. Tax policies and laws shall not be retroactive;
- iii. Tax policies and laws should ensure equal investment opportunities and support for businesses whether local or foreign;
- iv. Tax policies and laws on investments should be long term focused and tenured to enable investors plan with reasonable certainty;
- v. any incentive to be granted should be broad, tenured and transparent. Implementation should be properly monitored, evaluated, periodically reported and kept under review;

- vi. Revenue forgone from tax incentives or concessions should be quantified against expected benefits and reported annually. Where the benefits cannot be quantified, qualitative factors must be considered; and
- vii. Tax policies on investments should not promote monopoly such as entry barriers or otherwise prevent competition.

- Taxation and Diversification
- Focus on Indirect Taxation
- Convergence of Tax Rates
- Special Arrangements and other Incentives
- Creating a Competitive Edge
- International and regional Treaties

1.6 Responsibilities of Stakeholders

- The Government
- Tax payer
- Revenue Agencies

- Professional Bodies, Tax Practitioners, Consultants and agents
- Media and Advocacy Groups

1.7 Tax Administration

Tax Administration in Nigeria cuts across the three tiers of government. In the context of the Nigerian Tax Policy, tax authorities at all levels shall administer their mandates in accordance with the following-

- Registration of Taxable Persons
- Tax Compliance
- Efficiency of Tax Administration covering:
Payment & Processing and Collection,
Record keeping, Exchange of Information,
Enforcement of Tax Laws, Funding of Tax Refunds, Revenue Autonomy,
Technology and Tax Intelligence and Dispute Resolution amongst
others,

1.8 Implementation Measures –

- The President and Governors
- Legislature
- Ministry of Finance

- Other MDAs
- Independent National Electoral Commission (INEC) – shall by necessary Regulation and Rules mandate, political parties to articulate, prepare, provide and make public their tax agenda before and during election campaigns.

1.9 The Tax Laws

Compendium of Tax Laws applicable in Nigeria are-

- Tax Administration (Self Assessment) Regulations 2011 as amended to date.
- Federal Inland Revenue Service Act, 2007
- Personal Income Tax Act 2004 as amended to date.
- Companies Income Tax Act 2004 as amended to date.
- Petroleum Profits Tax Act
- Value Added Tax Act
- Stamp Duties Act
- Capital Gains Tax Act
- National Information Technology Development Levy Act 28 of 2007
- The Constitution of the Federal Republic of Nigeria 1999 as amended to date.

- Revenue Laws
- Other Guidelines and Circulars

1.10 Tax Administration

Tax powers under the Nigerian Constitution- Sanni (2002, p. 651) defines taxing power as

The power of a level of government to impose a tax by its own law and prescribe conditions for the collection and due administration of the tax either by its own agency or that of another level of government.

For example, the Personal Income Tax Act was enacted by the Federal government to impose income tax on individuals. On the other hand, each state government / FCT is expected to be responsible for the collection of the income tax from individuals resident in the State. Therefore, taxing power is different from the power to merely collect taxes or levies which is executive or administrative in character.

The Relevant Tax Authorities for the Collection of relevant taxes are:

- Federal Inland Revenue Service Board
- State Internal Revenue Service Board
- Local Government Revenue Committee
- Joint State Revenue Committee
- Joint Tax Board

2.0 SCHEDULE OF TAXES AND LEVIES (APPROVED LIST FOR COLLECTION) ACT AS AMENDED IN 2015

A. Taxes Collected by the Federal Government through the Federal Inland Revenue Service (FIRS)

1. Companies Income Tax
2. Petroleum Profits Tax
3. Personal Income Tax in respect of:
 - Members of the Armed Forces of the Federation
 - Members of the Nigerian Police Force
 - Residents of the FCT and Staff of the Ministry of Foreign Affairs and non-resident individuals.
4. Capital Gains Tax on corporate bodies and residents of FCT
5. Value Added Tax
6. Education Tax
7. Stamp Duties on corporate bodies
8. Withholding Tax on Companies, FCT residents and non-resident individuals
9. National Information Technology Development Levy

B. Taxes and Levies Collected by the State Government through the States Inland Revenue Service (SIRS)

1. Personal income tax in respect of:
 - Pay-As-You-Earn (PAYE); and
 - Direct taxation (self-assessment)
2. Withholding tax (individuals only)
3. Capital gains tax (individuals only)
4. Stamp duties on instruments executed by individuals
5. Pools betting and lotteries, gaming and casino taxes
6. Road taxes
7. Business premises registration in respect of urban and rural areas, which includes registration fees and per annum renewals as fixed by each state.
8. Development levy (individuals only) not more than N100 per annum will be imposed on all taxable individuals.
9. Naming of street registration fees in the State Capital.
10. Right of Occupancy fees on lands owned by the State Government in urban areas of the State.

11. Market taxes and levies where State finance is involved.
12. Land use charge, where applicable.
13. Hotel, Restaurant or Event Centre Consumption Tax, where applicable.
14. Entertainment Tax, where applicable
15. Environmental (Ecological) Fee or Levy
16. Mining, Milling and Quarrying Fee, where applicable.
17. Animal Trade Tax, where applicable
18. Produce Sale Tax, where applicable
19. Slaughter or Abattoir Fees where State Finance is involved
20. Infrastructure Maintenance Charge or levy where applicable
21. Fire Service Charge
22. Property Tax, where applicable
23. Economic Development Levy, where applicable
24. Social Service Contribution, where applicable
25. Signage and Mobile Advertisement, jointly collected by States and Local Governments.

C. Taxes and Levies Collected by the Local Governments through the Local Government Revenue Committees

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

15. Vehicle radio license fees (to be imposed by the local government of the State in which the car is registered).
16. Wrong parking charges
17. Public convenience, sewage and refuse disposal fees.
18. Customary burial ground permit fees.
19. Religious places establishment permit fees.
20. Signboard and advertisement permit fees
21. Wharf Landing Charge, where applicable

3.0 Justice and Harmonization – Process and Practices

3.1 The Role of the Judiciary –

The Judiciary has a critical role in interpreting of taxing statutes in Nigeria.

Because tax law is entirely statutory, tax disputes almost always raise issue of statutory interpretation. As a rule, tax statutes are interpreted very strictly. There is no common law of taxation; hence no general principle of law can displace the true meaning and effect of a tax statute which has been validly passed. As a result, the key issue in tax disputes is whether or not the words of a statute cover the alleged subject of taxation.

Since process of tax Administration by Relevant Tax Authority revolves around Assessment, Enforcement, Collection and Reporting, it is pertinent to note that there are always disputes between the tax payer and the tax Administrator requiring the adjudication of the Judiciary.

3.2 Objections and Appeals

Where a taxpayer disagrees with the assessment made on him, he may give a notice of objection to the relevant tax authority to review and revise the assessment.

3.3 Appeals to the Tax Appeal Tribunal

The Tax Appeal Tribunal established under FIRS EA 2007 has been given the power to adjudicate on disputes and controversies arising from the operations of relevant tax laws.

3.4 Contents of Notice of Appeal

The Federal Inland Revenue Service (Establishment) Act 2007 does not specify the information that should be contained in a notice of appeal. It simply states that "it shall be in such form and be accompanied by such fee as may be prescribed".

However, the Relevant Tax Authority may appeal to the Tribunal if it is aggrieved by the non-compliance by a person in respect of any provision of the tax laws. The notice of appeal should be given in writing through the secretary to the appropriate zone of the Tribunal (i.e. where the person is resident).

3.5 Appeals to Courts

Where the person or the relevant tax authority is dissatisfied with the decision of the Tribunal, he or it may appeal against such decision on points of law to the Federal High Court on giving notice in writing to the Secretary to the Tribunal within 30 days after the date on which the decision was given, then to Court of Appeal and the Supreme Court.

3.6 Harmonization of Tax Administration

- The Federal Inland Revenue Service, the States Board of Internal Revenue Service and the Local Government Revenue Committees are included in the definition of tax authority. These are tax authorities at the Federal, State and Local government levels respectively.
- The Role of the Joint Tax Board (JTB) – PITA 2004 provides for the establishment of JTB and section 86(2) of PITA 2004 provides that the Board shall consist of the following members-
 - (a) the Chairman of FIRS who shall be the Chairman of the Joint Tax Board; and
 - (b) One member from each of state nominated by the Governor of State and the nomination shall be evidenced by notice in writing delivered to the Secretary to the Board by the Governor. The JTB also has a Secretary and a Legal Adviser. The power and duties of the JTB are spelt out in Section 86(9) of PITA 2004.

4.0 Challenges and Prospects

The Nigerian Tax System requires reforms in the areas of ensuring the implementation of the National Tax Policy, review of the tax laws to meet with contemporary economic realities, overhaul of the tax administration

with a view to achieving voluntary compliance by taxpayers and maintain transparency in reporting through the deployment of appropriate technology and highly motivated workforce.

The sum of the above is that governments at all levels have a big role to play in ensuring a tax friendly environment for local and foreign investments.

Despite the potentials of taxation as a dynamic tool for sustainable national development, Nigeria tax system has been unable to achieve its objectives due to the following challenges, among others:

- Lack of robust framework for the taxation of informal sector and high network individuals, thus limiting the revenue base and creating inequity;
- Fragmented database of taxpayers and weak structure for exchange of information by and with tax authorities, resulting in revenue leakage;
- Inordinate drive by all tiers of government to grow internally generated revenue which has led to the arbitrary exercise of regulatory powers for revenue purpose,
- Lack of clarity on taxation powers of each level of government and encroachment on the powers of one level of government by another;
- Insufficient information available to taxpayers on tax compliance requirements thus creating uncertainty and non-compliance;

- Poor accountability for tax revenue;
- Insufficient capacity which has led to the delegation of powers of revenue officials to third parties, thereby creating complications in the tax system;
- Use of aggressive and unorthodox methods for tax collection;
- Failure by tax authorities to honour refund obligations to taxpayers;
- The non-regular review of tax legislation, which has led to obsolete laws, that do not reflect current economic realities; and
- Lack of strict adherence to tax policy direction and procedural guidelines for the operation of the various tax authorities.

5.0 Conclusion

Dear participants, it is pertinent to note that a single paper can hardly treat all the complexities in the Nigerian Tax System as they affect the stakeholders exhaustively. The discussions that would follow shall be of interest to all.

Thank you and God bless.

Q/A

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PROFILE OF THE PAPER PRESENTER

Mr. Akpan Umoh is the Head, Tax Audit and Advisory Services, Egg Heads Tax Practitioners, Uyo, Akwa Ibom State. He is a 1983 graduate of Accountancy of the Polytechnic Calabar. He was employed as Auditor Grade II in the Office of the State Auditor General, Cross River and subsequently transferred to Office of the State Auditor General Akwa Ibom State in 1987. He left in 1991 as Senior Audit Officer for the defunct Mercantile Bank of Nigeria as a Bank Inspector and Accountant.

He left for the firm of Thomas Gamble & Co. (Chartered Accountants) in 1997 as Audit Manager and Tax Advisory Services. However in 2002, he was employed as Head of Internal Audit, Akwa Savings and Loans Ltd, Uyo. In 2009 he served as the Pioneer Managing Director of Uniuyo Microfinance Bank Ltd.

In 2010, he joined the firm of Ezekiel Edem & Co. Chartered Tax Practitioners as Head of Tax Audit/Advisory Services. He subsequently joined the firm of Egg Heads Tax Practitioners in 2015 as Head, Tax Audit and Advisory Services, Benue State since August, 2015 to June, 2018.

Mr. is Chartered Accountant, a Chartered Banker, a Certified Microfinance Banker, a certified Pension Practitioner and also a fellow of the Chartered Institute of Taxation of Nigeria. He is a double prize winner of the Chartered Institute of Bankers of Nigeria professional examinations.

Mr. Umoh has attended the IFRS certification programme organized by Synergy Professionals, Lagos and also Basic and Advanced Mandev Courses by Centre for Management Development, Lagos in 2011 and 2012 respectively.

He also participated in Money laundering and anti-terrorism course organized by Economic and Financial Crime Commission (EFCC) Abuja in 2010.

He has been a paper presenter at different fora since 2001. He has served CITN as a member of Education Committee: 2014/2015; member Indirect Tax Faculty – 2015/2016, and a member of Tax Policy and Administration 2016/2017. Mr. Umoh is married with a family.