

TITLE PAGE

**AN EXAMINATION OF THE CONCEPT OF FISCAL FEDERALISM AND TAX
LEGISLATION IN NIGERIA: A CASE STUDY OF LAGOS STATE**

BY

**Abdul MOHAMMED
LLM/LAW/8018/2013-14**

**BEING A POSTGRADUATE DISSERTATION SUBMITTED TO THE SCHOOL
OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF
MASTER OF LAWS (LL.M.) DEGREE**

**DEPARTMENT OF COMMERCIAL LAW,
FACULTY OF LAW
AHMADU BELLO UNIVERSITY,
ZARIA**

NOVEMBER, 2015

DECLARATION

I hereby declare that this Dissertation entitled “AN EXAMINATION OF THE CONCEPT OF FISCAL FEDERALISM AND TAX LEGISLATION IN NIGERIA: A CASE STUDY OF LAGOS STATE” has been written by me and it is a record of my research work. To the best of my knowledge it has not been presented or published anywhere at any time by anybody, institution or organization. All quotations and references are indicated with full acknowledgement

.....
Abdul Mohammed
LLM/LAW/8018/2013-14

.....
Date

CERTIFICATION

This dissertation entitled “**AN EXAMINATION OF THE CONCEPT OF FISCAL FEDERALISM AND TAX LEGISLATION IN NIGERIA: A CASE STUDY OF LAGOS STATE**” meets the regulations governing the award of the degree of Master of Laws by the Senate of the Ahmadu Bello University Zaria and is approved for its contribution to knowledge and literary presentation

.....
Dr. A. R. Agom
Chairman Supervisory Committee

.....
Date

.....
Dr. I.F. Akande
Member Supervisory Committee

.....
Date

.....
Dr. A. R. Agom
Head of Department, Commercial Law

.....
Date

.....
Prof. Kabir Bala
Dean, School of Post Graduate Studies

.....
Date

DEDICATION

This work is dedicated to late Alhaji Muhammed Tukur and his lovely wife, late Hajia Zainab Mohammed whose short sojourn in this world contributed in shaping me into what I will ever become. May Allah reward you with a place in the highest heavens (*Al jannatul firdaus*)

ACKNOWLEDGEMENTS

Foremost, I give gratitude to Allah Almighty, the all wise for giving me the wisdom of reaching this stage of writing this acknowledgement. But for His Grace, I would not have attained this feat.

I will also wish to thank the Chairman of the Supervisory Committee, Dr. A.R. Agom, who made this task less stressful for me. I must say that, I find in him an ocean of knowledge too deep but not turbulent for a novice swimmer like myself. I did not have any problem other than the problem of meeting the standards for the award of this degree. Thank you. You have in fact made me a better writer. Of no less importance is Dr. I.F. Akande, member Supervisory Committee, she is indeed the mother hen, full of love yet strong in discipline. I will not forget the lesson that “knowledge can’t be obtained without humility”. May I also use this line to thank the Internal Examiners, Dr. A. A. Akume and Dr. Kabir Danladi for their scrutiny of the work as their criticism embellished it to turn out this way.

My humble parents, Alhaji Mohammed Abubakar Na Alhaji Kasimu and Hajia Fatima Abubakar, who always encouraged me with their kind words and taught me the wisdom in perseverance. To my lovely and beautiful wife, Bar. Halima Jibril Jambil (nee Matan Rafindadi) who gave me reason to attend lectures all through the period of the course work, to our bouncing sons, Abubakar Saqique Mohammed (Ammar) and Mohammed Nasir Mohammed (Rayyan) and named after my best friends who have also inspired me throughout my years of exploit in the pursuit of this additional Degree, I say thank you for the deprivation you sacrificed during those times.

The sentiments expressed here will not be complete if I do not mention Prof. Nuhu Mohammed Jamo, Prof. K.S. Chukkol, Prof. Tawfiq Ladan, Prof. Irolalibe Goldface, Prof.

Na'iyā Sada, Prof. Aminu Gurin and Prof. Y. Aboki, all of whom continue to be my academic fountain, from whose spring I strive to quench my academic thirst. Special mention must also be made of Dr. A.M. Madaki, Dr Bala Babaji, Dr I. M. Bappah. I must add Prof. Y.Y. Bambale who always keep watch of the progress of this work. Thank you
Sirs.

I will also not leave out my friends and colleague like Ahmed Abubakar Tanimu, Aliyu Ibrahim Lemu, Shamsudeen Abdurahman Yammama, Shehu Umar Adamu, Dalhat Idris, Zainab Haruna, Dahiru Sani, Salim Magashi and Hassan Bala in A.B.U. Zaria and Cephass Caleb, Sedoo Manu Antoniou and of course Mase Daphne Acho, who proof read the text, did the table of cases and list of authorities and bibliography for me. Thank you for all your contribution to this work.

To all my friends who are too numerous to mention, I say thank you and may Allah reward you abundantly.

TABLE OF CONTENTS

Declaration	iii
Certification	iv
Dedication	v
Acknowledgments	vi
Table of Contents	ix
Table of Cases	xii
Table of Statutes	xiv
Abbreviations	xvii
Abstract	xviii

CHAPTER ONE:

GENERAL INTRODUCTION

1.1	Background to the study	1-3
1.2	Statement of the problem	4
1.3	Objective of the research	4-5
1.4	Scope of the research	5-6
1.5	Research methodology	7-8
1.6	Literature review	8-10
1.7	Justification	10-11
1.8	Organisational layout	11-12

CHAPTER TWO:

THE LEGAL FRAME WORK OF TAX ADMINISTRATION IN NIGERIA

2.1	Concept of tax and tax policy	13
-----	-------------------------------	----

2.2	The concept of fiscal federalism and its operation in Nigeria	13-17
2.3	Historical development of tax and tax policy in Nigeria	17-19
2.4	The operation of section 4, of the 1999 Constitution (as amended) and its relationship with fiscal federalism	19-26
2.5	The operation of section 7 of the 1999 constitution (as amended) and its relationship with fiscal federalism	26-28
2.6	The operation of sections 162 and 163 of the 1999 Constitution (as amended) and its relationship with fiscal federalism	29-33
2.7	Classification and sources of tax legislation in Nigeria	33-39

CHAPTER THREE:

CHALLENGES TO THE IMPLEMENTATION OF AN EFFECTIVE TAX SYSTEM IN NIGERIA

3.1	Introduction	40-41
3.2	The socio cultural background of the Nigerian people	41-46
3.3	Dearth of comprehensive data base of taxable persons and taxable economic activities	46-50
3.4	The problem of tax evasion and tax avoidance	50- 57
3.5	The effect of corruption on the implementation of tax in Nigeria	57-60
3.6	The government's reliance on oil revenue	60-64
3.7	The fluidity of the powers to legislate on taxes by the different tiers of government	64-66
3.8	Lack of political will for effective tax regime	66-68

CHAPTER FOUR:

AN ANALYSIS OF THE LAGOS APPROACH IN THE QUEST FOR TAX PROSPERITY

4.1	Introduction	69-71
4.2	Lagos approach toward surmounting the problems of effective tax	71-89

administration

- | | | |
|-------|---|--------|
| 4.2.1 | Presence of political will in the administration of an effective tax regime in Lagos state | 71-73 |
| 4.2.2 | Curbing the socio cultural challenge of tax imposition on Lagosians | 73-75 |
| 4.2.3 | Creating an efficient and comprehensive database of taxable persons and taxable economic activities of the Lagos people | 75-79 |
| 4.2.4 | Resolving the challenges of tax evasion and tax avoidance | 79-84 |
| 4.2.5 | Harnessing existing tax laws to maximise the tax potential of Lagos State | 84-85 |
| 4.2.6 | Enacting proactive tax regime within the legislative competence of Lagos state so as to maximise the tax potential of Lagos state | 85- 89 |

CHAPTER FIVE:

CONCLUSION

- | | | |
|-----|-------------------------|-------|
| 5.1 | Summary of the research | 90 |
| 5.2 | Observations | 90-81 |
| 5.3 | Recommendations | 91-92 |

REFERENCES

TABLE OF CASES

1	Akwule V. The Queen (1963) ANLR 105, 1963 NSCC Vol. 3, 157	23
2	Attorney General Bendel State v. Attorney General Federation and Others (1981) 3 NCLR 1, (1981) 10 SC 1 at 133	65
3	Attorney General Cross River State v. Mathew Ojua (Unreported) Suit No CA/C/03/2009 Judgment of the Court of Appeal Delivered on 18 March 2010	27,39,89
4	Attorney General of the Federation v Attorney General of Lagos State (Unreported) Suit No.SC/340/2008 Judgment delivered on the 19 July 2013	6,21,61
5	Attorney General Federation v. Attorney General Abia State and 35 Others (2002)6 NWLR (Part 764) SC 542	28,31,32,33,65
6	Attorney General Lagos State v. Eko Hotel Limited (2008) All FWLR (Part 398) 235	28, 36, 39, 87
7	Attorney General Ogun State v. Aberuagba (1985) 1 NWLR (Part 3) SC 395	5,16,20,36,48,65,75
8	Attorney General of Ogun State v. Attorney General of the Federation (1982) 3 NCLR	23
9	Attorney-General Southern Nigeria v. John Holt & Co. & Ors. (1915) AC 599	70
10	Attorney General v. W. B. McIver & Co. & Ors. 2NLR	70
11	Ayrshire Pullman Motor Services v. IRS (1929)14 TC754	51
12	Bamidele v. Commissioner for Local Government (Lagos State) (1994) 2 NWLR (Part 328) 568	28, 39, 89
13	Cape Brandy Syndicate v CIR 12TC358	51
14	Cheek v. United States 498 U.S. 192 (1991)	46
15	CNOOC E&P Nigeria Limited v. AG Federation and 2 Ors (2011) 4 TLRN 45	33
16	Eti-Osa Local Government v. Jegede (2007) 10 NWLR (Part 1043) 537	26, 39

17	Greenberg v. IRS 1971 47TC at 272	51
18	Knight, Frank & Rutley (Nig) Ltd v. Attorney General Kano State (1998) 7 NWLR (Part 556) 1 SC	26, 27, 39
19	Mas Everest Hotels Limited and another v. Attorney General of Lagos State and another (Suit No. ID/640M/2009)	6, 86
20	Partington v. Attorney General (1869) L.R. 4 E&I. App. 100	51
21	Regina v. Simmonds and Others [Court Of Appeal] [1969] 1 Q.B 685	55
22	Registered Trustees of the Association of Fast Food Confectioners of Nigeria & others v. Attorney General of Lagos State and another (Suit No. FHC/L/CS/747/2009)	6,86
23	US v. Butler 297 US 1	2

TABLE OF STATUTES

1	Allocation of Revenue (Federation Account etc) Act Cap A15 Laws of the Federation of Nigeria 2004	24, 26, 27.
2	Companies Income Tax Act Cap C21 LFN 2004	5, 78.
3	Constitution of the Federal Republic of Nigeria 1999 (As Amended)	5
	Section 4	11,15,16, 18
	Section 4(5)	18,21
	Section 4(7)	5
	Section 7	11,22
	Section 7(5)	22,23,83
	Section 24(f)	
	Section 62	11
	Section 162	24,26,32
	Section 163	11,24,25, 26,28,32
	Section 315	31
	Item d of part II of the Second Schedule	26
	Item 16 of Part 1 of the Second Schedule	5
	Item 19 of Part 11 of the Second Schedule	17
	Item 60 of Part 1 of the Second Schedule	17
	Item 62 of Part 1 of the Second Schedule	5
	Item 1(J) of the Fourth Schedule	21
		23,83
5	Customs and Excise Tariff ETC (Consolidation) Act Cap C49 LFN 2004	17, 30
5	Federal Inland Revenue Service (Establishment) Act No. 13 of 2007	5,30,32,78

	Section 59	78
	First Schedule	30,78
7	Lagos State Hotel Licensing Law Cap H6 Laws 2003	6,21
8	Lagos State Hotel Licensing (Amendment) Law No. 23 Vol. 43 , 2010	6,21
9	Lagos State Hotel Occupancy and Restaurant Consumption Law No 30 Vol. 42 2009	6,21,81
10	Land Use Charge Law 2001	81
	Section 1(2)	82
	Section 1(3)	82
11	Nigerian Tourism Development Act Cap N 137 Laws of the Federation of Nigeria 2004	6,21
12	Personal Income Tax (As Amended) Act Cap P8 Laws of the Federation of Nigeria 2004	6,30,78
	Section 2	30,42
	Section 3	43
	Section 46(4)	43
	Section 74	77
	Section 76(4)	50
	Section 77	48
	Section 94	49
	Section 95	49
	Section 96	49
13	Petroleum Profit Tax Act Cap P13 LFN 2004	5,30,78
14	Lagos State Revenue Administration Law	
	Section 9	77
	Section 10	82
	Section 11	82
	Section 35	

	Section 36(1)	78
	Section 48	79
		78
15	Lagos State Tax Administration Law	
	Section 35(5)	69
16	Taxes and Levies (Approved List for Collection) Act 1998 Cap T2 Laws of the Federation of Nigeria 2004	5,24,31, 32,33,78
17	Value Added Tax Act Cap V1 LFN 2004	29,31,78
	Section 36	33

ABBREVIATIONS

1. AC Appeal Cases of England
2. All FWLR All Federation Weekly Law Report
3. All NLR All Nigeria Law Report
4. L.R. E&I App. Lloyds Report of England and Ireland Appeal Cases
5. NCLR Nigerian Constitutional Law Report
6. NLR Nigerian Law Report
7. NSCC Nigerian Supreme Court Cases
8. NWLR Nigerian Weekly Law Report
9. Q.B The Queen's Bench of England
10. SC Supreme Court Cases
11. TC London Tax Cases
12. US Supreme Court of the United States of America

ABSTRACT

This work is prompted by the shortage of revenue accruing to the federating units in Nigeria. It exposes the potential of taxation as an alternative and or additional revenue source to the federating states in Nigeria. Using the doctrinal method of research, this work espouses the potentials of taxation as a viable means of generating revenue for the federating States in Nigeria. The work analyses the problems bedeviling the implementation of taxation as a source of revenue generation in Nigeria under the current legal frame work, it reviewed the approach adopted by Lagos State in its quest for fiscal independence. Based on the review of Lagos State approach, the work provided the possible solutions to the over dependence of the other states on the revenue accruable from the Federation Account by providing possible means that other States could use in other to attain the success of using taxation as a means of achieving fiscal independence as currently enjoyed by Lagos State. It was found that Nigeria's Federal structure allows states to enact laws on taxation but the laws are over centralized in the federal legislature based on the interpretation of the provisions of the constitution and the items in both the exclusive and concurrent legislative list in the constitution. Corruption and absence of political will affects the ability of the state to obtain optimal tax success in Nigeria. It is recommended that a Constitutional review will assist in achieving tax prosperity for the component states, in the meanwhile, an active State House of Assembly that has the potential of ensuring a tax legislation that is not an infringement of the current legal regime can assist states in attaining tax prosperity. Good governance and accountability has the potential of bringing the Nigerian people on board the policy of taxation.

CHAPTER ONE

GENERAL INTRODUCTION

1.1. Background to the study

From remote antiquity, tax as a fiscal instrument of regulation and control is a “necessary evil” that societies have been compelled to stay with. At the time of Jesus Christ, there was an established tax system that led the people to ask him if he approved the payment of tax to the old Roman Emperor, who was the imperial lord of Jerusalem¹. In other words, since the inception of statehood, tax has been an instrument for generation of revenue in running the state. Prior to the discovery of other sources of wealth creation like natural resources, science and technology, production and distribution of goods and services,; tax had been that loyal servant of the state.

In recent times, tax has become a viable source of revenue generation to states such that it has shown its capability of being the main revenue stay of some countries all over the world. “Countries like Canada, the United States of America, the Netherlands and the United Kingdom are some 1examples of a tax based economy with their internal revenue generation being over 50% of their revenue base”². States³ are beginning to accept the reality that taxation is a very good avenue for blocking the shortfall from funds transmitted from the Federation Account.⁴

¹ An interesting reading is the content of The Gospel According to Saint Mathew Chapter 22 verse 21 related in the Synoptic Gospel also known New Testament of the Bible and the famous cliché of giving to Ceaser what is of Ceaser and to God what is of God”

² Prest A. R., (1985) *Public Finance in Underdeveloped Countries*; Palgrave Macmillan, United Kingdom p. 23

³ This term does not mean the same thing as the generally recognized entities with territorial sovereignty but the federating components in Nigeria.

⁴ Orogun W. and Ezigbo O (2009). “Nigeria: IGR –Lagos, Sokoto lead the way”, Thisday Newspaper published on 26 July 2009 p. 1. It was reported that states like Lagos State which is in the forefront of this quest, Kano State, Edo State, Oyo State are some of the states in Nigeria giving taxation a pride of place in its Internal Revenue Generation(IRG) drive.

The Black's Law Dictionary⁵ defines tax "as a reliable portion 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 the means for continuing in operation, the various legitimate functions of the state."

The New Shorter Oxford English Dictionary⁶ defines tax as "a compulsory contribution to the support of government levied on persons, property, income, commodity, transactions etc, usually at a fixed rate mostly, proportionate to the amount on which the contribution is levied." Taxation is the process of compulsory exaction of the money by a public authority from individuals and corporate bodies, such monies being for public purposes⁷.

From the above definitions, we can safely say that taxes are compulsory payments levied by the government on the people (i.e. governed) so as to create revenue for the running of the apparatus of government and the provision of social amenities to the citizens of the state. They are the contributions by the people to the general revenue pool of the government.⁸

Tax policy on the other hand is the planned system of a particular country for purposes of the implementation of its tax regime. This policy affects micro and macro-economic behaviours of the citizens of the country. It comprise policies as to who to tax and how much to tax these persons. It is the tax policy that determines whether it targets, the rich, middle class or the low income earners. The decision to target each of these groups for tax purposes also have its own advantages and disadvantages. The ability to provide a policy that balances a country's tax regime tells the level of the effectiveness and the efficiency of a tax regime. In other words;

⁵ Black H.C; (1980) 6th Edition *The Black's Law Dictionary*, West Publishing Co. New York p. 1457

⁶ (1993) *The New Shorter Oxford English Dictionary* Vol. 2, N-Z Clarendon Press Oxford, p. 3229

⁷ Per Justice Robert in the case of *US v. Butler* 297 US 1

⁸ Odewale R. O. (2004) 2nd Edition *Principles of Nigerian Taxation*. DBM Publishers, Ibadan, p. 54.

“... tax policies represent key resource allocator between the public and private sectors in a country. It is usually imposed on individuals and entity that make up a country. The funds provided by tax are used by the states to support certain state obligations such as education systems, health care systems, pensions for the elderly, unemployment benefits, and public transportation. A nation’s tax system is often a reflection of its communal values or the values of those in power. To create a system of taxation, a nation must make choices regarding the distribution of the tax burden—who will pay taxes and how much they will pay—and how the taxes collected will be spent.”⁹

Before the discovery of crude oil (the black gold) in Nigeria, the Nigerian economy was a tax based economy.¹⁰ Upon discovery of the crude oil, Nigeria shifted its source of revenue to the income accruable from the exploration of crude oil and abandoned taxation or merely paid lip service to its implementation to the extent that the Nigerian budget is based on the projected selling price of crude oil in the international market; and the performance of the budget is fundamentally dependant on how much revenue is generated from the actual sale of the product. Thus, the success or otherwise of the performance of the government is dependent on how much revenue it is able to generate from the sale of crude oil. There had been no obvious problem with this fiscal policy until lately.¹¹ The problems arising from the over reliance on revenue generated from crude has led to the need to review other revenue options. This work is an attempt to consider the tax options available to the states under the current legal regime in Nigeria.

⁹ Abubakar Y.M.: (2009)“Tax Policy in Nigeria” Retrieved on June 24 2009 from <http://www.buzzle.com/articles/tax-policy-in-nigeria.html>

¹⁰ Ibid

¹¹ Adeniyi O. (2011) *Power Politics and Death*, Thisday Books, Prestige Imprint Kachifo, Nigeria p. 72 where Adeniyi observed that “The impact of the Global Economic crisis affected commodity prizes especially the oil in 2008”. See also the observation in the Draft National Tax Policy For Nigeria submitted to the Federal Executive Council in 2008. p.5 where it was observed that “one of the reasons for this was Government’s heavy reliance on revenue derived from oil, as a result little or no attention has been given to revenue from other sources, such as taxation.” Sanusi L.S.: (2010) “*Global Financial Crisis Impact in Nigeria, Nigerian Financial Reforms and the Roles of Multilateral Development Banks and IMF.*” Submission to the House Financial Services Committee of the US Congress Hearing on the Global Financial crisis. p. 1 where he stated that the “Like most developing countries, Nigeria felt the effect of the Financial crisis largely through trade and capital flows because of the openness of the economy and the near total reliance on crude exports for government revenue and foreign exchange earnings”.

1.2. Statement of the problem

In recent times, there has been lots of agitation from the federating units where crude oil is explored for “resource control”.¹² The agitation has taken both economic and environmental dimensions.¹³ This call has also led to a movement towards the implementation of fiscal federalism and a need for generation of revenue from other sources owing to the consistent instability of oil prices and the challenge of the agitation for resource control.

The problem sought to be addressed in this work is the examination of the operation of fiscal federalism under the current constitutional framework to determine:

- a. What is the nature of fiscal federalism under the 1999 Constitution of the Federal Republic of Nigeria (as amended)?
- b. What is the extent of the powers of State Houses of Assemblies to legislate on tax matters under 1999 Constitution of the Federal Republic of Nigeria (as amended)?
- c. Does the Nigerian law prevent federating States from enacting independent laws on taxation
- d. What are the weaknesses of the existing tax laws in addressing socio-economic problems in Nigeria?

1.3. Objective of the research

This research is undertaken so as to explore the alternative to over dependence on revenue generated from the sale of crude oil by all tiers of the Nigerian Government. The aim of this work is as follows;

- a. To appraise the nature of fiscal federalism under the 1999 Constitution of the Federal Republic of Nigeria(as amended)?

¹² The term is devised by states in Nigeria wherein crude oil deposits are obtained, calling for the control of the revenues generated from the resources found in their territorial boundaries.

¹³ Robert S. et al (2009) *The case of Ken Saro-Wiwa* PEN American Centre New York p. 3. Sagay I.: “*Nigeria: Federalism, the Constitution and Resource Control*”. Text of speech delivered by Professor Itse Sagay (SAN), former Head of Law Department of University of Benin at the fourth sensitization programme organized by the Ibori Vanguard at the Lagoon Restaurant, Lagos available online at Urhobo Historical Society website:<http://www.waado.org/NigerDelta/Essays/ResourceControl/Sagay.html> Retrieved on 25 November 2009. (2005) Timothy D: (2003) *Environmental Movements In Minority And Majority Worlds A Global Perspective* Rutgers University Press London. p. 3

- b. To determine the challenges to the implementation of effective tax administration in Nigeria, particularly the problem of tax evasion and tax avoidance.
- c. To determine the extent of the powers of State Houses of Assemblies to legislate on tax matters under Nigerian law.
- d. To examine the efficacy of tax laws enacted by Lagos State.

And finally proffer solutions to the weaknesses of tax laws and tax administration in Nigeria.

1.4. Scope of the research

This dissertation will attempt to review the relevant statutory enactments and case laws in this regard. Consequently, the Federal Inland Revenue Service (Establishment) Act,¹⁴ Personal Income Tax Act,¹⁵ Personal Income Tax (Amendment) Act,¹⁶ Value Added Tax Act,¹⁷ The National Tax Policy which embodies the policy drive of taxation in Nigeria will also be considered in this research.

The import, effect and limitation of the Taxes and Levies (Approved List for Collection) Act¹⁸ *viz a viz* the operation of fiscal federalism in Nigeria will also be considered in this work. The Supreme Court's decision in *Attorney General of Ogun State v. Alhaja Ayinke Aberuagba*¹⁹ as it relates to the powers of the states to enact tax laws will also be analysed.

Equally instructive on this subject are the provisions of the 1999 Constitution of the Federal Republic of Nigeria. The provisions of Second Schedule (Part II) paragraphs 9, 18

¹⁴ Cap F 36 LFN 2004

¹⁵ Cap P8 LFN 2004

¹⁶ Act No. 20 2011

¹⁷ Cap V1 LFN 2004

¹⁸ Cap T 2 LFN 2004

¹⁹ (1985) 1 NWLR (Part 3) SC 395

and 19 of the Constitution, which empowers a State House of Assembly to make laws for the collection of any tax, fee or rate, or to make laws for the industrial, commercial or agricultural development of a state. The provisions of Section 4 (7) of the Constitution, which also empowers a State House of Assembly to make laws for the peace, order and good government of the state in respect of any matter that is not included in the Exclusive legislative list, or any matter included in the concurrent list or any other matter with respect to which it is empowered to make laws by the provisions of the 1999 Constitution. Some companies carrying on business in Lagos State are presently challenging the decision of the State to impose taxes on them²⁰. The Federal Government is also challenging the powers of the Lagos State Government to enact the Hotel Licensing Law²¹, the Hotel Licensing (Amendment) Law²² and the Hotel Occupancy and Restaurant Consumption Law²³. It is on this premise that it is considered appropriate to carry out a research on the tax system in Nigeria.

We will shine the torch on the federal tax laws and state tax laws with particular emphasis on Lagos State; tax administration; mode of resolving conflict and attitudinal behaviour; and tax impact in Nigeria. Experience from other jurisdiction may be drawn to explain situations in Nigerian Tax law where necessary.

²⁰ The unreported cases of *Mas Everest Hotels Limited and another v. Attorney General of Lagos State and another* (Suit No. ID/640M/2009), and *Registered Trustees of the Association of Fast Food Confectioners of Nigeria & others v. Attorney General of Lagos State and another* (Suit No. FHC/L/CS/747/2009).

²¹ Cap H6 Laws of Lagos State of Nigeria 2003

²² No. 23 Volume 43 Laws of Lagos State of Nigeria published in the Official Gazette in 2010

²³ No. 30 Volume 42 as contained in the Lagos State of Nigeria Official Gazette of 3rd June 2009. The Attorney General of the Federation instituted an action challenging the constitutionality/operationality of and the Lagos State Hotel Licensing Law, Hotel Licensing (Amendment) Law and Hotel Occupancy and Restaurant Consumption Law *viz a viz* the Nigerian Tourism Development Act of 1992 which is a Federal legislation made pursuant to Item 60(d) of the Exclusive Legislative List regulating “tourist traffic” in the case of *AG Federation v. AG Lagos* (Unreported) Suit No.SC/340/2008 Judgment delivered on the 19 July 2013.

1.5. Research methodology

The method adopted in this research shall be doctrinal in nature. The research material shall be based on existing legislations and case laws in the area, commentaries and views of experts on the subject as expressed in books, articles of mass media, academic journals, etcetera.

The primary data will be the existing statutes and case law on the subject, while the secondary data are the persuasive writing of academics and tax consultants and practitioners in the area. The research adopts the data and first hand information on tax administration contained in the following materials; Commissioned report of Maarten de Zeeuw and Abdulrazaq M. T. commissioned by the United Kingdom Department For International Development on the tax performance of Lagos State²⁴, the various presentation of Ipaye (Special Adviser to the Governor of Lagos State on Taxation) submitted to the Chartered Institute of Taxation of Nigeria.²⁵ The first hand information supplied by Ochei a tax practitioner of over 25 years in his book entitled the Nigerian Taxman's Book,²⁶ data sourced from the Central Bank of Nigeria on the Budget performance of State and tax performance of Lagos State.²⁷ Submission by the Governor

²⁴ Maarten de Zeeuw and Abdulrazaq T. (2005) "Tax Policy Assessment for Lagos State Government" a report of the tax performance of Lagos State prepared by the State and Local Government Program (SLGP) for the Department For International Development CNTR: 00 0512A SLGP Consultants' Report Number 318, May 2005

²⁵ Ipaye A.R. (2009) "Road to Effective Internally Generated Revenue Collection – The Lagos State Experience" being a paper presented at the Imo State Tax Summit held on 18 August 2009, Ipaye A. R. (2010): Speech Delivered by the special guest of honour, Mr. Ade Ipaye at The Chartered Institute of Taxation of Nigeria Joint District Society Quarterly Meeting Held On Thursday, April 8, 2010 At The Chartered Institute of Taxation of Nigeria Headquarters, Lagos, Nigeria, Ipaye A. R. (2011) "Options and Ways of Curbing Tax Evasion and Avoidance in Lagos State" being a paper presented at the Lagos State polytechnic Alumni Association Quarterly Lecture held at the Rennanissance Hotel Agidingbi Ikeja Lagos Nigeria on June 28, 2011

²⁶ Ochei, B.B.: (2008) *The Nigerian Taxman's Book*, Pyramid Unit Publishers Lagos Nigeria

²⁷ The Central Bank of Nigeria Annual Report & Statement of Accounts for 2002 which showed that the Nigerian Economy is changing structurally, The Central Bank of Nigeria Annual Report and Statement of

of the Central Bank of Nigeria to the House Financial Services Committee of the United States of America Congressional Hearing on the impact of the Global Financial Crisis on the Nigerian Economy²⁸ and the Report presented to the President on the new National Tax Policy²⁹ in preparing this research.

1.6. Literature review

The following books shall be of immense contribution to the writer in the cause of this research: Abdulrazaq a seasoned tax analyst wrote on the topic *Principles and Practice of Nigerian Tax Planning and Management*³⁰, Adesola titled *Tax Laws and Administration in Nigeria*.³¹ Ayua contributed to the area by his very rich book titled *The Nigerian Tax Law*³². These books mainly delved on the operation of taxation under the existing laws in Nigeria. No mention is made on how states could harness their tax potentials. Consequently they are not resources for the harnessing of tax powers under the Nigerian current legal regime. The Researcher intends to also draw from the fountain of the prolific guru of commercial law in the academia, Ola particularly from his book *Income Tax Law and Practice in Nigeria*³³. This book is very rich in other areas of taxation but seem to only scratch the surface on the potential of state government in exploring tax legislation and how taxation can be an alternative source of revenue for the federating states in Nigeria. The old book of Orewa titled *Taxation in Western Nigeria: The Problems of an*

Account for 2009 which reported that Lagos State internal revenue generation accounted for 62.14 percent of its total revenue base for that year.

²⁸ Sanusi L.S.: op cit.

²⁹ Draft Document on the National Tax Policy, Presentation by the Presidential Committee on the National Tax Policy June 7, 2008

³⁰ Abdulrazaq M.T. (1993):*Principles and Practice of Nigerian Tax Planning and Management*, Batay Law Publications Ltd., Ilorin.

³¹ Adesola S.M (1998) 3rd Edition *Tax Laws and Administration in Nigeria*, Comport Press and Publishing Company Ltd., Lagos.

³² Ayua I.A. (1996) *The Nigerian Tax Law*, Spectrum Law Publishing, Ibadan.

³³ Ola C.S (2004) *Income Tax Law and Practice in Nigeria* Heinemann Educational Books (Nig.) Plc., Ibadan.

*Emergent State*³⁴ is also helpful only for the purpose of history as it does not capture any of the current tax laws. None of these works can be taken to be a manuscript on the best approach for state governments to utilize their tax potentials. Notwithstanding the shortcomings of these materials and other books which the writer may in the course of this research find relevant, they will serve to give the Researcher an insight into the problem of taxation especially in the post independence era when tax was still the major source of revenue in Nigeria. Several articles written under the auspices of the Nigerian Institute of Advance Legal Studies and the Chartered Institute of Taxation in Nigeria as well as other academic forum are not left out in the course of this research. These include the article of Abubakar entitled “*Tax Policy in Nigeria*”³⁵, Awa and Jegede’s “*Federal Inland Revenue Service (Establishment) Act 2007: Centralization of Tax Administration in Nigeria through the Back Door*”³⁶, Cobham’s “*Tax evasion, tax avoidance and development finance*”³⁷, Fashola’s “*Reengineering State Tax Administration Strategies, Systems and Processes: Lessons from Lagos State*”³⁸, Festus and Okwu’s “*Fiscal Federalism: Fiscal Discipline and Service Delivery in Nigeria*”³⁹, Ipaye’s “*Road to Effective Internally Generated Revenue Collection – The Lagos State Experience*”, “*Options and Ways of Curbing Tax Evasion and Avoidance in Lagos State*”⁴⁰. Konyin’s “*On the Trail of a Spectre- Destabilization of Developing and Transitional Economies: A case Study of*

³⁴ Orewa G.O (1962) *Taxation in Western Nigeria: The Problems of an Emergent State* Oxford University Press, Ibadan.

³⁵ Abubakar Y. M.: Tax Policy in Nigeria published at <http://www.buzzle.com/articles/tax-policy-in-nigeria.html> - 2 (2009) Retrieved on June 24, 2009

³⁶ Awa I, and Jegede R.O.: “Federal Inland Revenue Service (Establishment) Act 2007: Centralization of Tax Administration in Nigeria through the Back Door” published at <http://www.icmaservices.com/icmaservices/articles.com> retrieved on November 28, 2011

³⁷ Cobham A.: “Tax evasion, tax avoidance and development finance” Working Paper Number 1229 Finance and Trade Policy Research Centre Queen Elizabeth House University of Oxford, (2005)

³⁸ Fashola B. R.: op cit.

³⁹ Festus O. O. and Okwu J. N. “Fiscal Federalism: Fiscal Discipline and Service Delivery in Nigeria” in *Economic Policy Options for a Prosperous Nation* retrieved from <http://www.csaе.ox.ac.uk./books/epopn/Fiscalfederalism.pdf> on July 25, 2011

⁴⁰ Ipaye, A.R.: op cit.

*Corruption in Nigeria*⁴¹. Odd-Helge Fjeldstad's "*Corruption in Tax Administration: Lessons from institutional reforms in Uganda*",⁴² Rapu's "*Tax Assignment and Revenue Sharing in Nigeria: Challenges and Option*"⁴³ and Sagay's "*Nigeria: Federalism, the Constitution and Resource Control*"⁴⁴ to mention a few.

1.7. Justification

Since the transition from *Militocracy* to Democracy, there has been call from various Sections of the country for a Sovereign National Conference essentially with the object of inserting in the constitution the American fiscal approach of federalism. The dwindling fortune of our major source of revenue, i.e. crude oil because the reserve is presently depleting for every exploration and extraction that is made; the serious security risk faced by the oil explorers as a result of the criminal activities of the locals in the guise of self actualization; the movement of the investors to more competitive countries with less challenges of investment than Nigeria, like Ghana and Angola are proving to be better haven for investment because there is sufficient infrastructure to support the oil prospecting investors than there is in Nigeria for the oil prospector's investment. The discovery of shale oil prospecting system, the abandonment of Nigeria's oil by America owing to the exploitation of its shale oil are justification for a research on the exploitation of the legal mean for generating alternative source of revenue in Nigeria

⁴¹ Konyin A. (1996-1997) "On the Trail of a Spectre- Destabilization of Developing and Transitional Economies: A case Study of Corruption in Nigeria" published in *Journal of International Law*.

⁴² Odd-Helge Fjeldstad: "Corruption in Tax Administration: Lessons from institutional reforms in Uganda" Chr. Michelsen Institute Working Papers 2005:10

⁴³ Rapu S.C. (2006) "Tax Assignment and Revenue Sharing in Nigeria: Challenges and Option" published in *Central Bank of Nigeria Journal on Economic and Financial Review* Vol. 44 No. 1 March 2006. P. 1

⁴⁴ Sagay I.: Nigeria: Federalism, the Constitution and Resource Control" Text of speech delivered by Professor Itse Sagay (SAN), former head of Law department of University of Benin at the fourth sensitization programme organized by the Ibori Vanguard at the Lagoon Restaurant, Lagos available online at Urhobo Historical Society website:<http://www.waado.org/NigerDelta/Essays/ResourceControl/Sagay.html> Retrieved on 25 November 2009. (2005)

Further, there is also the challenge of answering the question; what happens if the oil reserves are exhausted, since oil is a wasting resources? Moreover, the amount of revenue filtering away due to non taxation could be harnessed to augment the oil revenue and stop the consistent budget deficit that the country has been running over the years.

Moreso, Lagos State only initiated the massive drive for internally generated revenue from 1999 at the dawn of the current democratic dispensation. The potential of taxation of other states in Nigeria have never been exploited as proposed to be undertaken in the work. This make this research unique and worthy of the quest.

It is submitted that an exploration of alternative source of revenue may actually open the eyes of the federating components to the potentials of each state in the federation. Those without alternative source of revenue will be compelled to create avenue to boost the revenue base of their states as necessity has always been the mother of invention.

The above are the pressing questions/issues, which this research attempts to proffer an answer and which gives a justification for this research

1.8 Organisational layout

This dissertation is divided into five chapters. **Chapter one** gives a general introduction to the topic, providing hints as to what the reader is to expect in the course of reading the thesis, thus, we will find the general introduction, aims and objective of the research, scope, literature review and the organizational layout of the dissertation in this chapter. **Chapter two** discusses the historical development of our federalism, the legal frame work of tax administration in Nigeria and the role of the court in giving effect to the fiscal provisions in the Nigerian Constitution. **Chapter three** encompasses the problems bedeviling the implementation of an efficient and result oriented tax system in Nigeria.

The chapter discusses the stumbling blocks on the way to an efficient utilization of taxation as a source of revenue generation in Nigeria.

Chapter four discusses the legal approach adopted, mainly by Lagos State towards exploring the legal frame work in the achievement of a most effective and efficient tax system for the federating states in Nigeria and **Chapter Five**, is the conclusions which contains the summary, observation and recommendation made in this work.

CHAPTER TWO

THE LEGAL FRAME WORK OF TAX ADMINISTRATION IN NIGERIA

2.1 Concept of fiscal federalism, tax and tax policy.

This chapter reviews the legal framework for the administration of taxation in Nigeria. The chapter examines the concept of fiscal federalism in Nigeria and the problems bedeviling the Nigerian tax system. This Chapter will consider the effect of the provisions of Section 4, 7, 62 and 163 of the Constitution (as amended) and the corresponding Items in the Exclusive and Concurrent Legislative Lists. These Sections, being the constitutional framework for the operation of fiscal federalism in Nigeria, become of utmost importance in the quest for the understanding of Nigeria's fiscal federalism. Thus, we will undertake a review of the effect of the sections and their operation in Nigeria. The chapter will also include a brief discussion on the classification of tax laws enacted pursuant to these provisions.

2.2. The concept fiscal federalism and its operation in Nigeria.

The term federalism was defined by Wheare when he explained the term federalism thus:-

Federalism as, an arrangement whereby powers within a multi-national country are shared between a federal or central authority, and a number of regionalised governments in such a way that each unit, including this central authority, exists as a government separately and independently from the others, operating directly on persons and property within its territorial area, with a will of its own and its own apparatus for the conduct of affairs and with an authority in some matters exclusive of all others¹.

In a federation, each government enjoys a form of autonomy, a separate existence and independence of the control of any other government. Each government exists, not as an appendage of another government (e.g. the federal or central government) but as an

¹ Wheare K. C. (1946-63) Monograph on Federal Government. Quotation from the works of Sir K.C. Wheare published at <https://adb.enu.edu.au/biography>. retrieved on June 15, 2011

autonomous entity in the sense of being able to exercise its own will on the conduct of its affairs free from direction by any government. Thus, the central government on the one hand and the State Governments on the other hand are autonomous in their respective spheres.”²

As Wheare puts it, "the fundamental and distinguishing characteristic of a federal system is that neither the central nor the regional governments are subordinate to each other, but rather, the two are co-ordinate and independent."³ All governments have a horizontal relationship with each other.

With the coming of colonialism and imperialism, federations were formed not like the American style of formation where small independent nation agree to federate but by sanction of an order in council, decrees or proclamations as the case may be. Problems of trial and error with respect to revenue generation capacities of the federation and the sharing formula for revenues emanating from the federation.

The decision to make Nigeria a federal type of government started taking shape with the introduction of Sir Richard’s Constitution of 1946.

“[F]or the first time in the history of the foundation of British-Nigerian relationship and the establishment of Nigeria's regions by the Richard's Constitution of 1946, Regional Legislatures were granted powers to legislate over a variety of subjects within the Region. These included: Local government; town and country planning; agriculture and fisheries; education; public works for the region; public health in the region; forestry; veterinary services; land; welfare; local industries; native courts; (subject to central legislation regarding appeals to courts outside the regions); direct taxation (other than income tax and companies tax)”⁴

It was however under the Macpherson Constitution of 1951 that a Federal State was structured for Nigeria after a study of the nature of the relationship of the entities that was formed from the amalgamation in 1914. It was at the Constitutional Conference in Ibadan

² Sagay I.; op cit p. 5

³ Wheare K.C.; op cit

⁴ Udo U: (1995) *History and the Law of the Constitution of Nigeria* Malthouse Press Ltd, Nigeria p. 37

that it was agreed that Nigeria should be organized as a federal government. Awolowo wrote:

From our study of the constitutional evolution of all the countries of the world, two things stand out quite clearly and prominently. First, in any country where there are divergences of language and of nationality - particularly of language - a unitary constitution is always a source of bitterness and hostility on the part of linguistic or national minority groups. On the other hand, as soon as a federal constitution is introduced in which each linguistic or national group is recognised and accorded regional autonomy, any bitterness and hostility against the constitutional arrangements as such disappear. If the linguistic or national groups concerned are backward, or too weak vis-à-vis the majority group or groups, their bitterness or hostility may be dormant or suppressed. But as soon as they become enlightened and politically conscious, and/or courageous leadership emerges amongst them, the bitterness and hostility come into the open, and remain sustained with all possible venom and rancor, until home rule is achieved.⁵

Since the 1946 Constitution, the revenue generation and sharing formula has not been clear cut. There has been reform upon reform in the bid to obtain the best type of revenue generation and revenue sharing module to be adopted between the Nigerian central government and sub national government.

“Fiscal federalism concerns the analysis of problems that give rise to, and arise from, the existence of more than one level of government within the same geographical area. The theory of fiscal federalism concerns the division of public sector functions and finances in a logical way among multiple layers of government⁶ In economic terms the performance and success of this tax powers and revenue sharing formula is measured by the impact of the “Vertical Fiscal balance or imbalance” and the “Horizontal Fiscal balance or imbalance”. These economic policies are aimed towards bringing even development of the federating states. It has been noted that:-

⁵ Awolowo O.: (1966) *Thoughts on Nigerian Constitution*, Oxford University Press, Ibadan, Nigeria. Pp. 48-49.

⁶ Ipaye A. (2010) Extract from speech delivered by Ade Ipaye (Special Adviser to the Governor of Lagos State on Taxation) at the Chartered Institute of Taxation of Nigeria (CITN) Joint District Society Quarterly Meeting Held on Thursday, April 8, 2010 at CITN’s Headquarters in Lagos.

... many federal system attempt to achieve equity through revenue- sharing between the central and regions/local bodies and among the regions/ local bodies. This reflects the fact that most times high yielding revenue types are assigned to the central government while substantial and growing expenditures are devolved to the sub national government, reflecting the presence of vertical fiscal imbalance. A vertical fiscal imbalance is measured by the extent to which a tier of government expenditures is financed by own assigned taxes, there is also the horizontal fiscal imbalance, since revenue raising capacities of each of the sub- national government vary and they face different cost, revenue – shock and demand pressures as they attempt to meet their assigned expenditure. In this context, a horizontal fiscal imbalance is measured by the portion of which a sub-national government’s expenditures is financed by the assigned revenues compare to their counterpart. Thus revenue sharing in a federal system to a large extent is aimed at not only to redistribute resources within the nation but also to effectively control the borrowing capacities of the regions/local councils.⁷

In the case of *AG Ogun State v. Aberuagba*⁸ Sowemimo JSC stated that

“Nigeria, a Federation, started with very strong Regional Governments. Powers were exclusively granted to those Regions with regards to revenue collection. The Central or Federal Government, as the case may be, only had such powers as surrendered to it by the Regions. The basis, therefore, of eventual development in our body politics depends on this understanding. When therefore, legislative competence was conferred on the Regions, the Central or the Federal Government was weak, and the Regions strong. In further development and in the increase of States, the balance of legislative powers shifted. The Central or the Federal Government has exclusive powers and sometimes concurrent powers, and the States concurrent and residual powers. Such residual powers, in our own local Nigerian context, demand that certain things which are exclusively State oriented should be controlled by the States, e.g. local markets, local food-stuffs, local palm wine, internal trade and commerce, and other local products in the market. It is therefore that a State has powers to legislate for matters which are exclusively State-oriented”

What then is the nature of Nigeria’s fiscal federalism?

The answer to this question can be traced from the works of the several commissions appointed by various Governors General administering Nigeria over time. The *Phillipson* Fiscal Commission of 1946 under Sir Richardson recommended the principle of derivation

⁷ Rapu S.C. (2006) “Tax Assignment and Revenue Sharing in Nigeria: Challenges and Option” published in *Central Bank of Nigeria Journal on Economic and Financial Review*_Vol. 44 No. 1 March 2006 Pp. 1 – 36.

⁸ (Supra) 430 paragraph F-H

as the basis for distributing federally collected revenue, the *Hick- Phillipson* Fiscal Commission of 1951 recommended the principles of derivation, population and needs as the basis for distributing federally collected revenue, this principle was adopted by the *Louis Chick* Fiscal Commission, the *Raisman* Commission of 1958 also adopted this formula. This was the case until 1964 when owing to dispute amongst the regional governments comprising of the Northern Region, the Eastern Region, Western Region and the Middle Belt, the *Binns* Fiscal Commission was set up to review that tax assignment and revenue sharing formula for the country. The commission recommended the principle of derivation and adopted internal revenue generation efforts and needs. However the current tax assignment and revenue sharing formula use the following indices population 30%, land mass/terrain 10 % equity of states 40% internal revenue generation efforts 10% and social development indicators 10%. The social development indices uses six factors namely: primary school enrollment 24% of 10% direct number of students enrolled in secondary schools 8% of 10 % and inverse number of students enrolled in secondary schools 8% of 10% number of hospital beds 30% of 10% index of access to clean water 15% of 10% and quantity of rainfall 15 % of 10%.⁹

2.3. Historical development of tax and tax policy in Nigeria

Taxation in monetary form was first introduced in Nigeria in 1904 by Lord Lugard when community tax was introduced in northern Nigeria.¹⁰ Nigeria has three set of taxes. Taxes on income of individuals,¹¹ taxes on profit of enterprises,¹² and consumption tax.¹³ The law was amended by the Native Law Ordinance of 1917 by extending the application of

⁹ Rapu SC; op sit, p. 20

¹⁰ Ola C. S. op cit, p. 1, Also Tijani G.: (1986) *Taxation in Some Hausa Fulani Emirates Circa. 1860-1939*, PhD Thesis (Unpublished), University of Birmingham, United Kingdom.

¹¹ This is a direct tax that taxes the income of citizens

¹² This is a tax levied on the profit of enterprises comprising of Companies Income tax, Capital Gain Tax, Petroleum Profit Tax and other taxes levied on enterprises.

¹³ This is an indirect tax and includes the value Added Tax and other taxes levied not based on the income of the individual but based on the spending behaviour of the tax payer.

community tax to Southern Nigeria. The Ordinance became applicable in the entire Southern Nigeria in 1928. In 1940, a Direct Taxation Ordinance¹⁴ was enacted incorporating the Native Revenue Ordinance of 1917, 1918 and 1928. There was the Native Direct Taxation (Colony) Ordinance¹⁵ which applied to natives residing outside Lagos which was then the Capital of the Nigerian Colony. A tax law for Lagos was enacted in 1943 known as the Income Tax Ordinance¹⁶. The Act established the Federal Board of Inland Revenue. The Raisman Commission of 1958 recommended the introduction throughout Nigeria of basic principle of taxing persons other than companies. The recommendation was encapsulated in the Constitution (Order in Council) 1960¹⁷ which also formed the basis of the enactment of the Income Tax Management Act of 1961. The Income Tax Management Act was replaced by the Personal Income Tax Act of 1993¹⁸. Nigeria also has a special type of tax for profit of enterprises whether incorporated or not. This is known as the Companies Income Tax Act and the Companies Income Tax Management Act of 1961. The Act has been amended in 1979 and the Companies Income Tax Management Act has been abrogated and its provisions incorporated into the Federal Inland Revenue (Establishment) Act. With the discovery of oil, it was recommended that a special tax law be enacted to regulate oil producing companies. Hence the Petroleum Profit Tax Act was introduced. The latest version of this Act was made in 1979¹⁹. This Act also exempts the application of Companies Income Tax Act on Companies carrying on the business in Oil industries.²⁰

¹⁴ Ordinance No. 4 of 1940

¹⁵ Ordinance No. 41 of 1937

¹⁶ Ordinance No 29 of 1943

¹⁷ Section 74 of the Constitution (Order in Council) 1960

¹⁸ First enacted as a Decree and incorporated into the Acts of the National Assembly by adaptation under section 305 of the 1999 Constitution of the Federal Republic of Nigeria

¹⁹ Decree No. 95 of 1979

²⁰ Section 19(1)(h) of the Companies Income Tax Act

Nigeria also has consumption tax which was first introduced in 1986 under the Sales Tax Act of 1986. This is the first law introducing indirect form of taxation in Nigeria. This law was replaced with the Value Added Tax of 1993 and its administration was left with the Federal Government and the revenue shared amongst the Federating States under section 163 of the 1999 Constitution of the Federal Republic of Nigeria.

The Government also introduced the Stamp Duties Act²¹ which charges special tax on instruments containing commercial transactions as contained in the Act. The government also introduced a tax on capital known as the Capital Gains Tax Act of 1967.

In order to further clarify the taxing powers of the states, the government enacted the Taxes and Levies (Approved List of Collection) Act to guide the states in the collection of taxes in the areas of their administration. In 2007 the Federal Government amended the Nigerian Personal Income Tax Act and the Federal Inland Revenue Tax (Establishment) Act.

2.4. Interpretation techniques in the enforcement of the provisions of section 4, of the 1999 Constitution of the Federal Republic of Nigeria

Nigeria, being a federal state has imposed on the court the powers of judicial review of the laws passed by the Legislature of the various levels of government. This is to safeguard the union as parties are tempted to make legislation that could infringe on the legislative competence of the central government or the component state.²²

In this wise, the judicial arm of government have devised methods of reviewing legislations. The prominent amongst them are the doctrine of covering the field, pith and

²¹ First enacted in 1939

²² There are several areas where the balancing effect can be seen. For instance Section 8 of the 1999 Constitution empowers the National Assembly to create additional states, but this has always be viewed with suspicions and as such the tedious procedure makes it near impossible to achieve state creation under a democratic dispensation. So also is the case for the creation of addition of local government councils, but those local government councils will remain “inchoate” until the other states, pass a resolution and the National Assembly assents to the creation before the desire can be given effect as decided in the case of *AG of Lagos State v. AG of the Federation*. (2004) 18 NWLR (Part 901) 1

substance and the inconsistency rule. Section 4 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides as follows:

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.
3. The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.
4. In addition and without prejudice to the powers conferred by subsection (2) of this section, the National Assembly shall have power to make laws with respect to the following matters, that is to say:-
 - a. any matter in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
 - b. any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.
5. If any Law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other Law shall, to the extent of the inconsistency, be void.
6. The legislative powers of a State of the Federation shall be vested in the House of Assembly of the State.
7. The House of Assembly of a State shall have power to make laws for the peace, order and good government of the State or any part thereof with respect to the following matters, that is to say:-
 - a. any matter not included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.
 - b. any matter included in the Concurrent Legislative List set out in the first column of Part II of the Second Schedule to this Constitution to the extent prescribed in the second column opposite thereto; and
 - c. any other matter with respect to which it is empowered to make laws in accordance with the provisions of this Constitution.

The case of *Attorney General Ogun State v. Aberuagba*²³ is a good example that illustrates the attitude of the court in the interpretation of the effect of the above provision of the Constitution. The facts of this case is that, the State House of Assembly of Ogun State enacted the Sales Tax Law which seeks to charge taxes on all taxable products brought

²³ Supra

into the state and on supply of goods and services in any inn not exempted from the requirement of registration under the Law. “Taxable product” interpreted to mean “petrol, diesel oil, petroleum products other than petrol and diesel, drinks (Beers and Alcoholic spirits) tobacco, paints, sales and services provided in inns to lodgers and others”.

The Plaintiffs who are Respondents at the Supreme Court brought an action claiming against the Defendant seeking a “declaration that ... Sales Tax Law 1982 is inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria and accordingly void.” The trial court transferred the suit to the Court of Appeal for determination under the “Case Stated Procedure”. Dissatisfied with the decision of the Court of Appeal, the Respondent appealed to the Supreme Court. The appeal was determined by the full court presided by seven Justices of the Supreme Court with four Justices consenting with lead judgment of Justice Mohammed Bello and two other justices dissenting in part but concurring with the general finding of the lead judgment and one justice of the Supreme Court dissenting from the majority. The Items on the Exclusive Legislative List that were determined in the case were Item 15 of the Exclusive Legislative List dealing with the legislative Competence on issues relating to “Customs and excise duties”²⁴ and Item 61 of the Exclusive Legislative List dealing with legislative competence on areas of “Trade and Commerce”²⁵

Fundamentally, the court recognized and preserved the right of a State to create sale tax on items relating to trade and commerce that are within its legislative competence. Using the interpretation mechanism of the inconsistency with the constitution rule, doctrine of covering the field and the doctrine of pith and substance, the Supreme Court held, (by the majority decision), that:

²⁴ Which is in *pari materia* with Item 16 of the Exclusive Legislative List contained in the Second Schedule of the 1999 Constitution

²⁵ Which is in *pari materia* with Item 62 of the Exclusive Legislative List contained in the Second Schedule of the 1999 Constitution as Amended

It is axiomatic that in the absence of any constitutional provision, express or implied, to the contrary, the respective taxing powers of the Federation and of a State includes sales taxing power. Accordingly, the Federation is entitled to levy sale tax on any saleable matters within its competence. It must however be emphasized that it is not within the competence of a State:-

- a. To make sales tax law affecting any matters in the exclusive Legislative List; or
- b. To make any sale tax law in the concurrent Legislative List which is inconsistent with any law validly made by the Federation; or
- c. To make any sales tax law in the Concurrent Legislative List on any matter in the Concurrent Legislative List where any law validly made by the Federation has covered the field²⁶

Justice Bello CJN as he then was, after laying down the above formula went ahead to state that: “Any State Government in the Federation of Nigeria has the legislative power to impose sales tax. So long as that sale tax does not discriminate against other products of the State itself, or of other States, it will remain valid”

Having laid to rest the controversy over the powers of State to enact sales tax, the onus now falls on the States to exploit this power by enacting legislations which must be in conformity with the formula laid in the above case.

The provisions of Section 4 of the 1999 Constitution (As Amended) provides the Legislative capabilities of the National Assembly and the State House of Assembly as it relates to the Items stated in the Second Schedule of the 1999 Constitutions (As Amended). By Section 4(5) of the 1999 Constitution (As Amended):-

If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the Law made by the National Assembly shall prevail, and that other law shall to the extent of its inconsistency be void.

The above Section has been interpreted to mean that where the National Assembly exercises its powers to make laws on the items contained on the Legislative List, the State House of Assembly’s Law shall be void only if that law is inconsistent with the law

²⁶ Per Bello JSC p. 413 paragraph D-F

enacted by the National Assembly. In *Attorney General of Ogun State v. Aberuagba*²⁷, the Supreme Court has held that:-

The provisions of Section 4 (of the 1979 Constitution...) are clear. The National Assembly was vested with the exclusive legislative powers in respect of all the matters specified in the Exclusive Legislative List and, save as expressly provided in the Constitution, the House of Assembly of a State have no legislative power in respect of any of the matters in the Concurrent Legislative List but legislations made by the National Assembly on matters within the Concurrent List had supremacy over State's legislation on the same matters. In this respect a law enacted by a State might be void with on the ground of inconsistency as per section 4(5) a... or on the ground of covering the field where the identical legislations, without any inconsistency, on the same subject matter were validly made by the State and the federation. In such a situation the State's Law must give way to the Federation legislation....²⁸

From the above a State Law could actually exist side by side a Federal legislation if it is not inconsistent with the Federal legislation and the Federal legislation is not intended to cover the field. A best example where this kind of situation arose is in the case of *Akwule v. The Queen*.²⁹ In that case, the Northern Regional Government enacted a provision in the Penal Code Law of Northern Nigeria, providing for a severe punishment for a banker who commits the crime of breach of trust. The 1963 Constitution has listed in the Exclusive Legislative List, the powers to legislate on issues of "banking" with the Central Parliament in Lagos. One of the issue that arose for determination, was whether the provision punishing bankers for breach of trust in the Penal Code Law was not null and void owing to its operation in the area where the Constitution clearly reserves for the Federal Legislature. The Supreme Court per Ademola CJF held that:-

The Submission which was made to us is that, with reference to the division of legislative powers, Banking is a subject in the Exclusive Legislative List in our Constitution; that in accordance with section 64 of the Constitution of the Federation (1963) only Parliament can legislate on

²⁷ Supra

²⁸ Supra p. 405 per Bello JSC. See also *Attorney General of Ogun State v. Attorney General of the Federation* (1982) 3 NCLR 166 at 179

²⁹ (1963) AllNLR 105, (1963) NSCC Vol. 3 p. 157

matters in the Exclusive List, which list includes Banks and Banking; that section 315 of the Penal Code, in so far as it relates to bankers, is an encroachment on the legislative powers of the Parliament by the Northern Region legislature; that to the extent therefore that the section relates to Bankers, it is unconstitutional and void. Counsel for the appellant have referred to Item 44 of the Exclusive List, which empowers the Federal Parliament to legislate on “any matter incidental or supplementary (a) to any matter referred to elsewhere in the list”, which under Part III of the Schedule includes offenses and they have argued that penal provisions on Bankers are within the Exclusive competence of the Federal Parliament... For the Crown a number of cases have been cited on the validity of a legislation with limited powers; it will be enough if reference is made to *Gallaghe v. Lynn (1937) A.C. 863*. The legislature of Northern Ireland had passed an Act on Milk and Milk Product, which was attached as being *ultra vires* section 4 of the Government of Ireland Act, 1920, on the ground that it interfered with the trade in milk between farmers outside Northern Ireland and customers within it, contrary to the limitation not to legislate on “trade with any place out of the part of Ireland within their jurisdiction”. Lord *Atkin* said at page 869:-

“the short answer to this is that this Milk Act is not a Law “in respect of” trade; but is a law for the peace, order and good governance of Northern Ireland “ in respect of” precautions taken to secure the health of the inhabitant of Northern Ireland by protecting them from the dangers of an unregulated supply of milk. These questions affecting limitation on the legislative powers of subordinate parliament or the distribution of powers between parliament in a federal system are now familiar, and I do not propose to cite the whole range of authority which has largely arisen in discussion of the powers of the Canadian Parliament. **It is well established that you are to look at the “true nature and character of the legislation”.** If, on the view of the Statute as a whole, you find that the substance of the Legislation is within the express powers, then it is not invalidated if incidentally it affects matters which are outside the authorized field. The Legislation must have a perfectly lawful object, e.g. to promote health of the inhabitants, but may seek to achieve that object by invalid methods, e.g. a direct prohibition of any trade with a foreign country. In other words, you may certainly consider the clauses of an Act to see whether they are passed “in respect of” the forbidden subject.”

Adopting those views for our guidance, it is clear that the legislature of Northern Nigeria has power “to make laws for the peace, order and good government of the region”: Section 4 of the Constitution of Northern Nigeria....³⁰ (Emphasis added)

³⁰ Pp. 160 to 161

From the above authorities, a State Legislature has powers to make tax laws in areas within its legislative competence so long as it is not a contravention of Section 4(5) of the 1999 Constitution (As Amended) and if the legislation is not used as a cloak to infringe on the Federal legislative powers but merely incidental to that power.

Based on these provisions of the law, State Houses of Assemblies have attempted to exploit their powers to impose taxes in areas of their legislative competence in order to enhance their internally generated revenue. For instance the Lagos State Government has enacted the Hotel Licensing Law,³¹ the Hotel Licensing (Amendment) Law³² and the Hotel Occupancy and Restaurant Consumption Law.³³

The Federal Government filed a suit at the Supreme Court, under its original jurisdiction, challenging the constitutionality of the these laws on the ground that these laws are in conflict with the provisions of Section 4(2)(d) of the Nigerian Tourism Development Act,³⁴ a law enacted by the National Assembly and is, therefore, invalid, being inconsistent with the provisions of Section 4(2)(3) and Item 60 (d) Part 1 of the Second Schedule to the Constitution. The Supreme Court dismissed the suit on the ground that

The Federal Government lacks the constitutional *vires* to make laws outside its legislative competence which are by implication residue matters for the State Assembly: the National Assembly cannot, in the exercise of its powers to enact some specific laws, take the liberty to confer power or authority on the Federal Government or any of its agencies to engage in matters which ordinarily ought to be the responsibility of a State Government or its agencies. Such pretext cannot be allowed to enure to the Federal Government or its agencies so as to enable them encroach upon the exclusive constitutional authority conferred on a state under its residual legislative power.³⁵

³¹ Cap H6 Laws of Lagos state of Nigeria 2003

³² No. 23 vol. 43 Lagos State of Nigeria Official Gazette 2010

³³ No. 30 Vol. 42 as contained in the Lagos State of Nigeria Official Gazette of 3rd June 2009

³⁴ Cap N137 LFN 2004

³⁵ Judgment of the Supreme Court in the case of *AG. Federation v. AG Lagos* (SC/340/2010) Unreported. Judgment delivered on the 19 July 2013.

Thus it is clear from the above decisions that both legislative arms have powers to legislate on items within their legislative competence on any subject in the Concurrent Legislative List, but not on items in the Exclusive Legislative List. Whilst the federal legislature cannot legislate on areas considered as the residue which are neither listed in the Exclusive Legislative List nor Concurrent Legislative List

2.5 The operation of section 7 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and its relationship with fiscal federalism

Nigeria operates a three tier government. The third tier of government being the Local Government Councils. This third tier is also given the powers, to make bye laws made pursuant to the laws made by the State Houses of Assembly as provided by the Constitution for the generation of revenue. The Items listed in Section 7 and the Fourth Schedule of the Constitution are for the Local Government Council to administer. Any other level of Government which attempt to tamper with the administration of those items will be met with the Brick Wall of the Constitution.³⁶ Section 7(5) of the 1999 Constitution provides: “The functions to be conferred by Law upon local government council shall include those set out in the Fourth Schedule to this Constitution”.

The provisions of the Fourth Schedule is reproduced hereunder for ease of reference:

1. The main functions of a local government council are as follows:
 - a. the consideration and the making of recommendations to a State commission on economic planning or any similar body on –
 - i. the economic development of the State, particularly in so far as the areas of authority of the council and of the State are affected, and
 - ii. proposals made by the said commission or body;
 - b. collection of rates, radio and television licences;
 - c. establishment and maintenance of cemeteries, burial grounds and homes for the destitute or infirm;
 - d. licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts;

³⁶ For instance the decision of the Court of Appeal in the cases of *Eti-Osa Local Government v. Jegede* (2007) 10 NWLR (Part 1043) 537, *Knight, Frank & Rutley (Nig) Ltd v. Attorney General Kano State* (1998) 7 NWLR (Part 556) 1 SC and the case of *AG Cross Rivers State v Mathew Ojua* (Supra)

- e. establishment, maintenance and regulation of slaughter houses, slaughter slabs, markets, motor parks and public conveniences;
 - f. construction and maintenance of roads, streets, street lightings, drains and other public highways, parks, gardens, open spaces, or such public facilities as may be prescribed from time to time by the House of Assembly of a State;
 - g. naming of roads and streets and numbering of houses;
 - h. provision and maintenance of public conveniences, sewage and refuse disposal;
 - i. registration of all births, deaths and marriages;
 - j. 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; and
 - k. control and regulation of –
 - i. out-door advertising and hoarding,
 - ii. movement and keeping of pets of all description,
 - iii. shops and kiosks,
 - iv. restaurants, bakeries and other places for sale of food to the public,
 - v. laundries, and
 - vi. licensing, regulation and control of the sale of liquor.
2. The functions of a local government council shall include participation of such council in the Government of a State as respects the following matters: –
- a. the provision and maintenance of primary, adult and vocational education;
 - b. the development of agriculture and natural resources, other than the exploitation of minerals
 - c. the provision and maintenance of health services; and
 - d. such other functions as may be conferred on a local government council by the House of Assembly of the State.

Many states have attempted to exploit these provisions. Let us use some cases to illustrate the extent of their successes or failure. In the Court of Appeal's case of *Attorney General Cross River State v. Mathew Ojua*,³⁷ the issue that came up for determination was whether the State House of Assembly of Cross Rivers State, has the powers to make laws transferring the powers of the Local Government to collect rates contrary to the provisions of Section 7(5) and Item 1(J) of the Fourth Schedule of the 1999 Constitution as amended. The Court of Appeal held that "... if the constitution has given the function of assessing and collecting property tax to Local Governments, the State House of Assembly cannot

³⁷ (Supra). Also *Knight Frank & Rutley (Nig) Ltd v. AG Kano State* (1998) 7 NWLR Part 556 1 SC

validly make law conferring the assessment and collection of that same tax to the State Government or any agency of the State Government”³⁸ In *Knight Frank & Rutley (Nig) v AG Kano State*,³⁹ the Supreme 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 of the 1979 Constitution which is *pari materia* with the provisions of the Fourth Schedule of the 1999 Constitution as Amended.⁴⁰ Also in *Bamidele v. Commissioner for Local Government (Lagos State)*,⁴¹ the Court of Appeal Lagos Division, considered the Constitutional functions of Local Government Councils and declared (per Uwaifo JCA) 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.

Thus, the Court has continued to protect the forte of the Local Governments with regards to their constitutional functions. Thus, a State Government will have to take constitutionally recognized steps in obtaining delegations as was stated in the *Bamidele’s* case before it can carry out local government constitutional role. It is however important to note that the problem of identifying areas of tax legislative competence of a State with regards to Local Government has been further reduced by the enactment of the Taxes and Levies (Approved List for Collection) Act⁴² which provides a list of areas of tax legislation competences for the various levels of government in the Federation. Note however that this Act is only applicable under the current dispensation, to the extent of its consistency with the provisions of the Constitution.

³⁸ p. 17. Also the Case of the case of *AG Lagos State v. Eko Hotel Limited* (Supra)

³⁹ (1998) 7 NWLR (pt. 556) page 1

⁴⁰ Ibid per Uwais CJN at p 23.

⁴¹ (1994) 2 NWLR (Part 328) CA.

⁴² Cap T2 Laws of the Federation of Nigeria 2004

2.6. The operation of section 162 and 163 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) and its relationship with fiscal federalism

The revenue sharing formula is contained in Section 162 and 163 of the 1999 Constitution [As amended] and the Allocation of Revenue(Federation Account etc) Act⁴³ are the regulating the revenue sharing formula in Nigeria. Section 162 of the 1999 Constitution (As Amended) provides as follows:

Section 162 provides as follows:

- (1) The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.
- (2) The President, upon the receipt of advice from the Revenue Mobilisation Allocation and Fiscal Commission, shall table before the National Assembly proposals for revenue allocation from the Federation Account, and in determining the formula, the National Assembly shall take into account, the allocation principles especially those of population, equality of States, internal revenue generation, land mass, terrain as well as population density;

Provided that, the principle of derivation shall be constantly reflected in any approved formula, as being not less than thirteen per cent of the revenue accruing to the Federation Account directly from any natural resources.

- (3) 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 State on such terms and in such manner as may be prescribed by the National Assembly.
- (4) Any amount standing to the credit of the States in the Federation Account shall be distributed among the States on such terms and in such manner as may be prescribed by the National Assembly.
- (5) The amount standing to the credit of Local Government Councils in the Federation Account shall also be allocated to the State for the benefit of their Local Government Councils on such terms and in such manner as may be prescribed by the National Assembly.
- (6) Each State shall maintain a special account to be called "State Joint Local Government Account" into which shall be paid all allocations to the Local Government Councils of the State from the Federation Account and from the Government of the State.

⁴³ Cap A15 Ibid

- (7) Each State shall pay to Local Government Councils in its area of jurisdiction such proportion of its total revenue on such terms and in such manner as may be prescribed by the National Assembly.
- (8) The amount standing to the credit of Local Government Councils of a State shall be distributed among the Local Government Councils of that State on such terms and in such manner as may be prescribed by the House of Assembly of the State.
- (9) Any amount standing to the credit of the judiciary in the Federation Account shall be paid directly to the National Judicial Councils for disbursement to the heads of courts established for the Federation and the States under section 6 of this Constitution.
- (10) For the purpose of subsection (1) of this section, "revenue" means any income or return accruing to or derived by the Government of the Federation from any source and includes –
 - a. any receipt, however described, arising from the operation of any law;
 - b. any return, however described, arising from or in respect of any property held by the Government of the Federation;
 - c. any return by way of interest on loans and dividends in respect of shares or interest held by the Government of the Federation in any company or statutory body.

Section 163 provides:

Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in Item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly -

- a. where such tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State;
- b. where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State.

From the above construction, it is clear that the Constitution itself is framed in a way that the Federating States are dependent on the Federation for its revenue with which to run the State. This shows an inherent or deliberate step by the outgoing Military at the time to make the federating units dependent on the central government. The Supreme Court had an opportunity to interpret the import of these provisions in the case of *AG. Federation v.*

*AG. Abia State and 35 Others.*⁴⁴In that case, the Attorney General of the Federation has approached the Supreme Court, under its original jurisdiction as provided under Section 232 of the 1999 Constitution (as Amended) to interpret the purport of the provisions of Sections 162 and 163 *viz a vis* the provisions of Section 2 of the Allocation of Revenue (Federation Account etc) Act⁴⁵ for purposes of determining the revenue accruable to each level of the federation, states and the Federal Capital Territory. It would be recalled that this was the first test case on the operation of fiscal federalism since Nigeria's return to democracy in 1999. Of importance is the fact that the federal government was using the Allocation of Revenue (Federation Account etc) Act in the distribution of revenue at the time. The Supreme Court held that:

Whereas section 2 of the Allocation of Revenue (Federation Account etc) Act provides that:

- i. The amount standing to the credit of the Federation Account shall be distributed by the Federal Government among the various Governments in Nigeria and the funds concerned shall be shared on the following basis, that is to say-
 - a. The Federal Government - 48.5 per cent;
 - b. The State Government - 24 per cent;
 - c. Local Governments - 20 per cent'
 - d. Special Funds -7.5 percent;
 - e. Federal Capital Territory - 1 per cent of the Federation Account;
- ii. Development of the Mineral Producing Areas - Three percent of the revenue accruing to the Federation derived from minerals;
- iii. General Ecological Problems - Two percent of the Federation Account,
- iv. Derivation: - One percent of the revenue accruing to the Federation derived from minerals
- v. Stabilisation Account - 0.5 percent of the Federation Account plus arising out of using mineral revenue, instead of the Federation Account as the basis for allocation to the fund for the development of the mineral producing areas and derivation.

And whereas Section 162(3) of the Constitution provides for the beneficiaries among whom the Federation Account is to be distributed to the effect that;

⁴⁴ (2002) 6 NWLR (Part 764) SC 542

⁴⁵ This was originally enacted as Decree No 16 of 1992 and became operational by virtue of the exercise of the President's powers of adaptation under Section 315 of the Constitution. The Decree is codified as Cap 16 Laws of the Federation of Nigeria 1990 now codified as Cap A15 LFN 2004

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 State on such terms and in such manner as may be prescribed by the National Assembly.

The Supreme Court has held that any entity not stated in Section 162(3) of the 1999 Constitution shall not partake in the share of the federation account, hence it held that the “Federal Capital Territory is not a state or a local government in a state. It, therefore, cannot qualify for distribution of the Federation Account. Nor are the Area Councils in the Federal Capital Territory as they are not local governments "in a State" as provided in sub-section (3)”⁴⁶ this, according to the Supreme Court, is because the Allocation of Revenue (Federation Account etc) Act though enacted as a Decree (with the overriding clause over the provisions of the 1979 Constitution) can only be applicable under the extant Constitution if it passes the inconsistency rule)⁴⁷.

The Court also had the opportunity of interpreting the provisions of Section 163 of the Constitution as it relates to the distribution of revenue generated from taxes collected from various states, the Supreme Court have held that:-

Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in Item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly -

- (a) where such tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State;
- (b) where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State.

⁴⁶ Per Micheal Ekundayo Ogundare JSC (As he then was), in *AG Federation v. AG Abia and 35 Others* (Supra) p. 17

⁴⁷ Section 1(3) of the 1999 Constitution provides that “If any other law is inconsistent with the provisions of this Constitution, This Constitution shall prevail, and that other law shall to the extent of its inconsistency be void”. Therefore the Allocation of Revenue Act is applicable to the revenue allocation by virtue of Section 315 but only to the extent of its consistency with the provisions of Section 162 of the Constitution and so the Supreme Court held in *AG Federation v. AG Abia State* (Supra.)

Item D of Part II of the Second Schedule makes provision for the imposition, by the National Assembly of such tax or duty as the capital gains tax, incomes or profits of persons other than companies and stamp duties. By section 163, the net revenue collected from these taxes and duties is distributed among the states on the basis of derivation. It follows that what net revenue is collected from any state by the Government of the Federation is paid back to that state. There can be no justification for refusing to pay to the 10th Defendant his share of such revenue.⁴⁸

2.7 Classification and sources of tax legislation in Nigeria

The next question to be determined is how has Nigerian courts reacted to attempts by state government to raise additional revenue through legislation of tax laws? The courts have been guided by established rules of interpretation of statutes where there exist two levels of legislative arm of government. Thus, items in the Exclusive Legislative List, the power to make laws on those items is strictly vested in the federal legislature. Example of this is the Custom and Excise Duties, the Companies Income Taxes and the Petroleum Profit Tax e.t.c. on these items, the State Legislature cannot make any law regulating them. If they do, they have run *ultra vires* the constitution and those laws will be struck down for being inconsistent with the provisions of the constitution. In *CNOOC E&P Nigeria Limited v. AG Federation and 2 Ors*⁴⁹ Justice Adamu Bello of the Federal High Court Abuja declined to extend the definition of goods and services to include the assignment of interest in a Petroleum Sharing Contract (PSC) to render the transaction subject to tax under the Value Added Tax Act. The Court in refusing to extend the meaning of services as currently provided for under the VAT Act reasoned that

...[i]f in this country, we need to charge VAT on such incorporeal property like contractor rights of the Plaintiff in the PSC, we need to borrow a leaf from the UK VAT Act, 1994... by amending our VAT Act ... to incorporate the provisions of Section 5(2) of the UK VAT Act which

⁴⁸ Per Micheal Ekundayo Ogundare in *Attorney General of the Federation v. Attorney General of Abia State* (supra)

⁴⁹(2011) 4(TRLN) 184, see the review of the decision made by Mr. Afolabi Elebiju on the case “*All Things Not Bright and VATable*” in *Thisday Lawyer* of 28 June 2011, at Page XII

provides: "...anything which is not a supply of goods but is done for consideration (including, if so done, the granting of assignment or surrender of any right) is supply of services.

The power to legislate on an item listed in the Concurrent Legislatives List, is however shared between the Federal and State legislature. Thus, where there are two legislation, one from the Federal Legislature and another from the state legislature on the subject, the courts considers the provisions of both law to see if the federal legislature desires to cover the field. If the text of the federal legislation shows a desire to cover the field, then the court will declare the state legislation inoperative until the federal legislation is either repealed or amended to allow both laws to operate side by side. Thus it is the pith and substance of these legislations that determines the extent of their co-existence.

Put differently, where both the Federal and State legislature have made laws on the subject, the doctrines of covering the field and pith and substance are used in determining the operation of the State legislation. Where a State tax legislation is enacted in such a manner that it is in conflict with a Federal tax legislation, and it can be discerned that the Federal legislature intended that its legislation should regulate the subject to the exclusion of any other legislation, then the court shall declare the State tax legislation as inoperative. Where however, it can be discerned that both the Federal Legislation and the State Legislation can operate seamlessly on the subject on the Concurrent Legislative List, without causing double taxation and other avoidable hardship on the taxpayer, the court will hold that both laws are effective and operational.⁵⁰

Where the Item is neither listed on the Exclusive Legislative List or the Concurrent Legislative List, it is only the State legislative arm that has the power to make legislation on the item. Because these residue of legislative items are not contained anywhere, and the

⁵⁰ Oluyede P.A.O: (2001) *Constitutional Law in Nigeria* Evans Brothers (Nigeria Publishers) Limited 1st Edition Reprint 2001 p. 77

issue has not been tested in court, there is doubt as to whether the courts will declare a federal legislation *ultra vires* merely because it is not contained in either of the Exclusive Legislative List or Concurrent Legislative List

Based on the above analysis and a review of the provisions of the Constitution, it is safe to provide four categories of taxes based on the legislation establishing the tax and the tier of government empowered to administer the tax. First, we have taxes that can be considered as “federal taxes” because they are solely within the legislative and administrative competence of the National Assembly. These taxes include the taxes imposed under the Custom and Excise Duties Act, The power to levy custom and excise duties is contained in the Exclusive Legislative List of the 1999 Constitution (as Amended). Pursuant to that power, the National Assembly enacted the Customs and Excise Tariff, ETC (Consolidation) Act⁵¹, Companies Income Tax⁵², Petroleum Profit Tax Act⁵³, and Education Tax⁵⁴

The second category of tax laws in Nigeria are those tax laws which legislative source is vested in the Federal legislature but its administration is conferred on both the Federal and State Government. A typical example of this category of taxes is the Personal Income Tax. The power to legislate on the personal income of persons in Nigeria is vested on the National Assembly.⁵⁵ However the administration of this tax is done by both the Federal Inland Revenue Service (FIRS) and the various States Internal Revenue Services. The FIRS administers the Personal Income Tax in respect of Armed Forces personnel, Police

⁵¹ Cap C49 LFN 2004 established pursuant to Section 4 and Item 16 of Part 1 of the Second schedule of the 1999 Constitution

⁵² Companies Income Tax Act Cap C21 LFN 2004 and Section 7 and the First Schedule of the Federal Inland Revenue Service (Establishment) Act No. 13 of 2007

⁵³ Cap P13 LFN 2004

⁵⁴ Cap E 4 LFN 2004

⁵⁵ Section 4 and Item 59 of Part 1 of the Second Schedule of the 1999 Constitution. It is pursuant to this power that the National Assembly enacted the Personal Income Tax Act Cap P8 LFN 2004 and further amended it in 2011

personnel, Residents of the Federal Capital Territory, External Affairs Officers and Non Residents Income Earners while the State Inland Revenue Service administer the personal income taxes of other persons not mentioned in the above list⁵⁶. Another type of this tax is the Capital Gain Tax and Stamp Duties on documents depending on the executing party. Where the executing party is a corporate entity, it is the Federal Inland Revenue Service that is empowered to administer the tax and where the executing parties are natural persons, it is the State Inland Revenue Service where the transaction was entered that is entitled to administer the tax.⁵⁷

The third category of tax laws are those tax laws whose legislative and administrative powers are vested in both the State and Federal Government. These categories consist of taxes on activities excluded in the Exclusive Legislative List of the Constitution and activities contained in the Concurrent Legislative List. Examples of these categories of taxes are sales tax imposed on the goods.⁵⁸ It has been submitted in *Attorney General of Ogun State v. Aberuagba*⁵⁹ that both the Federal and State Legislature have powers to legislate on sales tax.⁶⁰ However with the enactment of the Value Added Tax Act, it seems that the powers of the State Government to legislate on taxes that have some form of similarity with the Value Added Tax have been eroded. Thus in the case of *AG Lagos State v. Eko Hotel Limited*⁶¹ the Court of Appeal held that

⁵⁶ Section 2 of the Personal Income Tax (Amendment) Act 2011

⁵⁷ This is also dependent on other factors like the subject matter that the stamped document is evidencing.

⁵⁸ This has been very controversial since the decision of the Supreme Court in the Case of *AG Ogun State v. Aberuagba* (Supra). The controversy has become more steep with the commencement of democratic rule in Nigeria. Presently, the Lagos State Government have filed a suit challenging the constitutionality of the imposition of Value Added Tax in Lagos State when that power is not conferred on the National Assembly by either the Exclusive Legislative List or the Concurrent Legislative List. The same argument can be made on the validity of the Taxes and Levies (Approved List of Collection) Act Cap T2 LFN 2004

⁵⁹ Supra

⁶⁰ The Supreme Court in *AG Ogun State v. Aberuagba* (Supra) Per Mohammed Bello JSC p. 417 paragraph H held that "... I may summarize that the Federation has implied exclusive power to make sale tax law in all matters within the Exclusive and Concurrent List while States have implied and residuary power to enact sales tax law on all matters outside the said List."

⁶¹ CA/C/L/428/2005 judgment delivered on 13 July 2007, reported in (2008) AllFWLR (Part 398) 235

“Under the Constitution of Federal Republic of Nigeria 1999 the collection of taxes is listed in Item 7 Part II of the Concurrent Legislative List. The Constitution has conferred on the National Assembly the power to provide for the collection of any taxes or duty on capital gains, incomes or profits of persons other than companies or the administration of the law imposing it shall be carried out by the State Government or other authority of a State. The Value Added Tax Decree No. 12 of 1993 is an existing law deemed to be an Act of the National Assembly by virtue of Section 315(1) (a) of the 1999 Constitution. Item 8 Second Schedule Part II of the Constitution has gone to provide that where an Act of the National Assembly has provided for the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a State, it is that Act of the National Assembly that shall regulate the liability of persons to such tax or duty in such manner as to ensure that tax or duty is not levied on the same person by more than one State. The Constitution has therefore frowned at double taxation... It is my view and this I hold that the Value Added Tax Decree No. 12 of 1993 having imposed tax on the same goods and services imposed by the Sales Tax (Schedule Amendment) Order 2000, the Value Added Tax Decree prevails over the Sales Tax Law of Lagos State as the VAT Decree is deemed to have covered the field. Under Section 7 (1) of the Value Added Tax Decree No. 12 of 1993, it is provided that the Value Added Tax shall be administered and managed by the 1st Defendant. The Taxes and Levies (Approved List for collection) Decree 21 of 1998 also gave authority to collect Value Added Tax. All these provisions prevail over any provision to the contrary in the Sales Tax Law of Lagos State”.

There is also the fourth category of taxes whose legislative powers is conferred on the State Houses of Assemblies but its administration is conferred on the Local Government Councils either by the Constitution or by other law.⁶² This category of taxes also include those taxes that are left within the residual powers of the State House of Assembly to make regulations concerning the subject.

It is also important to note that there are some taxes that are administered by the Federal Government but the revenue generated from those taxes are to be remitted to the States from whence those tax revenue are derived after deducting the cost of administering the tax by the Federal Government. An example of these taxes is the Capital Gain Tax. By virtue of Section 163 of the 1999 Constitution as Amended, these category of taxes and duties collected by the Federal Inland Revenue Service (FIRS) are to be remitted to those

⁶² Section 7 of the 1999 Constitution (As Amended) and Sections 2 and Part III of the Taxes and Levies (Approved List Of Collection) Act Cap T2 LFN 2004

States by the Federal Government by virtue of Section 163 of the 1999 Constitution (As Amended). The matters specified in Item D, Part II of the Second Schedule to the Constitution are:

Any tax or duty

1. on capital gains, incomes or profits of persons other than companies; and
2. documents or transactions by way of stamp duties.

In *Attorney General of the Federation v. Attorney General of Abia State*⁶³ the Supreme Court held that:- “By Section 163, the net revenue collected from these taxes and duties is distributed among the states on the basis of derivation. It follows that what net revenue is collected from any state by the Government of the Federation is paid back to that state”

Another type of tax that has its legislative source and administration in the Federal legislature and the Federal Inland Revenue Service but the revenue derived there from is distributed to the state based on a formula of derivation is the Value Added Tax Act⁶⁴. By Section 36 of the Value Added Tax Act 2007 As Amended, “... the revenue accruing by virtue of the operation of this Act shall be distributed as follows a) 15% to the Federal Government; b) 50% to the State Government and the Federal Capital Territory, Abuja; c) 35% to the local Government.” Generally, the implementation of assigned taxes to any level of government follows four methods namely: independent legislation and administration, dual administration, surcharges...and tax sharing. Rapu explained the classification thus:

Independent legislation and administration guarantees tax sovereignty... Dual administration means that both the centre and the unit have legislative and administrative responsibilities, tax sharing implies that the central government gives a fraction of revenue from some selected taxes collected from a sub-national government to the same government....surcharges

⁶³ Supra p. 68

⁶⁴ Cap V1 LFN 2004

implies that the lower levels of government may surcharge the central government for the taxes collected in its jurisdiction or vice versa.⁶⁵

The essence of this distinction becomes imperative as the success or failure of the operation of any tax legislation is depended on the rightfulness of the legislative source of the tax law within the constitutional frame work of Federation. We had earlier submitted that a law might be declared *ultra vires*, null and void, or inoperative if it is not enacted by the appropriate body empowered to so enact the law or if it is not administered by the appropriate body empowered to so administer it. In the case of *Attorney General Cross River State v. Mathew Ojua*,⁶⁶ the Court of Appeal, Calabar Division, did not hesitate to nullify the Cross State Urban Development Tax Law 2004 which purports to bestow on the Cross River State Board of Internal Revenue the power to collect sanitation levy, tenement rates and other form of taxes reserved for the Local Government Council by Section 7(5) and the Fourth Schedule of the 1999 Constitution and the Taxes and Levies Approved List of Collection Act. The Court of Appeal, per Akaahs JCA (As he then was) held that “... if the Constitution has given the function of assessing and collecting property tax to Local Governments, the State House of Assembly cannot validly make law conferring the assessment and collection of that same tax to the State Government or any agency of the State Government”⁶⁷

Thus, in order to achieve tax prosperity, the tier of government in a federation must ensure that it is swimming in safe waters by legislating on only areas of its legislative competence or else like Napoleon Bonaparte, take itself to Waterloo.

⁶⁵ Rapu SC.; op cit p. 7

⁶⁶ (Supra). Also *Knight Frank & Rutley (Nig) Ltd v. AG Kano State* (Supra)

⁶⁷ P. 17 Also the case of the case of *AG Lagos State v. Eko Hotel Limited* (Supra), the case of *Bamidele v Commissioner of Local Government (Lagos State)* (1994) 2 NWLR (Part 328) 568, *Eti-Osa Local Government v Jegede* (Supra)

CHAPTER THREE:

CHALLENGES TO THE IMPLEMENTATION OF AN EFFECTIVE TAX SYSTEM IN NIGERIA

3.1. Introduction

The chapter will analyze the social, political and legal impediments to the effective tax system in Nigeria. Tax is introduced as an instrument for efficient social engineering. It seeks to provide the resources for the management of the institution of government and the provision of basic amenities for the members of the society. Its success as a virile source of revenue for the provision of social services is dependent on the planning and implementation that follows its imposition. In 1978, the British Government set up the Meade Committee which prepared a report on the Structure and Reform of Direct Taxation in the United Kingdom. The report gave some basic characteristics of an efficient tax system to include the following:-

- a. An efficient tax system is one which gives incentives and provides economic efficiency to the tax payer. It must have the tendency to enable the tax payer operate at his best within the tax system encouraging him to earn income, save from the income and take business risk for the investment of the revenue generated from the environment without fear of any detriment owing to the existing tax laws.
- b. It also identified a good tax system by the class of people benefitting from the revenue derived from the tax pool. Thus, a good tax system is expected to provide social amenities to the contributors of the tax revenue so as to give impetus to the tax payer to abide by the tax law and file his tax returns promptly and accurately.
- c. It also identified an efficient tax system as one where the procedure for computing and filing tax return is simple, cost effective and administratively easy to run.

- d. The report also identified an efficient tax system as one which is operated by highly qualified staff with the highest level of professionalism and ethics in the administration of taxes.
- e. Flexibility and fairness is another quality of a good tax, a good tax system is one where all the tax payers within the tax net are taxed with the same criteria and all tax payer accept the tax system as fair and equitable to them.

A tax system that possesses all of these characteristics is bound to succeed. Does the Nigerian tax system possess these characteristics?

The problems inhibiting the effective implementation of taxation in Nigeria can be summarized under the headings of: (a) socio-cultural background of the Nigerian people. (b) dearth of comprehensive data base of taxable persons and taxable economic activities. (c) tendency of people evading and avoiding tax. (d) The effect of corruption on the implementation of tax in Nigeria. (e) The government's comfort in its use of oil revenue in executing its social contract with the people. (f) The fluidity of tax powers of the different tiers of government. (g) Lack of political will of the government to pursue an effective tax regime.

These are the humungous challenges to Nigeria's tax system. Each of these challenges is considered under the succeeding subheadings.

3.2. The socio cultural background of the Nigerian people.

Modern day method of taxation is alien to the African culture because the concept of citizens of a state contributing funds for the development of the society is not known to them. Rather, a typical African setting contributes human labour for the development of the society. Thus, communal development of road, bridges and other utilities are done

through communal services. The purpose for which tax is levied is mainly for the fulfillment of the obligation of the government to the governed under the concept of the social contract.⁶⁸ The introduction of British form of revenue generation to a society which historically is different from that of the imperial government must be expected to meet some form of resistance. It is submitted that the historical background of the people determine how they receive certain policies introduced by their imperial government. Thus, where the concept to be introduced by the government is antithetical to the basic norm of the people, it will become difficult for the government to achieve high success in the implementation of the law backing such concept.

Law as an instrument of social control must attain the standard of acceptability of the people before it can become effective most especially where the law requires the willing submission of the people for its success. This submission is not a challenge to the definition of law as a command of the sovereign backed by sanction but an intrinsic characteristic/function of the law which all laws must possess in order to enjoy the obedience of the people. This sub head attempts to show the root cause of the challenge for an effective implementation of taxation in Nigeria.

To the pre-colonial territorial occupants of the territory now called Nigeria, taxation (especially the form that requires the tax payer to part with money) is seen as an imposition of the colonial masters and an unheard concept in some part of the areas that was subsequently colonized by the British. The Igbo speaking people of the Eastern part of Nigeria for example, know more of community service for the provision of the social amenities than the payment of taxes for the provisions of these amenities by a formal government. Thus, when there is need to provide these social amenities like the repairs of

⁶⁸ Jean Jacques Rousseau's treatise published in 1762 intended to explain the appropriate relationship between individuals and their government.

a communal road or provision of military force to fight off a social menace in the form of animals attacks to crops or even waging war for the defence of the territorial integrity of their community, it is considered the duty of every member of the community and is seen as the contribution of such member to the effective running of that community. Ola made the same observation when he wrote that "... previously Nigerians cheerfully paid their taxes by rendering free services such as clearing the bush, digging toilets, well, etc, for the benefit of the community as a whole. Failure to render such services usually resulted in seizure of property, which might be reclaimed on payment of money..."⁶⁹

Even the North with its established form of monetary taxation had a problem with the introduction of British form of taxation. It has been erroneously submitted that the North was the model that was used for the eventual introduction of British tax system into Nigeria and the introduction of British type of taxation in that region was seamless.⁷⁰ The reason for the above proposition being that the *Uthmanu Danfodio* Caliphate which ruled over 70% percent of the current Northern region of Nigerian and the Sudan had already introduced Islamic form of taxation in the form of *Zakkat* (poor tax), *Haraji* (general tax imposed on dwellers of the city), farm produce tax, *Jangali* (cattle tax), and other forms of taxes which were either paid at the point of entering a major market in a city or on market days by traders carrying on commercial activities under the protection of the Sultan and *Amirs* ruling the then Hausa kingdom of Bauchi, Daura, Kano, Katsina, Kwarrarafa, Rano, and Zaria.

⁶⁹Ola C.S (2004) *Income Tax Law and Practice in Nigeria*, Heinemann Studies in Nigerian Law, Ibadan, Nigeria, p. 1. Achebe C. (1964). *The Arrow of God*, Heinemann Press, London in 1964 contains examples of this means of "taxation" for the creation of wide road for the white man in the Eastern part of the country.

⁷⁰ Sagay I.: op cit. Also Suberu R.T (2001) *Federalism and Ethnic Conflict in Nigeria*, United States Institute for Peace Press, Washington p. 70

The fallacy of the above proposition has been exposed by recent research conducted on the subject. The research revealed that the North actually saw the British form of taxation as a form of interference with the *Sharia* and their political hegemony contrary to the treaty signed by the British Government and the Sokoto Caliphate wherein a treaty of non interference was agreed upon. The British form of taxation were rejected vehemently by the people and was seen as a tool for foreign exploitation, most especially when the payment was in foreign currencies and to a foreign government. The researcher observed that:-

The Colonial policy of generating revenue based on a theory of land tenure encouraged the British to impose taxes in Sokoto, the capital emirate of the Sokoto Caliphate. This not only raise the much needed revenue for colonial rule in the emirate, where no one had paid land or poll tax under Caliphate rule, but indeed entrenched British supremacy over the Caliphate. The legitimacy of the new taxation was seriously questioned by both local officials and commoners in Sokoto, because they knew about the promise of “non interference” in their religion which the imperial power had made after the Caliphate’s collapse. The colonial state abolished the collection of taxes in kind and local currencies, and insisted on the use of the new British introduced currency.⁷¹

It has also been observed that British colonial taxation scheme “changed” the “Hausa/Fulani” taxation scheme it found, under the guise of continuity of the “Hausa Fulani” schemes the British Colonialist slowly and consistently changed the basis of both the taxing system and the *Caliphal* authority.⁷² This attitude of uprooting the existing system and replacing it with that of the imperial government caused so much bad blood to the imperialist and this bad blood degenerated into confrontation and even “rebellion” by the local people. Examples abound of this rebellion to the introduction of British form of taxation. For example, the introduction of British form of taxation was part of the causation of the famous *Aba Women Riot*. It was reported that:-

⁷¹ Ibrahim M. J. (1998) “Colonial Taxation in the Capital Emirate of Northern Nigeria” in *African Economic History* No. 26, Pp. 83-97

⁷² Tijjani G, (1986) “Taxation in some Hausa Fulani Emirates” c. 1860-1939” (Ph.D Thesis Unpublished), University of Birmingham.

At the end of 1929, just when the government was congratulating itself upon the success with which the difficult task of introducing direct taxation into these provinces had been accomplished, rioting of a serious and unusual kind broke out in Calabar and Owerri. In Owerri province, in the heart of the Ibo country, where a particularly dense population inhabits the palm forest, there is a place called Oloko. Here a warrant chief, Okugo, under instructions from the district officer, was making a reassessment of the taxable wealth of the people. In this he attempted to count the women, children, and domestic animals. A rumor at once spread among the women that the recently introduced taxation of men was to be extended to them. All through this densely inhabited forest country, at intervals of a few miles, are markets where many thousands, mostly women, collect to do petty trading, sell palm-oil to the small middle-men, and gossip with each other.⁷³

The *Aba* riots point to a moral that is applicable far beyond Nigeria. It is what is considered as an unconscious cultural protest against the British Rule. This situation is what has transformed to the concept of “remoteness of taxpayers from the government”⁷⁴ explained as a belief held by taxpayers that they are parting with their hard earned money for the maintenance of an oppressive institution. This is because “it is almost inevitable that there will be fundamental tension between the essential need of the government to raise revenue and the lack of desire of taxpayers to pay for this. The taxpayer feels reluctant to grant government the right to take a chunk of what he considers the monetary reward of his toils.”⁷⁵

Independent Nigeria thus fought for the empowerment of the common man other than impoverishing him by introducing more taxes for the running of an independent Nigeria. In various climes, taxpayers have created both lawful and unlawful avenues, logical and illogical reasons for the non-payment of tax. In America, under the guise of “tax protest”⁷⁶

⁷³ Margery P. (1937) *Native Administration in Nigeria* London p. 7. Another reaction came from Western Region. In the Western Region, the *Egba* Women led a protested against the introduction of taxes introduced by the British Government.

⁷⁴ Kiabel B. D and Nwankwo N. G (2009) *Curbing Tax Evasion and Avoidance in Personal Income*. Owerri Springfield Publishers. p. 54

⁷⁵ Odenyl. C (2011) “The Problem of Tax Evasion and Avoidance” in *The Unity Voice (a Journal of the Nigerian Bar Association Abuja Chapter)* Vol. 1 No 4 June 2011 Pp. 4 and 6

⁷⁶ The term is derived from America where some persons or group object to payment of taxes on the basis that it is unconstitutional or contrary to their conscientious believe to pay taxes.

some tax payers refuse to either file their tax return or even pay for the tax on ground that the levying of taxes is unconstitutional. The case of *Cheek v. United State*⁷⁷ is a reported case on the point. In response to the argument that tax is unconstitutional, the United States Supreme Court held that "...[A] belief that the Federal income tax is unconstitutional is not a misunderstanding caused by the complexity of the tax law, and is not a defense to a charge of "willfulness" to evade tax, even if that belief is genuine and is held in good faith". The Court further held that the defendant's belief that the tax laws were unconstitutional was not a defense, no matter how honestly that belief might have been held.

In Nigeria, we do not have a group of persons engage in the complex, enlightened and systematic form of tax protest like America, tax protest in a less complex form is also present in our clime even though not so christened. A tax practitioner has observed that:

Tax Administrators go through very difficult times, trying to collect tax. They are sometimes manhandled, ruffled or even beaten up in the course of duty. During the Nigerian Civil war 1966-1967, I was the Assessment Authority for Port Harcourt collecting income tax from companies and individuals. An aggrieved taxpayer asked me to tell him why I wanted to collect income tax from his company when my government have (SIC) not paid even one kobo into his company equity capital.⁷⁸

3.3. Dearth of comprehensive data base of taxable persons and taxable economic activities

An effective tax system cannot be attained without a comprehensive data base of taxable population and their taxable incomes. That will enable the government plan and project on the income likely to be derived on these taxable citizens for effective tax administration. Information management is one of the greatest challenges of the Nigerian government at all levels. Data collation and storage is a great problem bedeviling an effective tax administration amongst all tiers of government in Nigeria. Section 2 of the Personal

⁷⁷ 498 U.S. 192 (1991)

⁷⁸ Ochei B.B.: (2008) *The Nigerian Taxman's Book*, Pyramid Unit Publishers Lagos Nigeria p. 1

Income Tax Act (As Amended) provides for the list of persons from whom income tax is collected:

Section 2(1) provides that

Tax of an amount to be determined from the income set out in the Sixth Schedule (In this Act referred as “income tax”) shall be payable for each year of assessment on the total income of

- a. every individual other than persons covered under paragraph (b) of this subsection or corporation sole or body of individuals deemed to be resident for that year in the relevant State under the provisions of the Act, and
- b. The following other persons, that is-
 - i. Persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air Force, the Nigerian Police Force other than civilian capacity
 - ii. Officers of the Nigerian Foreign Service,
 - iii. Every resident of the Federal Capital Territory, Abuja and,
 - iv. A person resident outside Nigeria who derives income or profit in Nigeria

Section 2(1A) provides that:

Notwithstanding the provisions in the principal Act, the relevant tax authority in a state shall have powers to collect tax under this Act from itinerant workers

Sub section 2 provides that

In the case of an individual other than an itinerant worker and persons covered under paragraph (b) of subsection (1) of this section, tax for any year of assessment may be collected only by the state in which the individual is deemed to be resident for that year under the provisions of the First Schedule to this Act and in the case of persons referred to in subsection (1) (b) of this section tax shall be collected by the Federal Board of Inland Revenue

Sub section 3 provides that

In the case of an itinerant worker, tax may be collected for any year by any state in which the itinerant worker is found during the year.

By the provisions of Section 3 of Personal Income Tax Act (As Amended), Income chargeable is

Subsection 1

Subject to the provisions of this Act, tax shall be payable on the aggregate amounts each of which is the income of every taxable persons, for the year, from a source or outside Nigeria, including, without restricting the generality of the foregoing-

- a. Gain or profit from any trade, business, profession or vocation for whatever period of time such trade, business, profession or vocation may have been carried or exercised;
- b. Any salary, wage, fee, allowance or gain or profit from employment including compensations, bonuses, premiums, benefits or other perquisites allowed, given or granted by any person to *any temporary or permanent employee other than so much of any sum as or expenses incurred by him in the performance of his duties, and from which it is not intended that the employee should make any profit or gain*⁷⁹
- c. Gain or profit including any premiums arising from a right granted to any other person for the use or occupation of any property
- d. Dividend, interest or discount
- e. Any pension, charge or annuity
- f. Any profit, gain or other payment not falling within paragraph (a) to (e) inclusive of this subsection

It is clear that the law empowers the taxing authority to obtain information for purposes of tax administration. However, these data is not available. The cause of the problem have been identified by the Nigerian Supreme Court in the case of *Attorney General Ogun State v. Aberuagba*⁸⁰ as the bane of taxation in Nigeria. The Supreme Court stated

In developed countries where retail trade is carried on in departmental stores, supermarkets, drug stores and shops where all sales are accounted for and the business address registered, it is convenient and safe for any government to appoint retailers as its agents for the collection of sales tax. Every penny collected will ordinarily reach the government. The position is entirely different in Nigeria. It is a notorious fact that except in few departmental stores, shops and drug-stores where accounts of sales are kept, the bulk of retail trade is carried on by a swarm of amorphous traders in the market places and in their homes, on our streets and highways, under our bridges and trees. They do not keep record or account of their business dealings and they cannot be reached by any Government.⁸¹

⁷⁹ Introduced by the 2011 Amendment Act to expand income chargeable

⁸⁰ (1985) 1 NWLR (Part 3) SC 395

⁸¹ Per Bello JSC p. 427 paragraph F-H

This problem of poor storage of data persist in every facet of the Nigerian life including the Nigerian tax system, not only do the tax authorities not have record a comprehensive data of taxable persons and taxable activities in Nigeria, they do not have a comprehensive record of the existing tax payers. There is no reliable data bank of the total population of Nigeria so as to bring the Nigerian populace within the tax net. The census report of a country makes it possible for the country to appraise the past, accurately describe the present and make useful estimated plan for the future unfortunately there has been hardly any acceptable census in Nigerian history. The questions have been asked:- “how many Nigerians are there? Nobody knows for certain because accurate census data are not available. We believe that the development of a coordinated, systematic, and responsive database is essential if the government is to make informed decision for policy and planning, to access the impacts of these decisions...”⁸²

Also Ola shared the same view when he stated that

“the difficulty in the way of assessing income are of two sorts: first the difficulty of ascertaining the amount of the annual revenue of different individuals; second, supposing that amount to be known, the difficulty of laying an equal tax on incomes derived from different sources. It will be useless to dwell at any length on the first of these heads. Incomes arising from rent of lands and houses, mortgages, funded property, and such sources, may be learned with tolerable precision; but it neither has become and we make bold to say, never will be, possible to determine the incomes of farmers, manufacturers, dealers of all sorts, and professional men, with anything like even the rudest approximation to accuracy. It is in vain to attempt to overcome this insuperable difficulty by instituting an odious inquiry into the affairs of individuals. It is not indeed very likely that any people, not altogether enslaved, would tolerate in ordinary circumstances such inquisitorial proceedings; but whether they did or not, the result would be the same. The investigation would be worthless; and the commissioners of income tax would in the end have nothing to trust but the declarations of the parties⁸³

⁸² Okolo A: “The Nigerian Census: Problems and Prospects” in *The American Statistician* Vol. 53, No. 4 (1999) Pp. 321-325. See also Abubakar Y.M. (2008) “Tax Policy In Nigeria” Draft Document on the National Tax Policy, Presentation by the Presidential Committee on the National Tax Policy 7 June 2008.

⁸³ Ola C.S.; op cit, Pp. xvii –xviii

This is irrespective of the power given to the tax collector by tax laws to conduct audit on the tax payers declared income so as to verify the returns filed by the taxpayer. Section 46(4) of the Personal Income Tax Act (As Amended) provides that:-

Nothing in the foregoing of this section or any other provisions of this decree, shall be construed as precluding the relevant Tax Authority from verifying by tax audit any matter relating to entries in the book...account or returns as the relevant tax authority may from time to time specify in any guideline by the relevant tax authority

Tax based planning must be based on informed decision with a lot of planning. There must be precision and reasonably accuracy with regards to information of the taxable population and taxable activities going on in the country.

3.4. The problem of tax evasion and avoidance.

Almost all the authorities on taxation classify tax evasion and tax avoidance as “twin brothers” causing the same effect to the tax revenue. The two terms are not the same or even related other than by their phonetic similarity, they are not in the same league. Tax evasion is considered immoral, illegal and sanctioned by penal law, defined as “...the deliberate misrepresentation or concealment of the true state of the affairs of the taxpayer to the tax authorities to reduce tax liability and includes in particular dishonest tax reporting (such as declaring less income, profit or gain than actually earned; false invoicing and disguising the cost of goods and services or overstating deductions and exaggerating the real cost of transactions to minimize taxable profits”.⁸⁴ Tax evasion is deceptive and criminal.

On the other hand tax avoidance is not considered illegal or immoral as the law itself do not consider the payment of tax as a moral duty but a legal one, which only arises by the establishment of statute. There is nothing wrong in using to your advantage existing legal

⁸⁴ Chinedum Odenyl: op cit. p. 4

loopholes in avoiding tax. This has been accepted by the English court as a clever move.

In the case of *Cape Brandy Syndicate v CIR*⁸⁵ J Rowlett stated that

In taxation you have to look simply at what is clearly said, there is no room for any intendment, there is no equity about tax you read nothing in, you imply nothing but you look fairly at what is said and at what is said clearly and that is the tax.” This mode of interpretation of tax laws is what encourages tax avoidance for what is not stated and cannot be fairly deduce as the meaning of the legislation cannot be interpreted as the tax.

The courts seem to have moved from this type of interpretation of tax laws. In the recent case of *Greenberg v. IRS*⁸⁶ Lord Reid remarked that

We seem to have travelled a long way from the general and salutary rule that the subject is not to be taxed except by the plain words. But I must recognize that the plain words are seldom adequate to anticipate and forestall multiplicity of ingenious schemes which are constantly being devised to evade taxation.⁸⁷

In the English case of *Ayrshire Pullman Motor Services v. IRS*⁸⁸ the Court held that:-

No man in this court is under the smallest obligation, moral or otherwise to arrange his legal relations to his business or his property as to enable the Internal Revenue to put the largest possible shovel in his stores. The Inland Revenue is not slow, and quite rightly, to take advantage open to it under the taxing statutes for purposes of depleting the tax payer’s pocket. And the tax payer is, in like manner entitled to be astute to prevent, so far as he honestly can, the depletion of his means by the Internal Revenue

In the case of *Partington v. Attorney General*⁸⁹ the court held that

If a person sought to be taxed come within the letter of the law he must be taxed, however the hardship may appear to be. On the other hand, if the crown ...cannot bring the subject within the spirit of the law, the subject is free...if there be admission in any Act what is called an equitable consideration, certainly such a construction is not admissible in a taxing Act

Thus, tax avoidance is the arrangement of one’s finances within the law in such a way that the tax liability is avoided or reduced. It involves all arrangements to reduce, eliminate or defer tax liability within the boundaries of the law.

⁸⁵ 12TC358

⁸⁶ (1971) 47TC

⁸⁷ Ibid at 272

⁸⁸ (1929)14 TC754

⁸⁹ (1869) L.R. 4 E&I. App. 100

The problems bedeviling an effective implementation of tax system is like a vicious cycle. One problem is linked with the other in the chain. If the Nigerian government has sufficient information (data) of taxable persons and the taxable activities in Nigeria, it may be able to effectively combat tax evasion and make plans to net in income that could have gone under the radar with the device of tax avoidance owing to responsive legislative approach to the combat tax avoidance. It has been observed that;

...one of the greatest problems facing the Nigerian tax system is the problem of tax evasion and tax avoidance. While tax evasion is the willful and deliberate violation of the law in order to escape payment of tax which is unquestionably imposed by law of the tax jurisdiction, tax avoidance is the active means by which the tax payer seeks to reduce or remove altogether his liability to tax without actually breaking the law.⁹⁰

Dishonesty in the preparation of tax returns and taxable income is the bane of an efficient tax system in Nigeria. The amount lost to tax evasion and tax avoidance is inestimable. Active legislative steps needs to be taken to plug identified leakages because funds derived from tax can be used to cushion any shortfall in crude oil revenue and could even be used as alternative source of revenue in the short term and the main source of revenue in the long term with the right political will and right laws properly harnessed.

Tax revenue is considered as the “most promising long-term source of new funds for development, and also a politically attractive medium”⁹¹ for augmenting revenue shortfall.

Domestic revenue mobilization is key to sustainable development finance:- only self sufficiency will allow the development of fully-functioning states with flourishing systems of political representation and economies reflecting societies’ expresses preference in regards to, for example inequality. Tax evasion and tax avoidance are important insofar as they affect both volume and nature of government finances⁹²

⁹⁰ Kiabel B.D. and Nwankwo N. G.; op cit. p. 51

⁹¹ Cobham A.; op cit. p.2

⁹² Ibid p. 2. He further observed that due to political difficulty of introducing new taxes, it will be safer to proffer better means of effective application of existing tax laws, compelling wider obedience to tax laws and showing political will to enforce tax codes irrespective of the person involved.

The government has not made any serious attempt to remedy this problem. Politicians in the United States must show a continued and persistent tax compliance to be eligible to contest in any election. In Nigeria, there is no such requirement for the provision of evidence of payment of taxes. The relevant provisions of the Electoral Act 2010 which provides for the qualification of contestant, merely requires an aspirant to comply with the provisions of the Act.⁹³ No mention is made of the fulfillment of his tax duties. Though Section 24(f) of the 1999 Constitution as amended provides that; “it shall be the duty of every citizen to – declare his income honestly to appropriate and lawful agencies and *pay his tax promptly*”. (Emphasis Supplied). There is no follow up by the government agencies to confirm if the income declared in the tax clearance certificate is true. The Government seems not to bother that a person has not been paying taxes for a major part of his life. How will such a person make useful tax laws for an efficient tax system in Nigeria?

It is the social and economic responsibilities of the government under Chapter II of the 1999 Constitution of the Federal Republic of Nigeria (as amended). Thus if the Nigerian citizens pay their taxes as at when due, they will be entitled to have more interest in the manner in which the government is run and as such can protest mis-governance. This work is undertaken because we accept the view that tax run economies are more accountable to the populace than natural resource run economies. It is believed that where the government revenue source changes from revenue generated from crude exploration to taxes obtained from the people, the government will be compelled to cut its waste and focus on good leadership because of the fear of the wrath of its citizens. Leadership will then become the shared responsibility of the leaders in authority as well as the populace.

⁹³ Section 34 and 118 of the Electoral Act 2011

Another aspect of this problem that was prevalent before the passage of the Personal Income Tax (Amendment) Act is the penalty provided for tax evasion in Nigeria. Section 74 of the Personal Income Tax Act provides as follows:-

A person who being obliged to deduct tax under section 69,70,71 or 72 of this Act, fail to deduct or having deducted fails to pay to the relevant tax authority within thirty days from the date the amount was deducted at the times the duty to deduct arose is guilty of an offence under the Act and is liable on conviction to a fine of N5,000 or 10 percent of the amount of the tax due, whichever is higher, in addition to the amount of tax deductible or deducted plus interest at the prevailing commercial rate.

However the old Section 74 has been replaced with a new Section 74 which provides that:-

Any person or body corporate who, being obliged to deduct tax under section 69, 70, 71or 72, fails to deduct, or having deducted fails to remit such deductions to the relevant tax authority within thirty days from the date the amount was deducted or the time the duty to deduct arose shall be liable to a penalty of an amount of 10 percent of the tax not deducted or remitted in addition to the amount of tax not deducted or remitted plus interest at the prevailing monetary policy rate of the Central Bank of Nigeria.

The new Section 74 has introduced stiffer penalty which will discourage tax evasion. And it is hope that the tax administrator will take advantage of this novel legislation in the administration of the Personal Income Tax Act (As Amended)

This amendment does not cure all the defects in the Act. As there still exist some provisions of the Act which the author consider mild. For instance under the Personal Income Tax Act,⁹⁴ the employer whose duty it is to deduct and make tax returns for the income tax deducted under the Pay As You Earn scheme are penalize for failure to carry out the statutory duty of deducting the tax from source or making the tax return after the deduction of the taxes. Section 76(4) provides that:-

A person who without lawful justification or excuse...fails to pay the income tax within the period of one monthshall be guilty of an offence under this Act.

⁹⁴ Cap P8 Ibid

This offence is contained in Section 94 of the Act. Section 94 of the Act provides:-

A person guilty of an offence under this Act, or a person who contravenes or fails to comply with any provisions of this Act or any rule or regulation made thereunder for which no other penalty is specifically provided, shall be liable on conviction to a fine of two hundred Naira and where the offence is the failure to furnish a return, statement or information or to keep records required, a further sum of forty Naira for every day during which the failure continues, and in default of payment, to imprisonment for six months, and the liability of such further sum shall commence from the day following the conviction or from such day thereafter as the Court may order.”

One will argue that the penalty for tax evasion⁹⁵ is very paltry, other than the fact that the burden of proof requires the proof of both the *actus reus* and *mens rea* of the offence. The penalty recoverable may not even cover the cost of litigating the offenders in a court of law.⁹⁶ The case of *Regina v. Simmonds and Others*⁹⁷ offers a good example of the complexity of proving tax offences before the court of law. The appellants, four men and certain limited companies, were tried with others on an indictment containing three counts of conspiracy to cheat and defraud the revenue of purchase tax on wireless receiving sets, two counts of furnishing a false purchase tax return with intent to deceive and one count of fraudulent evasion of tax on wireless receiving sets. At the request of the prosecution, separate trials of the counts were not ordered. The trial lasted 81 days; during its course, two jurors dropped out because of illness, and towards the end an attempt was made to bribe one of the remaining ten. There were 3,000 exhibits, as well as a mass of other documents to be considered. Examination and cross-examination of prosecution witnesses

⁹⁵ As contained in Section 94 of the Act.

⁹⁶ Though it can be argued that the essence of penalty in law is to purge the person of the offence and not to punish the offender, tax crime should be an exception to this general rule in criminology so as to give the law the capacity of serving as deterrent to would be offenders. Section 77 of the Personal Income Tax Act (As Amended) now provides for “interest on an annual basis at bank base lending rate from the date when the tax becomes payable until it is paid”.

⁹⁷ [Court Of Appeal] [1969] 1 Q.B 685

covered 1,400 pages of transcript. The appellants were convicted and a joint and several order for costs was made against them.

On appeals against conviction, on the grounds, inter alia, (a) that the length and complexity of the trial had been such that justice could not be done to the individual defendants, whatever care the judge took, and (b) that the first two conspiracy counts were statute barred since they were in reality not common law conspiracies but conspiracies to commit the statutory offence of evading purchase tax contrary to the Finance Act, 1944, s. 17, and thus subject to the time limit of three years, imposed by the Purchase Tax Act, 1963, s. 34 (4), within which prosecution must be commenced. Dismissing the appeals, the court held:

(1) that although a trial which assumed such proportions cast an inordinate burden on all concerned and greatly increased the risks of injustice, the case had been in essence a simple one and both judge and jury had discharged their duties meticulously and no miscarriage of justice had ensued.

(2) That the offence of a common law conspiracy to cheat and defraud the Crown of revenue had been current for over a hundred years, and was a proper charge to bring; and even if the conspiracy charged had been a conspiracy to commit the offence.

To this end it has been observed that:-

A recurring problem with personal income tax in Nigeria is the non-compliance of employers to register their employees and to remit such taxes to relevant authorities. To address this, in 2002 the government amended the 1993 Personal Income Tax Act to make non-compliant employers liable to penalties up to N25,000, as well as liable for the payment of all tax arrears. Employers failing to keep proper records would also face a penalty of N 5,000. A fine this small tends to encourage tax evasion since the penalty for been caught is lower than the cost for non-compliance. The issues of unremitted funds from the PAYE system and withholding taxes particularly among government ministries and agencies as well as lax adherence by all three levels of government to the approved list for (tax) collection, as stipulated by the 1998 Taxes and Levies Act, have over the past five years attracted the attention of Joint Tax Board (JTB)⁹⁸

⁹⁸ Abubakar Y. M. Op sit p. 12

Tax enforcement requires a proactive legislation and an efficient vigilant taxing authority.

Tax evasion and avoidance is a problem that must be surmounted for the achievement of an efficient and effective tax system.

3.5. The effect of corruption to the implementation of tax in Nigeria

Perhaps it is best, in the course of discussing this subhead to streamline the scope of term corruption as used under this sub-head. The term corruption has evaded a precise definition.

The term corruption has been defined as “the use of public office in a way that forsakes the public interest, measured in terms of mass opinion, elite opinion or both, in order that some form of personal advantage may be achieved at the expense of that public interest”.⁹⁹

It has also been defined “as any form of reciprocal behavior or transaction where both the power/office holder can respectively initiate the inducement of each other by some rewards to grant (illegal) preferential treatment or favour against the principles and interest of specific organization, or (public institution) within the society”.¹⁰⁰ It is also defined as “any act or omission which spoils, taints or degenerates a hitherto legally thriving system.

It had also been defined amongst many other definitions as a deviation from or perversion of the system”¹⁰¹. The above specie of corruption has its impact on the psyche of the tax payer and affects the effective implementation of tax administration.

It is clear that tax revenue is paid into the commonwealth for the purpose of advancing the welfare of the members of the commonwealth. By the provision of the amenities under the

⁹⁹ Gibbons, K.M. and Rowat, D.C Eds (1976) *Political Corruption in Canada*, Toronto, McClelland and Stewart p. 5

¹⁰⁰ Akindele S.T, “Corruption: An Analytical Focus on the problems of its conceptualization” IFE Psychologia 3(1) cited with approval by Aluko M.A.O. (2002) “The Institutionalization of Corruption on Political Culture and Behavior in Nigeria” published in *Nordic Journal of African Studies* 11(3) 393-402

¹⁰¹ Konyin A. (1996-1997) “On the Trail of a Spectre- Destabilization of Developing and Transitional Economies: A case Study of Corruption in Nigeria” published in *Journal of International Law* p. 545

social contract which was the consideration for which the tax payer agrees to part with a percentage of his hard earned income in the first place. It accords with common sense that where the tax payer feels that his hard-earned resources is not used for his betterment but for the development of the private estate of public officials, then there will be a serious problem of effective tax administration.

The impact of corrupt practices in the Nigerian polity is alarming. It has the potential of upstaging the existing social ethical order and eroding the principles upon which a government lawful structure is built.¹⁰²

Where corruption governs the society, then it reigns supreme over everything lawful. Societal acceptance of corruption is the reason why the generality of the Nigerian masses do not consider it strange when policemen ask for/take bribe or where people bribe their way into public positions or towards receiving public facility or service. It is considered as partaking in the sharing of the “National Cake”.

What is the effect of the political behavior of these public office holders to the psyche of the common man whose tax is expected to fill the treasury where this corruption is carried out? This social problem of corruption permeates into every facet of the society including the tax system. On the part of the tax payer, he becomes susceptible to tax evasion. It becomes acceptable and even moral to refuse to pay tax or to even subvert tax law as is the case with every other law in the society.

The taxing authority on its part, owing to the complexity of the tax laws, low salaries and wages in some cases, absence of professional ethic and complete acceptance of corrupt

¹⁰² Aluko M.A.O.; op cit p. 20.

ethos, participate in the fray in order to make money using his office and earn respect from the society. The tax authority hiding under the complex tax laws, could increase the tax assessment of a taxpayer who is more often than not ignorant of tax laws, and thereby force the tax payer negotiate the assessed tax liability downward. This is done in a way that the taxpayer would be made to believe that both the tax authority and himself are on the same side and since the government is corrupt there will be no advantage in paying such a high amount as tax if he co-operates. The taxpayer in appreciation will be forced to part with some money and a reassessment will be done where he will be given a lesser tax liability.

The taxpayer could also connive with the tax collector to obtain a less assessment and avoid payment of the appropriate taxes. This is because corrupt tax officials could double as tax consultant and assist the taxpayers in evading tax by not disclosing the true tax returns of the tax payer.

Although it has been argued that “by moving away from civil service terms and conditions of service and management practices... many... problems can be overcome. In particular, with higher salaries, staff will not need to seek alternative sources of income; coupled with stricter discipline this should reduce corruption, increase morale and productivity and thus revenue intake.”¹⁰³

This has turned out not to be a panacea to corrupt behavior in the taxing entity, because it is common knowledge that irrespective of the welfare of the staff, where corruption pervades a system, coupled with the insatiability of human want and the societal pressure from relatives of staff from the Federal Inland Revenue Service who harp on their

¹⁰³ Harvey, C. and Robinson M: 1995 “The Design of Economic Reforms in the context of Political Liberalisation: the Experiences of Mozambique, Senegal and Uganda”.² Discussion Paper No. 353 Institute of Development Studies Brighton

problems on the tax officials, who in turn feels bound to render assistance to this teeming dependant in a classic communal nature of the African society. This has been confirmed from a study of the Ugandan Internal Revenue Service.¹⁰⁴

The study showed that even with higher income the malaise of corruption may not go away. Another problem of this corruption is the permeability of corruption amongst members of the society. Even where a person is upright, the perversion of corrupt practices in a society makes its contagious to other honest worker and taxpayers alike. This is coupled with the fact that because the majority of the society is corrupt, it is the corrupt members of the society that get rewarded for being corrupt either with promotion for the tax worker or increase in profit margin for the conniving tax payer to the detriment of the honest tax official and tax payer.¹⁰⁵

Corruption could also have is the effect of dampening the morale of the honest tax collectors and the taxpayers following the impunity with which government treat public officials who are caught looting public funds and the levity with which they are treated when caught.

3.6. The government's reliance on oil revenue.

The discovery of crude oil in Nigeria has tremendously impacted on the government's revenue. This has in turn led to the abandonment of other revenue sources and a near total reliance on oil revenue for the provision of social amenities and the running of the government of the country. Consequent upon the prosperity derived from the exploitation

¹⁰⁴ Fjeldstad O.: "Corruption in Tax Administration: Lessons from institutional reforms in Uganda" Chr. Michelsen Institute Working Papers 2005:10

¹⁰⁵ Mahesh C. P.: (2007) "Corruption in Tax Administration". In World Bank publication on *Performance Accountability and Combating Corruption* edited by Anwar Sha Washington D.C Pp. 285 to 302

of natural resources, Nigeria started showing symptoms of the “Dutch Disease”¹⁰⁶. A manifestation of the Dutch disease is exemplified by the recent struggle by the Governors of the various States to the pay the National Minimum wage. The President signed into law the National Minimum Wage Act 2011 which increased the minimum salaries of civil servants to N18,000. The Governors of the various states are expressing doubt on their ability to abide by the law if the revenue sharing formula is changed. This clearly exposes the challenges faced by the sole reliance of the Nigerian State on the revenue generated from the sale of crude oil. This also exposes the avoidable doom that this research is trying to highlight. Where a State in a Federation complains of its inability to pay its workforce, it clearly shows that the workforce is either not productive, or it has more than it requires or there is no sync between the work force and the revenue generation of that state. Had there been an effective exploitation of the tax potentials of these states, they would have been able to pay the minimum wage with ease.

Nigeria had all the makings of an uplifting tale: poor African nation blessed with enormous sudden wealth. Visions of prosperity rose with the same force as the oil that first gushed from the Niger Delta's marshy ground in 1956. The world market craved delta crude, a "sweet," low-sulfur liquid called Bonny Light, easily refined into gasoline and diesel.... By the mid-1970s, Nigeria had joined OPEC (Organization of Petroleum Exporting Countries), and the government's budget bulged with petrodollars....From a potential model nation, Nigeria has become a dangerous country, addicted to oil money, with people increasingly willing to turn to corruption, sabotage, and murder to get a fix of the wealth....When the oil curse began with that first great gusher in the creekside village of Oloibiri, 50 miles (80 kilometers) west of Port Harcourt, Nigeria was still a British colony. At independence in 1960, few observers expected that Nigeria would mature into an oil giant. But in subsequent decades, the oil companies, led by five multinational firms—Royal Dutch Shell, Total, Italy's Agip, and ExxonMobil and Chevron from the U.S.—transformed a remote, nearly inaccessible wetland into industrial wilderness. The imprint: 4,500 miles

¹⁰⁶ The term was coined by the Economist Magazine in 1977. The term is defined to mean “an increase in revenues from natural resources will de-industrialise a nation’s economy by raising the exchange rate which leaves the manufacturing sector less competitive and public service entangled with business interest” See also M.A. Salisu. (2000) "Corruption and Economic Growth in Nigeria" presented at the International Economics Study Group (IESG) Easter Conference 2000, University of Wales Conference Centre, Gregynog.

(7,200 kilometers) of pipelines, 159 oil fields, and 275 flow stations, their gas flares visible day and night from miles away.¹⁰⁷

With crude revenues accounting for a gradual increase in the Gross Domestic Product of the Nigerian Economy.¹⁰⁸ Our history is a cause of our problem. Due to Military adventure into politics, the laws on revenue allocation and derivation have been so over-centralised by the control of the major sources of revenue. These sources of revenue includes revenue generated from the sale of crude oil which account for 80% of the nations revenue, custom and excise duties, which account for 10% and revenues accruing from other federal government agencies which accounts for the balance.¹⁰⁹

In contrast with the state of affairs before the discovery of crude oil in commercial quantity, agriculture was the dominant sector of the economy, contributing about 70% of the Gross Domestic Product (GDP), employing about the same percentage of the working population, and accounting for about 90% of foreign earnings and Federal Government Revenue. The early period of post-independence up until mid-1970s saw a rapid growth of industrial capacity and output, as the contribution of the manufacturing sector to GDP rose from 4.8% to 8.2%. This pattern changed when oil suddenly became of strategic importance to the world economy through its supply-price nexus, as shown in Table 1¹¹⁰.

Below is a table of the GDP of Nigeria between 1960 to 2002

Table 1 Nigeria: Sectoral Contribution to Gross Domestic Product (GDP)

¹⁰⁷ O'Neill T: (2007) "Curse of the Black Gold: Hope and betrayal on the Niger Delta" published in the *National Geographic Magazine* in February 2007 p.7

¹⁰⁸ Acha J: 2009 "The Role of Oil in Nigerian Economy" Retrieved on June 15 2011 from <http://EzineArticles.com/1904957>. The Article was published on January 21, 2009

¹⁰⁹ Biodun A. (2004) "The Impact of Oil on Nigeria's Economic Policy Formulation." Text of a paper presented at the conference on Nigeria: Maximizing Pro-poor Growth: Regenerating the Socio-economic Database, organized by Overseas Development Institute in collaboration with the Nigerian Economic Summit Group, 16/17 June 2004.

¹¹⁰ Ibid

Sector	1960	1970	1980	1990	2000	2002
Agriculture	64.1%	47.6%	30.8%	39%	35.7%	28.35%
Manufacturing	4.8%	8.2%	8.1%	8.2%	3.4%	5.5%
Crude Oil	0.3%	7.1%	22%	12.8%	47.5%	40.6%
Others	30.8%	37.1%	39.1%	40%	13.4%	25.6%

Source: *Central Bank of Nigeria, Changing Structure of the Nigerian Economy and Annual Report & Statement of Accounts (2002)*

From a close look at the table, it can be discerned that a steady abandonment of other sectors for the oil sector to the detriment of the Nation's economy was emerging. This is not withstanding the fact that the Nigerian Government was not doing anything in the oil sector other than providing regulations for the operation of the oil mining /prospecting leases [OML/OPL] and the collection of royalties for the operation of the leases from the oil mining/prospecting companies operating in the sector. It has been observed that:

The oil boom of the 1970s led Nigeria to neglect its strong agricultural and light manufacturing bases in favour of an unhealthy dependence on crude oil. In 2000 oil and gas exports accounted for more than 98 % of export earnings and about 83 % of federal government revenue. New oil wealth, the concurrent decline of other economic sectors, and a lurch toward a statist economic model fueled massive migration to the cities and led to increasingly widespread poverty, especially in rural areas. A collapse of basic infrastructure and social services since the early 1980s accompanied this trend. By 2000 Nigeria's per capita income had plunged to about one-quarter of its mid-1970s high, below the level at independence. Along with the endemic malaise of Nigeria's non-oil sectors, the economy continues to witness massive growth of "informal sector" economic activities, estimated by some to be as high as 75 % of the total economy.¹¹¹

¹¹¹ Gbadebo Olusegun ODULARU (2008) "Crude oil and The Nigerian Economic Performance" Oil and Gas Business, 2008 retrieved on 15 June 2011 from <http://www.ogbus.ru/eng/>

This informal sector, though growing, was never brought within the tax net. This is because, amongst others, oil revenue was thought to be sufficient for the running of the polity. After the 1975 crude oil crash, the government thought it was all rosy and it paid less attention to other sources of revenue until with the recent global recession which struck the world, a rude shock of the “credit crunch” global recession of 2008/09 that affected the world economy affecting oil prices in the international market.

An effective management of the Nigerian tax system has the capability of being a viable revenue source for the Nigerian government. An effective management of the tax system could lead to a generation of revenue that can upstage oil revenue.¹¹² This is very possible since the income generated from indirect taxes like the Value Added Tax is enormous if we consider the amount of taxable transactions that go on in Nigeria without the payment of any form of tax. The same sentiment has been expressed by the President of the Chartered Institute of Taxation of Nigeria”.¹¹³

3.7. The fluidity of the power to legislate on tax matters by the different tiers of government.

Another problem affecting the efficient administration of tax in Nigeria, is the duality of the power to legislate on taxes by the Federal and State government. The general opinion among scholars is that Nigeria’s fiscal regime is characterized by unnecessary complex, distortionary and largely inequitable taxation laws that have limited application in the formal sector that dominates the economy¹¹⁴.

Based on the above propositions, there have been two species of legal battle for the control of resources by the states and the federal government. Whereas the first specie tries to

¹¹² Okele O. (1999) “Indirect Taxation can Upstage Oil Revenue” published in the Guardian Newspaper of 31 August 1999 p. 34

¹¹³ Steve A. (2009) “Nigeria can rake in more revenue from agriculture than from crude oil-CITN President” published the Sun Newspaper of 27 June 2009 p.12

¹¹⁴ Abubakar Y. M. *Tax Policy in Nigeria* retrieved on 15 June 2011 from <http://www.buzzle.com/authors.asp>

battle the revenue sharing formula adopted under the vertical fiscal policy on the one hand, the other specie tries to challenge the validity of the attempt of the sub-national government to attain an efficient horizontal fiscal policy.

The first type of crisis can be seen in cases like the *AG Bendel State v. AG Federation and Others*¹¹⁵ and *AG Federation v. AG. Abia State and 35 Others*.¹¹⁶ These cases challenged the manner that the revenue accruing to the federal government is shared amongst the federating states. The other specie of cases exposes the attempts by the federating states to harness their tax potentials so as to narrow the gap of their horizontal fiscal imbalance. Prominent amongst this case is the case of *AG Ogun State v. Alhaja Adeyinke Aberuagba*.¹¹⁷

It can be said that the fluidity of the powers to legislate on taxes, and the absence of a clear cut legislation on the revenue generating powers of the states, continue to be a sphinxes in the wheel of taxation in Nigeria. State government are hampered from harnessing its powers to legislate on taxes most especially when the decision of the Supreme Court, in the case of *Attorney General Ogun State v. Aberuagba*,¹¹⁸ dismissed the aspect of the questions in the originating summons that sought to obtain a guide on the powers of States to legislate on inter/ intra state commercial activities liable to state tax administration. The decision rather laid down a general proposition.¹¹⁹

¹¹⁵ (1981) 3 NCLR 1

¹¹⁶ Supra

¹¹⁷ Supra

¹¹⁸ Per Bello JSC in *Attorney General Ogun State v Aberuagba* (Supra) p. 413 paragraph D-F

¹¹⁹ Ibid

This might not be unconnected with the fact that the Court, as being the Apex Court cannot afford to delve into an academic exercise that might come back to hunt it. Thus, Bello JSC (as he then was) held that “The second limb, as to whether the power to legislate on all fiscal subjects have been vested in the Federal Government, is too wide and it smells as an academic question which I would refrain to answer on reference”¹²⁰ However we have seen from the recent decision of the Supreme Court in the case of *AG Fed. v. AG Lagos*¹²¹ that all the items in the Concurrent List and those not listed in the either the Concurrent or the Exclusive Legislative List could be a mine for Revenue Generation.

3.8. Lack of political will for an effective tax regime.

A serious concern is generally the lack of political will by the government of both the Federal and the State to pursue an effective tax regime. Political will refers to the desire and determination of political actors to introduce as well as embark on reforms that will bring significant and persistent changes in the society. Political will can simply be defined as the seriousness shown by the government in the attainment of a particular government goal.

Political will is the steering that is needed to turn the wheels of developmental reforms that do not only meet present needs but also secure the capacity of future generations to meet their own needs. Political will in developing countries rest in the hands of the government and ruling political parties. As a result therefore, a lot of incentives have been offered by international organisations to tilt political commitment in the direction of realising both the present and future needs of developing countries. However the political commitment of most governments today still hovers around the same mantra-exploit the little you have today for the brief time you have it, because that is the only way you can feed yourself and your family today.¹²²

¹²⁰ P. 409 paragraph G

¹²¹ (Supra). Also known as the Tourism Case

¹²² Stephen N. A.: “Political Will and Sustainable Development” published in Human Rights and Sustainable Development. Retrieved on the 15 June 2011 from <http://profiles.tigweb.org/proff>

In order to attain an effective and efficient tax system in Nigeria, the government must exhibit a serious political will to support an efficient tax agency. Thus, it has been noted that "...generally, distributive policies can be optimally formulated and implemented under an efficient institutional and legal framework. Service delivery in Nigeria has suffered serious neglect because of institutional weakness"¹²³.

Credence is given to this point from the effect of the presence of political will in Lagos State thereby improving its internally generated revenue from a mere 3.5 Billion Naira on the monthly average in 1999 to an average of 15 Billion Naira per month since 2007 to its economic advantages and prosperity. Imagine the gap that this revenue has filled in the Lagos horizontal fiscal balance sheet. Further the fact that Lagos relies on taxes to fill the gap in its Fiscal balance Sheet has another advantage. It increases political vigilance of governance by the governed and encourages political participation thereby eliminating the problem of political apathy.¹²⁴ In addition this source of revenue does not come with any form of environmental hazard and no other state could challenge the State's use of the revenue on grounds of revenue sharing formula. Further the Federal Government cannot dictate to Lagos what it should do with these resources. What stops a State like Kano State

¹²³ Festus O. O. and Okwu J. N. "Fiscal Federalism: Fiscal Discipline and Service Delivery in Nigeria" in *Economic Policy Options for a Prosperous Nation* retrieved from <http://www.csae.ox.ac.uk/books/epopn/Fiscalfederalism.pdf> on 25 July 2011. Also Abubakar M. Op sit at p. 3 where he stated that "The political economy of revenue allocation in Nigeria even with the current draft document [i.e. The National Tax Policy] does not prioritize tax efforts. It is, instead, anchored on such factors as equality of states (40 per cent), population (30 per cent), landmass and terrain (10 per cent), social development needs (10 per cent), and internal revenue efforts (10 per cent). The approach, discourages a proactive revenue drive, particularly for internally generated revenue, makes all government tiers heavily reliant on unstable oil revenues which are affected by the volatility of the international oil markets. Aside from the national syndrome of 'cake sharing', the instability and volatility of oil revenue should have created an opportunity for improved tax efforts within the provisions on taxation ratified in the 1999 Constitution. Although some state governments have initiated measures to enhance their tax generation attempts, the outcome has not reflected any level of serious effort"

¹²⁴ The consistent high voters turnout of Lagos State since 1999

from harnessing its tax potentials with the level of commercial activities going on in the city and the high percentage of taxable citizen? Who says that Kaduna State cannot achieve similar revenue prosperity using the same tax system?

Fashola has submitted that to succeed in harnessing taxes "... necessarily involves a huge outlay of financial and human resources, political will and adaptability to change. To be successfully accomplished, this task must keep the tax payers constantly in view, treating them as valued customers to be cultivated and convinced."¹²⁵ He further stated that "constant and unprecedented taxpayer education and public enlightenment on the need to and how to go about paying taxes have been sustained, both in print and electronic media. Prominent citizens, religious leaders, royal fathers, sport personalities, captain of industries and notable actors and actresses were enlisted and engaged in the LIRS [Lagos Internal Revenue Service] campaign drive"¹²⁶

¹²⁵ Fashola B.R.: (2011) Reengineering State Tax Administration Strategies, Systems and Processes: Lessons from Lagos State: Being a paper presented at the Governors Forum in Abuja on 15 May 2011

¹²⁶ Ibid

CHAPTER FOUR:

AN ANALYSIS OF THE LAGOS APPROACH IN THE QUEST FOR TAX PROSPERITY

4.1 Introduction

The last two chapters outlined some of Nigeria's laws regulating tax administration in Nigeria and the problems bedeviling the effective administration of tax in Nigeria. In this chapter, we will espouse the "Lagos Approach" towards addressing the "Dutch Disease" affecting the Nigerian Economy owing to the discovery of crude oil and the fiscal challenges facing Lagos State owing to the deficit of revenue coming from the Federation Account based on the current revenue sharing formula in force in Nigeria.

Thus, those chapters discuss some of the problems of taxation in Nigeria as a viable means of revenue mobilization while this chapter delves on the possible solution to the problem of using taxation as a viable means of boosting revenue base of a State taking into consideration the approach adopted by Lagos State. This research uses Lagos State as the litmus test in exposing the potentials of taxation as a potent revenue spinner for the Nigerian Federation and the States in their quest for increased revenue base. Lagos State is chosen due to the successes it has recorded in increasing its budgetary performance and fiscal independence through the exploitation of non oil revenue base.

It is not an attempt to invite all other States to copy Lagos State *in toto* because like all sub-national governments in a Federation, each sub-national government has its peculiarities, the social nature of Lagos State is not the same with some other states, such that a wholesale copying of Lagos State's approach might lead to a failure of the tax system in the copying state. "The wide disparities in tax bases available to each State produce large differences in internal revenue efforts across the State Governments. This is

attributed to the differences in resource endowments, expenditures, infrastructures and efficiency of tax administration amongst States...”¹

However there exists a peculiar approach that can be adopted by all states in Nigeria to attain tax prosperity even if not to the extent achieved by the Lagos State Government but to a reasonable extent, better than the position in which the other State governments find themselves today. Tax prosperity is dependent on many factors existing in a particular economy. First, there must exist viable economic activities undertaken by the citizens who are the target of every tax system. Put differently, there can be no taxation if the citizens have no earned income. Thus, it becomes incumbent on the government to create a virile economic environment for its citizen’s prosperity. Their prosperity leads to an increase in the Gross Domestic Product² and if harnessed properly will lead to the increase in the Internally Generated Revenue of the State.

Lagos State is chosen for this research because of its promises. The State is located in the coastal boundary of Nigeria and is amongst the first parts of the country that had contact with the British Imperialists since 1861.³ When the colonial masters left in 1960, Lagos was made the capital city of Nigeria. All Federal Revenue was geared towards developing Lagos State to give it the status befitting the capital city of the emerging giant of Africa. With the discovery of oil money the Lagos ports was expanded. Lagos became the centre for international commerce and the contact point of Nigeria to the World. The

¹ Rapu S.C.; op cit p. 22

² Gross Domestic Product is an economic indicator used in determining the level of economic activity in a country measuring the income, production, investment and consumption level of an economy.

³ By the Treaty of Cession entered into on 6th August 1861, King Dosumu (otherwise spelt Docemo) of Lagos and his chiefs ceded to the British Crown the Port and Island of Lagos. For the full text of the treaty, see *The Attorney-General Southern Nigeria v. John Holt & Co. & Ors.*(1915) AC 599 and *The Attorney General v. W.B. McIver & Co. & Ors.* 2 NLR at Pp.4-5

Government undertook many developmental projects. The *Murtala Muhammed* International Airport was upgraded to meet International expectations, the State had world class road networks, the federal Government undertook the advancement of massive housing scheme for the civil servants and other citizens through the FESTAC 77 project and the Federal Housing Authority and provision of the basic needs for economic development. Lagos was on the road to propelling itself into world greatest city.

The economic boom also led to the influx of people from all other part of Nigeria into Lagos State. Lagos State thus became the commercial nerve centre of Nigeria, a haven for those in the search for the greener pastures. To this end it has been observed that:

Lagos State no doubt enjoys a strategic position in the economy of Nigeria. It is the smallest State in the Federation in terms of land space. It occupies 3,577 sq or 0.4% of Nigeria's Land Area. However, about 65% of commercial and business activities are concentrated in the State, especially the city of Lagos. Over 2000 manufacturing industries and 200 financial institutions operate in the State. This and other economic factors attract a high influx of people into the State from all parts of the country. The population has increased tremendously over the years from almost six million in 1991 to about 18 million in 2009. The population growth rate is put at 5% per annum and a population density of 5,032 persons per sq km. Indeed, in some built up area of metropolitan Lagos, the average density is over 20,000 persons per square km...⁴

These are the advantages enjoyed by Lagos State and these opportunities available to the State have been turned into a gold mine.

4.2 Lagos approach toward surmounting the problems of effective tax administration

4.2.1 Presence of political will in the administration of an effective tax regime in Lagos State.

“The journey of a thousand miles begins with a step” best describes the successes of the tax administration in Lagos State. The use of tax as a sustainable source of revenue cannot be achieved in a day. It requires a dedication by the leadership of a State to the consistent

⁴ <http://lagsmepb.org/files/2010%20Price%20summary.pdf> retrieved on 20 April 2011

implementation of tax policies over time.⁵ It is a project of a life time that requires continuous and consistent planning for its efficacy.

The story of the tax success of Lagos State can be credited to Tinubu.⁶ He laid the foundation for the increasing success of the system. With the election of Fashola as successor of Tinubu, the Lagos State fiscal independence quest through got a boost as Fashola continued nurturing the tax culture of the State. In 2006, the State House of Assembly passed the Lagos State Tax Administration Law. This Law was assented to on 13 March 2006. By that Law, virtually everything a Lagos citizen needs to do that requires government participation cannot be done without providing evidence of tax compliance. If you want to obtain licence or renew any licence for anything that requires the issue of licence by the State Government, you must provide evidence of payment of taxes. In fact if you are arrested for violation of road traffic laws, the first thing you will be required to present is your tax receipt. The Government does not patronize any organization that is not prompt with its tax returns. It is quick to distrain any entity that defaults in tax payment.

Section 35(5) of the Tax Administration Law provides:

A Ministry, Department, Agency or official of the Lagos State Government, or any Local Government Council Official, or any corporate body, statutory authority or person empowered in that regard by this or any other law shall demand tax clearance certificate for the three years immediately preceding the current year of assessment as pre-condition to transacting any business including but not limited to the following;

- i. Application for Governor's consent to real property transactions;
- ii. Application for certificate of occupancy;
- iii. Application for registration as a contractor;
- iv. Application for award of contracts by the establishment or conduct of business;
- v. Application for approval of building plans;
- vi. Application for any Government licence or permit;

⁵ Currently the tenure of a democratically elected government at the Federal and State level is just four years renewable for another four years

⁶ The Executive Governor of Lagos State between 1999 to 2007

- vii. Any application relating to the establishment or conduct of business;
- viii. Application for Lagos State Government loan for housing, business or any other purposes;
- ix. Registration of motor vehicles;
- x. Registration of distributorship;
- xi. Confirmation of appointment by Government as Chairman or Member of any public board, institution, commission, company or to any other similar position made by the government;
- xii. Application for registration of limited partnership;
- xiii. Application for allocation of market stalls;
- xiv. Appointment or election into public office; and
- xv. Any other application or process for which tax clearance certificate is required under the provisions of this law or Section 84 of the Personal Income Tax Act.

Lagos State Government on its own part is giving political support to all its agencies enforce this law. Tax enlightenment and tax enforcement is high. Defaulters are prosecuted irrespective of your standing in the society. In fact you are not considered as having any standing if you don't pay your taxes. The government considers every tax defaulter as an enemy of progress because it considers the payment of taxes as the contribution you make towards the fulfillment of its election promises.

4.2.2 *Curbing the socio cultural challenge of tax imposition on persons residing in Lagos State.*

State Government intending to plug its revenue deficit by the use of taxes must bring its citizens on board with its plan and reorient its populace on the advantages of payment of taxes. It has been advised that:

What is required in a developing country such as Nigeria is publicity by government of social amenities such as transport system, water supply, electricity, and the development infrastructure provided from taxes collected, legislation making the keeping of true business accounts compulsory, the existence of only one tax authority in each state; the reorganization of the Board of Internal Revenue to allow for competent and professionally qualified personnel who should be given realistic tax target based on the growth of the Gross Domestic Product in each state, improvement of the collection machinery; the bringing of tax offices nearer to the people; and enforcement of discipline among erring officials.

Taxation should be both source of revenue and a measure of achieving social equity....⁷

A report carried out by the State and Local Government Project (SLGP) under the Department for International Development (DFID) in 2005 reported that:

...[t]axpayer morale in Lagos State is exceptionally low, partly because of the lack of credibility of the present arrangement in the eyes of many of the taxpayers. Crucial for a steep increase in Lagos State's internally generated tax revenue is not the introduction of new taxes or the increase of existing tax rates ... but an increase in compliance, in particular by bringing in more taxpayers in the net of the tax administration...the fact that almost no efforts are made in the area of public relations, taxpayer advice and taxpayer education is another factor that is no doubt harmful to compliance. As everywhere there is no doubt that there is a segment of the business community in Lagos State that wants to get their taxes right and go on with their business without disturbance. It is hard for them however to find the tax legislation or brochures explaining to them how they can comply. Nor is there an LSBIR website containing such information.⁸

This report was taken seriously by the Lagos State Government and it is not resting its oars in the quest of orienting the Lagos people on the advantages of payment of taxes. In all public gathering, on bill boards, through mass media, the populace is being educated on the advantages of tax payment. Evidence abounds on how revenue generated from taxes are expended for the betterment of the taxed populace.⁹ Once the people support the idea behind taxation, the sky is the limit of tax prosperity and the economic development of Lagos State in particular and Nigeria in General.

To prosper in increasing Internally Generated Revenue (IGR), the government must be up and doing in the provision of social service and infrastructure for the economic prosperity of its citizens. The government and the people are partners in progress and must be seen as

⁷ Ola C.S: Op cit p. 72

⁸ Maarten de Zeeuw and Abdulrazaq T. (2005) "Tax Policy Assessment for Lagos State Government" a report of the tax performance of Lagos State prepared by the State and Local Government Program (SLGP) for the Department For International Development CNTR: 00 0512A SLGP Consultants' Report Number 318, May 2005

⁹ Ipaye A. (2009) "Road to Effective Internally Generated Revenue Collection – The Lagos State Experience". Being a paper presented at the Imo State Tax Summit held on 18 August 2009

such in order to achieve the desired goal.¹⁰ Where the people are in agreement with the purpose for which tax is levied, then, it will be easy to administer the taxes. This in turn makes tax collection easier and cost effective. Nobody will ask what the government contributed to the success of his/her business that they now want to collect taxes from them.

4.2.3 *Creating an efficient and comprehensive data base of taxable persons and taxable economic activities of persons residing in Lagos State.*

An efficient tax administration cannot be undertaken without a comprehensive data on tax related activities in a country. This is because, data is what is used in assessing taxes payable by tax payers and estimating revenue to be generated in a tax system. Having obtained data of tax payers and tax related activities, the tax payers must be encouraged to keep record of their commercial entities to assist the taxing authority in ascertaining the authenticity of the return filed by the tax payer. Record keeping has been observed by the Supreme Court as the bane for the success of tax administration in Nigeria. In the case of *Attorney General of Ogun State v. Aberuagba*,¹¹ the Supreme Court observed that the bane of the administration of the Sales Tax Laws which ought to be collected from the final consumer and remitted by the final retailer is the amorphous nature of traders in Nigeria and the absence of record keeping of sales transaction.¹²

¹⁰Ipaye A. (2010): Speech Delivered by the special guest of honour, Mr. Ade Ipaye at The Chartered Institute of Taxation of Nigeria Joint District Society Quarterly Meeting Held On Thursday, 8 April, 2010 at The Chartered Institute of Taxation of Nigeria Headquarters, Lagos, Nigeria. Where he stated that "... [t]axation is however more than revenue generation. If we are to equate taxation with *only* raising sufficient revenue to satisfy the needs of the government, we are going to be doing substantial injustice to the concept of taxation and we are going to be limiting our discussion of taxation to the traditional viewpoint. It is noteworthy that today, taxes have an important role to play in a government's economic and social policy...."

¹¹ Supra

¹² Also the comments of Bello JSC in the case of *Attorney General of the Federation v Aberuagba* (supra) p. 427 paragraph F-H

The Government must devise a means of enjoining citizens to keep record at the pain of punishment. This is all the more so that payment of tax is not a charitable donation that is based on the discretion of the tax payer, but a levy imposed on the actual income of the tax payer based on stated percentages.

Lagos State in order to reduce the incidence of want of data of taxpayers and tax activities appointed a private company, Alpha Beta Consulting Limited to undertake the task of preparing a comprehensive database. The mandate of Alpha Beta Consulting Limited are reproduced hereunder for ease of reference:-

1. Monitoring all revenue generation, collection and accounting activities and operations of the Lagos State Board of Internal Revenue and all Lagos State Ministries, departments and agencies.
2. Conducting a comprehensive enumeration of all taxpayers in Lagos State with a view to compiling a master database of all taxpayers.
3. Developing and maintaining a comprehensive master database of all taxpayers in Lagos State.
4. Ensuring computerisation of all processes, procedures and documentation in respect of all Lagos State revenue collection and accounting.
5. Integrating fully within the EBS-RCM infrastructure all revenue generating, collection and monitoring activities of any and all other consultants as may be appointed by the Employer from time to time.
6. Conducting structured training on the electronic banking system (EBS-RCM) for all relevant staff of the revenue generating agencies.
7. Identifying deficiencies and weaknesses in the revenue generation, collection and accounting systems of the Employer and proffering appropriate recommendations for improvement.
8. Designing the system for the assignment of unique tax ID to all taxpayers in Lagos State.
9. To carry out all assignments necessary for the implementation of an Electronic Banking System of Revenue Collection and Monitoring including System planning, design, hardware and software selection.
10. To ensure prompt posting of transactions and timely account reconciliation by the Participating Banks.
11. To follow-up and assist in the prompt resolution of all outstanding reconciliation items.
12. To produce monthly and periodic reconciliation reports of collections under the System and forward same to the Honourable Commissioner for Finance.

13. To ensure timely distribution of relevant reports to all tax stations, revenue collecting ministries and agencies, and other concerned officials of the Employer.
14. To use data from the System as well as data from other sources in establishing and maintaining a database of all taxpayers in Lagos State.
15. To constantly monitor data in the system for significant trends, relations and potential problems, and promptly bring these to the attention of the Employer.
16. To recommend to the Employer new banks that have installed the necessary facilities and could be appointed to join the Participating Banks.
17. To detect fraud and errors in the System, assist in their resolution and put in remedial measures to prevent reoccurrence.
18. To produce periodic reports on the operation of the system and performance of all Participating Banks.
19. To meet the Employer's requirement for specialised reports and investigations.
20. To ensure the System uptime is not less than 95%.
21. To make necessary arrangement and monitor disaster prevention and data recovery at the Participating Banks and the Locations.
22. To implement and maintain a comprehensive system of data protection, security and backup.
23. To advise and assist the Employer in procuring all hardware, software, and communication facilities required for the System.
24. To arrange and implement a regular programme of maintenance for the System.
25. To prevent obsolescence of the System by implementing regular hardware and software upgrades.
26. To ensure that the System's data structure evolves to meet the changing needs of the Employer.
27. To recommend and co-ordinate the training of staff of the Employer who are involved with the operation of the System.
28. To co-ordinate and liaise between the Employer, technical and financial consultants, finance institutions, and other interested parties that may be involved in the operation of the System.
29. To carry out other assignments as may be specified from time to time by the Employer to ensure the smooth operation of the System.¹³

With the above mandate, Alpha Beta Consulting Limited computerized the Lagos Tax system and introduced two types of Tax Clearance Certificate for the formal and informal sector. Their computerisation efforts and the introduction of the Electronic Tax Clearance Certificate (ETCC), all since November 2000, which are the main factors to which the huge growth rates from 2001 onwards have to be attributed. The State which was

¹³ Maarten de Zeeuw and Taofeeq A: op cit p. 35.

generating as low as six hundred million Naira as its monthly internally generated revenue (IGR) is now generating an average of about fourteen billion Naira. Below is a table showing the IGR of Lagos State between 2005 to 2009

INTERNALLY GENERATED REVENUE OF LAGOS STATE FROM 2005 TO 2009

Year	Internally Generated Revenue for the year
2005	42,283,061,598.19
2006	61,684,478,036.31
2007	83,019,617,502.92
2008	129,563,177,150.12
2009 (Jan- Aug)	103,631,764,927.70

Sources: Lagos State Treasury Office

The efforts of Alpha Beta Limited have been commended by the DFID when it stated in its report that “We visited the premises of ABC and also had a meeting with a delegation of TMAs and TAMAs. In general we are impressed by the contributions they made to revenue generation, their enthusiasm for their work, their professionalism, and the progress they have made in computerization.”¹⁴

The data collected involved information on residential and commercial building, number of workers in the formal sector and also a number of workers from the informal sector. The nature of business carried on by commercial entities etc. The record collected by Alpha Beta Consulting Limited is up to date such that it takes less than an hour for tax payment to be verified online from any part of the world. The tax payer needs only to log into the website of the Lagos State Internal Revenue Service website to confirm payment and he could report any anomaly to the nearest tax administration office.¹⁵

¹⁴ Ibid p. 39

¹⁵ This information is gotten from Olanrewaju T. A., a Senior Special Assistant to the Governor of Lagos State on Taxation that these tax centers are very amenable to taxpayers and are manned by well trained tax official for the effective administration of taxes all over Lagos State.

As with every human society, the Carrot and Stick approach is being adopted. The Government is also prosecuting tax defaulters. Thus, tax compliant citizens of Lagos State are encouraged and tax defaulters are brought under the hammer of the law. This is because Nigerian Tax Laws as with every other tax law provides for compliance at the pain of punishment for tax defaulters.¹⁶

This has in turn brought about tremendous success to the tax administration of Lagos State.¹⁷ Media sensitization of taxpayers have been used not only to remind the citizens of their legal and moral obligation but to also give useful information about time limits, procedure for payment and compliance process and ways in which compliance can be achieved with ease. The tax performance of Lagos State have been recognized by the British Minister for Africa. Bellingham observed that:

...[h]ere in Lagos, I am seeing that economic potential being realised hand-in-hand with improved governance. In my short time in this city, I have been struck by its size and strategic significance as well as its dynamism, energy and abundant optimism. I do not underestimate the challenges for those charged with the responsibility of running it and planning its future, given its rapid growth and the demands placed on the public services, environment and critical infrastructure. But it's clear to me from my meetings so far the current State Administration under Governor Fashola has brought the city in a relatively short time – and **based primarily on tax revenues**. (Emphasis Supplied) Improved business-friendliness, including security and infrastructure, are factors that make an impact internationally and will attract the attention of worldwide investors¹⁸

4.2.4 *Resolving the challenges of tax evasion and tax avoidance.*

¹⁶ Olanrewaju T. A. (2010): “*Tax Crime - Implications And Challenges For Tax Professionals*”(unpublished) in this article, the author made an erudite exposition of tax offence by practitioners and tax payers under Nigerian Law.

¹⁷ The Central Bank of Nigeria Annual Report and Statement of Account for 2009 reported that Lagos State internal Revenue Generation accounted for 62.14 percent of its total revenue base for that year.

¹⁸Bellingham H. “On Prosperity And Nigeria, Lagos: The UK Prosperity Agenda – growth, open markets and good governance” Speech delivered in Lagos in the month of February 2011

Ipaye¹⁹ has summarized the means adopted by Lagos State Government in combating the menace of tax evasion and avoidance in Lagos State. The following as the panacea for resolving the problem.

4.2.4.1. **Simplification of tax system:** Once a tax administration is simplified, it encourages people to comply with the tax laws and open access for more people to enter into the tax bracket. Once this is achieved, a substantial number of unintentional tax evaders would have been recovered into the revenue till. Lagos State has achieved this by reviewing the tax system in Lagos State and creating a table that can be used by any person to determine his/her tax liabilities. Lagos State enacted the Lagos State Revenue Administration Law which re- establishes the Lagos State Board of Internal Revenue Service with a new set of functions as provided in Section 9 of the Law which include the following

- a. Providing general policy guidelines regarding the functions of the Internal Revenue service and supervising the implementation of such policies
- b. Ensuring the effective and optimum collection of all revenue, including levies and penalties due to the State Government under the relevant Federal and State Laws
- c. Doing all such things that may be deemed necessary and expedient for the assessment and collection of revenue
- d. Accounting for all amount so collected in a manner to be prescribed by the Governor
- e. Making recommendation, where appropriate, to the Joint Tax Board on Tax Policy, tax reform, tax registration, tax treaties and exemption as may be required from time to time
- f. Appointing promoting, transferring and imposing discipline on employees of the Internal Revenue Service
- g. Making recommendations to the Governor regarding the terms and conditions of employment and the remuneration of staff of the Internal Revenue Service

4.2.4.2. **Introduction of Electronic Tax Clearance Certificate (The eTCC):** Lagos State has made its tax clearance certificate electronic. The eTCC is a tax clearance certificate

¹⁹Ipaye A (2011) “Options and Ways of Curbing Tax Evasion and Avoidance in Lagos State” Being a paper presented at the Lagos State polytechnic Alumni Association Quarterly Lecture held at the Renaissance Hotel Agidingbi Ikeja Lagos Nigeria on 28 June 2011

that has an electronic chip embedded in it and can be used by both the tax payer and the tax administrator to monitor the returns made and the taxes paid over the return. The eTCC also has a unique Taxpayers Identification Number for the purposes of tracking transactions and accounting for tax paid. For instance, a person who is registering a land transaction can only pay the stamp duties by using his eTCC. This number will be used to verify if the appropriate taxes have been paid on the transaction before the land transaction can be registered and the state will also be able to determine whether he is making the appropriate disclosure of his income for purposes of tax payments.

4.2.4.3. **Establishment of linkages among revenue agencies of the State.** The State government have synchronised all the revenue agencies under the eTCC system such that payments made to Lands Bureau, Motor Vehicle Administration Agency, Ministry of Physical Planning, etc can be tracked. This is because information is key to an effective tax administration.²⁰ Recently the Federal Inland Revenue Service requested all Banks to obtain the Tax Identification Numbers of their customers during the account updating exercise directed by Central Bank of Nigeria²¹.

4.2.4.4. **Elimination of cash transaction through strict compliance with the directive to pay taxes and levies through Banks.** In order to eliminate contact with tax funds, the Lagos State government has appointed some designated banks to act as its agents for purposes of collecting taxes. Tax personnel are prohibited from collecting cash payment from the tax payer. The tax payer is also informed through the media not to pay any taxes directly to the tax authority. Thus, a tax payer is assured that once his payment is made, the funds are directed to the appropriate quarters. Fashola in one of his media chat restated the policy that “All payments to the Board (Lagos State Internal Revenue Service) are

²⁰ Section 35 of the Lagos State Revenue Administration Law

²¹ Publication of the CBN circular to Bank on Know Your Customer (KYC) published on the 15 July 2012 in Thisday Newspaper p. 48

made directly to designated revenue collecting banks by the taxpayers...tax collection has been made more transparent to the taxpayer as they could access their records via internet, and this made tax payment more convenient and transparent to the public”²²

4.2.4.5. **Introduction of Tax Investigation and Intelligence Unit to monitor High Net**

Worth Individuals: The Lagos State Government have introduced the Tax Investigation Unit who are empowered to carry out a verification exercise on the tax returns filed to ensure that those taxes accord with the real net worth of the tax payer. This is also backed by statutory law. Section 36(1) of the Lagos State Revenue Administration Law; empowers the State Inland Revenue Board to carry out inspections. The Section provides:

an authorized officer of the Internal Revenue Service shall between the hours of 9 am and 4 pm have free access to all lands, building and places, and to all books and documents, whether in the custody or under the control of a public officer, institution or any other person whatsoever, for the purpose of inspecting any books, or documents including those stored or maintained on inspecting any books, or documents including those stored or maintained on computers, or on digital, magnetic, optical, or electronic media, and any property, process or matter which the officer considers necessary or relevant for the purpose of carrying out any other function lawfully conferred on the internal Revenue Service, or considered likely to provide any information otherwise required for the purpose of any of those enactments or any of those functions and may, without fee or reward, make any extract from or copies of any such books or documents.²³

A similar provision is also contained in the Personal Income Tax Act. Section 46(4) of the PITA provides that:

Nothing in the foregoing of this section or any other provisions of this decree, shall be construed as precluding the relevant Tax Authority from verifying by Tax Audit any matter relating to entries in the book...account or returns as the relevant Tax Authority may from time to time specify in any guideline by the relevant tax authority

4.2.4.6. **Designation of special courts as Revenue Courts to ensure speedy**

determination of revenue cases: Taxation is a specialised field and as such not all judges

²² Speech delivered at the Governors Forum titled “Re-engineering State Tax Administration Strategies, Systems and Processes; Lessons from Lagos State”

²³ Also Section 44 of the Law.

are abreast with the rules of interpretation of tax laws. It is not interpreted like any other law. Tax cases are *sui generis*. Tax laws are interpreted as legislated. It is only a person specially skilled in tax laws, that should be called upon to make interpretation on the effect of a particular tax legislation. Specialised courts are those courts that have limited and frequent exclusive jurisdiction in one specific field of law, judges who serve in this courts are considered as specialist in those fields of the law.²⁴ In recognition of the specialised nature of tax laws, both the Federal tax law and the State tax law makes provisions for the establishment of specialised tax tribunal for the resolution of disputes arising from the application of tax laws. The Federal Inland Revenue Service (Establishment) Act 2007 made provisions for the establishment of the Tax Appeal Tribunal to administer the laws set out in the First Schedule of the Act.²⁵ The laws to be administered by the Tax Appeal Tribunal include the Companies Income Tax Act, Petroleum Profit Tax Act, Personal Income Tax Act, Capital Gain Tax Act, Value Added Tax Act, Stamp Duties Act, Taxes and Levies (Approved List of Collection) Act.

Section 48 of the Lagos State Revenue Administration Law provides for the establishment of the Body of Appeal Commissioners. However Lagos State Government has not formed the Body of Appeal Commissioners as required by the Law. The Federal Inland Revenue Service has established Tax Appeal Tribunals in almost all the six geopolitical zones of the country as required by the Federal Inland Revenue Service (Establishment) Act.

²⁴ The American Bar Association Central and East European Law (CEELI) (1996) Concept Paper on Specialized Courts, retrieved on 12 February 2013, available at www.ceeli.org

²⁵ Section 59 of the Federal Inland Revenue Service (Establishment) Act 2007

Lagos State has not constituted the Body of Appeal Commissioners. However, some High Courts in Lagos State are designated as Tax Appeal Courts for the purpose of settling disputes arising from the operation of tax laws.

4.2.4.7. **Execution of developmental projects:** On this note, it is agreed that where the people feel the impact of the taxes that they pay, they will be spurred to pay their taxes promptly.²⁶

4.2.5 *Harnessing existing tax laws to maximise the tax potential of Lagos State.*

Lagos State Government is presently harnessing existing tax laws and is also looking out for avenues towards creating new ones. Indicators are numerous showing the success of taxation in Lagos State. In 1999, Lagos State IGR was estimated to be about N6 billion. In 2008, LIRS generated over N109 billion an average of 9.08 billion per month.²⁷ This figure has further increased to an IGR of 14 Billion per month since 2010.²⁸

Lagos State is invigorating its tax potential. After the report of Alpha Beta Consulting Limited, Lagos State passed the Lagos State Revenue Administration Law. This law seeks to give the Lagos State Tax System the desired boost for efficiency. Key element of this law is the transformation of the Lagos State Internal Revenue Service into an autonomous devoid of the problems and bureaucracy of the civil service. Section 10 of the Law

²⁶ www.slgpnigeria.org. It is reported that: “A Tax Payer in Lagos State Mr. Chika Nnamani is quoted to have said that “Although we were reluctant to pay tax in the early stages, we have come to appreciate the benefits of paying taxes and the impact it will have on our business. With the easing of traffic congestion I can deliver goods more quickly to my clients.” The report further stated that “Chika ... looks out on the new road by the Alaba International Market, he can see firsthand the impact of Lagos States ongoing reform of the tax system. This road used to be in a complete state of disrepair, but recently it has been improved to such an extent that traffic now moves relatively freely in this area”

²⁷ Ipaye. I. “Road to Effective Internally Generated Revenue Collection – The Lagos State Experience” Being a paper presented at the Imo State Tax Summit held on the 18 August 2009

²⁸ Aderinokun K: “States’ IGR Drive Still Low as Fiscal Pressure Grows” published in Thisday Newspaper of Monday 18 July, 2011 Vol. 16 No 5929 p. 1 observed that Lagos State IGR was 62 percent of its Budgetary allocation in 2009 amounting to One hundred and thirty nine thousand two hundred million Naira only (N139,200,000,000.00)

provides that “the Board shall be autonomous in the day to day running of the technical, professional and administrative affairs of the Internal Revenue Service.”

The Board has also been given the power to fire and hire staff of the Board so as to maintain discipline and high level of professionalism required for an effective tax administration.²⁹

The Lagos State Board of Internal Revenue on its part has hit the ground running by implementing people friendly and tax efficient policies for the betterment of Lagos State. Teams of professionally qualified tax officials are also constantly sent out to meet the populace and educate them on the need for tax compliance. The officials of the Lagos State Inland Revenue Service are trained not only to check defaulters but to give information which would assist and encourage compliance. Tax payers are seen as partners in progress toward making Lagos the megacity of choice and an envy of the Sub Saharan Africa.³⁰

4.2.6 *Enacting proactive tax regime.*

States Legislatures must be proactive in their legislation and must be wary of legislations that could be interpreted as infringing on the Federal Legislative powers because it has been submitted that:-

²⁹ Section 11 of the Law provides that “Subject to the provisions of this Law, the Board may make staff regulation relating generally to the conditions of service of the staff and, in particular such regulation may provide for the appointment, promotion, termination, dismissal or other disciplinary measures...”

³⁰ Fashola B.R.: Reengineering State tax Administration Strategies, Systems and Processes; Lessons from Lagos State. Being a paper presented at the Governors Forum in Abuja on 15 May 2011

The main analytical task is to define the appropriate functions and finances of the various tiers as efficiently as possible, i.e., in such a way as to maximize community welfare. Each jurisdiction would then be most efficiently mapped in terms of the spatial dimension of the services it provided. Thus, there would be 'local public goods', 'state public goods' and 'national public goods', with the presumed beneficiaries of each financing their provision in an appropriate way³¹

Lagos State has enacted two laws that will be discussed briefly. The Lagos State Hotel Occupancy and Restaurant Consumption Bill³² and the Land Use Charge Law³³.

4.2.6.1. The Lagos State Hotel Occupancy and Restaurant Consumption Law: This

Law imposes a 5% charge on goods and services consumed in hotels, restaurants, events centers and short let apartments (like guest inns, hotels and motels etc) throughout Lagos State with effect from August 1, 2009. The Lagos State Government have argued that the Hotel occupancy and Restaurant Consumption Law is different from VAT (which has a multi level, input-output mechanism) and Sales Tax (which may be charged at every point of sale and is bedeviled with case laws declaring its invalidity) and on the bases that the taxes charged under the law are charges emanating from intra state commerce which is within the legislative competence of the State. This argument notwithstanding, some hoteliers have filed actions before the courts challenging the constitutionality of the Law. Two separate suits were filed before the Federal High Court and the State High Court in this respect. The case instituted at the High Court of Lagos State i.e. *Mas Everest Hotels Limited and another v. Attorney General of Lagos State and another*³⁴ have been determined, the High Court of Lagos State in a final judgment delivered on the 15th of December, 2009, held that the Lagos State Hotel Occupancy and Restaurant Consumption

³¹ Extract from speech delivered by the special guest of honour, Mr. Ade Ipaye, Special Adviser to the Governor of Lagos State on taxation at the CITN Joint district society quarterly meeting held on Thursday, 8 April, 2010 at the CITN Headquarters, Lagos

³² Signed into Law in 2009

³³ Signed into Law in 2001

³⁴ Suit No. ID/640M/2009

Tax Law was within the legislative competence of the Lagos State House of Assembly. The other case pending at the Federal High Court is the case of *Registered Trustees of the Association of Fast Food Confectioners of Nigeria & others v. Attorney General of Lagos State and another*³⁵ have not been fully determined though on October 19, 2009, the Federal High Court issued an order of interlocutory injunction restraining the State Government from enforcing the Law against the Plaintiffs.

An interlocutory injunction does not imply that the substantive suit would be decided against the party at the end of the substantive proceedings. At the end of the contest, the interlocutory injunction could be revoked and a finding similar to the Lagos High Court might be made. We await the outcome of the final decision.

Ipaye has said that the enactment of the Consumption Tax Act “is a great experiment. ... peculiar to Lagos State.”³⁶ This great experiment is enacted to prevent the pitfalls experienced in the *Attorney General Lagos State v. Eko Hotel Limited* case on the administration of the Amended Lagos State Sales Tax Law 2000.

4.2.6.2. The Land Use Charge Law The Land Use Charge is strictly speaking not a tax legislation though it is also aimed at raising the IGR of Lagos State, it is a law that provides for the collection of rates on land use. This law aim to achieve the dual purpose of promoting infrastructural development whilst also reducing multiplicity of the

³⁵ Suit No. FHC/L/CS/747/2009

³⁶ Ibid

imposition of rates from both the Lagos State Government and the Local Government Councils.

Prior to 2001 when the Land Use Charge Law was introduced in Lagos State, “property owners were, at different times in every year, obliged to pay Ground Rent and Neighbourhood Improvement Charge to the State Government and Tenement Rates to their Local Government Councils. This necessitated three different bills and three different settlement processes, which made compliance both cumbersome and costly for taxpayers. It also created an irregular situation in which different valuations were used for the same property by the two levels of government concerned Apart from glaring problems of administrative inefficiency, the tenement rate valuations had, at this time, become grossly outdated and because of financial constraints, Local Government Councils were finding it difficult to commission fresh valuation exercises. The Land Use Charge was therefore a new cooperative effort between the State Government and the Local Government Councils, which saw all property related taxes in Lagos State consolidated into a single charge”.³⁷ Section 7(5) of the 1999 Constitution (as amended),

The functions to be conferred by Law upon local government councils shall include those set out in the Fourth Schedule of this Constitution

By the provisions of paragraph 1(j) of the Fourth Schedule of the 1999 Constitution,

The function of a local government council includes 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.

³⁷ Ibid

In view of the above provisions of the Constitution, and in order to avoid the pitfall of Cross River State as seen from the decision of the Court of Appeal in the case of *Attorney General Cross River State v. Mathew Ojua*,³⁸ and the decision in the case of *Bamidele v. Commissioner for Local Government (Lagos State)*³⁹ the Lagos State House of Assembly, “acting under these powers, ... properly designated the Local Government Authorities as collecting authority⁴⁰ and gave them the option of doing so by themselves or allowing the State Government to collect centrally on their behalf. Where a Local Government elects to delegate the function of collecting these rates on behalf of the State, the delegation must be in writing.⁴¹

Having included this provision into the law, the Lagos State House of Assembly have shown a proactive and vibrant attitude and awareness of the existing laws, it has navigated the Lagos State Land Use Charge Law out of the murky waters that the Cross State Urban Development Tax Law 2004 found itself and led to its destruction. It can be said that the Lagos State Land use Charge Law is in “safe waters” and other States could just adopt it as their laws to avoid being caught up with the provisions of Sections 4(5) of the Constitution.

³⁸ *Supra*

³⁹ *Supra*

⁴⁰ Section 1(2)

⁴¹ Section 1(3) of the Law, which provides that “Each collecting authority may delegate to the State, by written agreement, its functions with respect to the collection of rates and the assessment of privately-owned houses or tenement for the purpose of levying such rate as may be prescribed under this Law.”

CHAPTER 5

SUMMARY AND CONCLUSION

5.1 SUMMARY OF THE RESEARCH

In conclusion, this work reviewed the sources of tax powers under the Nigerian Constitution and reviewed how these powers are exercised by State Governments under the 1999 Constitution with particular emphasis on the exercise of such powers by Lagos State. The research highlighted the problems of implementation of taxation in Nigeria. We have shown the challenges encountered by States in the exercise of their tax powers within the Federal System. We have shown the tremendous success achieved by Lagos State in its exploitation of its tax potential. We have also shown the hard work needed to achieve legislative and administrative success on the imposition of taxes. We have also shown that a proper exploitation of the economic activities in the various states have the potential of creating wealth to both the people and the government of the States. The work focuses on the utilization of taxation as an instrument of good governance.

5.2 OBSERVATIONS

In the course of this work, lots of observations were made regarding the tax potential of the states in augmenting its horizontal and vertical budgetary needs for the betterment of the Nigerian people. The following could be listed as the major findings of this research

- a. It is the finding of this work that Nigeria's Federal structure is one which gave more powers in the Federal Government than to the States. There are two legislative lists, the Exclusive Legislative list and the Concurrent Legislative list. Enactment in the exclusive legislative list is exclusive to the federal legislature and any enactment that is made by the State House of Assembly, unless saved under

the principle of “pith and substance” is rendered null and void. Whilst legislation by State Houses are ‘inoperative” by a legislation on the same item by the National Assembly if it is found that the National Assembly intend to cover the field

- b. Notwithstanding the above, the State Houses of Assembly have the powers to legislate on items that are residual, i.e. not stated on either the Exclusive Legislative List of the Concurrent Legislative list. They also have the powers to legislate on items in the concurrent legislative list where it is shown that the National Assembly have either not legislated, or do not intend to cover the field or where it is shown that both laws could operate concurrently without any conflict
- c. Owing to the difficulty of discerning the fine line of the legislative competence of the State Houses of Assembly and the National Assembly on tax matters, legislation on tax matters are highly contentious and often open to litigation by either the Federal Government or the tax payers.
- d. This work listed lack of political will to encourage the proper administration of taxation in Nigeria. It also identified corruption, absence of data for taxable activities and taxable persons, the problems of tax evasion and avoidance, and how the negative impact of military incursion into politics that has led to the over concentration of power in the Federal government as some of the major problems bedeviling effective taxation in Nigeria.

5.3 RECOMMENDATIONS

The researcher makes the following recommendations:

- a. It is recommended that Constitutional amendments should be undertaken so as to decentralize the law making powers of the levels of government with regards

to items in the Exclusive Legislative List that could assist the efforts of the State government in boosting their Internal Revenue Generation.

- b. In the meanwhile, an active State House of Assembly that has the potential of enacting revenue generating legislations that is not an infringement of the current legal regime and or amending any that is found to have infringed on the current legal regime will assist states in attaining tax prosperity. Hence the need of the State Houses of Assembly to be pro-active and willing to effect correction for every pitfall they face in the course of the enactment of tax laws
- c. Responsive legislation is expected from the State Houses of Assembly in circumstances where the legislation is struck down owing to its inconsistency with the provisions of current constitutional provisions or hindered owing to the doctrine of covering the field and the doctrine of pith and substance. Hence the need of the State Houses of Assembly to be pro-active and willing to effect correction for every pitfall they face in the course of the enactment of tax laws
- d. Good governance and accountability has the potential of bringing the Nigerian people on board on the current drive of the government in its quest to enforce the new tax policy. The enlightenment programmes undertaken by the Lagos State Government on the populace, the review of tax laws within the legislative competence of the State, the struggle for greater control and the recourse to the court of law for a determination of the questions pertaining to the constitutional fiscal provisions are all right steps in the right direction.

BIBLIOGRAPHY

BOOKS

Abdulrazaq M.T.: (1993) *Principles and Practice of Nigerian Tax Planning and Management*, Batay Law Publications Ltd., Ilorin.

Achebe C: *The Arrow of God*. Heinemann Press, London, (1964)

Adeniyi O.: (2011) *Power Politics and Death*, Thisday Books, Prestige Imprint Kachifo, Nigeria.

Adesola S.M.: (1998) *Tax Laws and Administration in Nigeria*, (3rd Edition), Comport Press and Publishing Company Ltd., Lagos.

Ayua I.A.: (1996) *The Nigerian Tax Law*, Spectrum Law Publishing, Ibadan, Nigeria.

Black H.C.: (1980) *The Black's Law Dictionary*, (6th Edition), West Publishing Co. New York

Eso K.: (1991) *Concept of Law and Justice under the Nigerian Constitution: Continuing Education for the Judiciary* Lagos Professional Publishers Ltd.

Gibbons, K.M. and Rowat, D.C. (Eds): (1976) *Political Corruption in Canada*, McClelland and Stewart, Toronto, Canada

Kiabel B. D and Nwankwo N. G.: (2009) *Curbing Tax Evasion and Avoidance in Personal Income*. Owerri Springfield Publishers

Margery, P.: (1937) *Native Administration in Nigeria*, Butterworth, London

Obafemi, A.: (1966) *Thoughts on Nigerian Constitution*, Oxford University Press, Ibadan, Nigeria.

Obilade, A.O. (2005) *The Nigerian Legal System*, Spectrum Books Limited, Ibadan, Nigeria

Ochei, B.B.: (2008) *The Nigerian Taxman's Book*, Pyramid Unit Publishers Lagos Nigeria,

- Odewale, R. O.: (2004) *Principles of Nigerian Taxation*, DBM Publishers, Ibadan.
- Ola, C.S.: (2004) *Income Tax Law and Practice in Nigeria*, (2nd Edition) Heinemann Educational Books (Nig.) Plc. Ibadan, Nigeria.
- Oluyede P.A.O.: (2000) *Constitutional Law in Nigeria*, (1st Edition) Evans Brothers (Nigeria Publishers) Limited, Reprint
- Orewa G.O.: (1962) *Taxation in Western Nigeria: The Problems of an Emergent State*, Oxford University Press, Ibadan. Nigeria
- Robert S. et al: (2009) *The Case of Ken Saro-Wiwa*, PEN American Centre New York
- Smith A.: (2003) *The Wealth of Nations*. Bantam Classic Edition, Bantam Dell, New York,
- Suberu R.T (2001) *Federalism and Ethnic Conflict in Nigeria*, United States Institute for Peace Press, Washington
- Tijani G.: (1986) *Taxation in Some Hausa Fulani Emirates Circa. 1860-1939*, PhD Thesis (Unpublished), University of Birmingham, United Kingdom
- Udo U: (1995) *History and the Law of the Constitution of Nigeria*, Malthouse Press Ltd, Nigeria.

ARTICLES RETRIEVED FROM THE INTERNET

- Abubakar Y M: Tax Policy in Nigeria Retrieved on June 24 2009 from <http://www.buzzle.com/articles/tax-policy-in-nigeria.html> - 2 (2009)
- Acha J: “The Role of Oil in Nigerian Economy” Retrieved on June 15 2011 from <http://EzineArticles.com/1904957>. The Article was published on January 21, 2009
- Awa I, and Jegede R.O. “Federal Inland Revenue Service (Establishment) Act 2007: Centralization of Tax Administration in Nigeria through the Back Door” Retrieved from <http://www.icmaservices.com/icmaservices/articles.com> on 28 November 2011

Festus O. O. and Okwu J. N. "Fiscal Federalism: Fiscal Discipline and Service Delivery in Nigeria" in *Economic Policy Options for a Prosperous Nation* retrieved from <http://www.csae.ox.ac.uk/books/epopn/Fiscalfederalism.pdf> on 25 July 2011

Kenneth C W: Monograph on Federal Government. Quotation retrieved on 15 June 2011 from the works of Sir K.C. Wheare published at <https://adb.enu.edu.au/biography> (1946-63)

Odularu G.O. "Crude oil and The Nigerian Economic Performance" Oil and Gas Business, 2008 retrieved on 15 June 2011 from [http://www.ogbus.ru/eng/\(2008\)](http://www.ogbus.ru/eng/(2008))

Sagay I.: Nigeria: Federalism, the Constitution and Resource Control" Text of speech delivered by Professor Itse Sagay (SAN), former Dean of the Faculty of Law of the University of Benin at the fourth sensitization programme organized by the Ibori Vanguard at the Lagoon Restaurant, Lagos available online at Urhobo Historical Society website:<http://www.waado.org/NigerDelta/Essays/ResourceControl/Sagay.html> Retrieved on 25 November 2009. (2005)

Stephen N. A, "Political Will and Sustainable Development" published in Human Rights and Sustainable Development. Retrieved on the 15 June 2011 from <http://profiles.tigweb.org/proff>

ARTICLES PRESENTED IN JOURNALS, SEMINARS AND OTHER PUBLIC PRESENTATIONS

Abraham Okolo:, "The Nigerian Census: Problems and Prospects" in *The American Statistician* Vol. 53, No. 4 pp. 321-325 C.S. (1999)

Akindele S.T.: "Corruption: An Analytical Focus on the problems of its conceptualization" *IFE Pyshologia* sited with approval by Aluko M.A.O. (2002) "The Institutionalization of Corruption on Political Culture and Behavior in Nigeria" published in *Nordic Journal of African Studies* 11(3) 393-402

Akinsola. T. O.: “*Tax Crime - Implications And Challenges For Tax Professionals*” (unpublished) (2010)

Biodun A.: “The Impact of Oil on Nigeria’s Economic Policy Formulation.” Text of a paper presented at the conference on Nigeria: Maximizing Pro-poor Growth: Regenerating the Socio-economic Database, organized by Overseas Development Institute in collaboration with the Nigerian Economic Summit Group, 16th / 17th June 2004

Chinedum Odenyl. “The Problem of Tax Evasion and Avoidance” in *The Unity Voice (a Journal of the Nigerian Bar association Abuja Chapter)* Vol. 1 No 4 June 2011 (2011)

Cobham A.: “Tax evasion, tax avoidance and development finance” Working Paper Number 1229 Finance and Trade Policy Research Centre Queen Elizabeth House University of Oxford, (2005)

Etiosa U: “Renewable Energy and Energy Efficiency and Sustainable Development in Nigeria” in Etiosa U, Matthew A and Agharese E (Edit) *Promoting Renewable Energy and Energy Efficiency in Nigeria: The report of a one day conference which held at the University of Calabar Hotel and Conference Centre 21st November 2007* the conference was convened by the Community Research Development Centre (CREDC) with financial support from the Global Green Grants Fund the Environmental Right Action and Friends of the Earth Nigeria (2007)

Fashola B.R.: Reengineering State Tax Administration Strategies, Systems and Processes: Lessons from Lagos State: Being a Paper presented at the Governors Forum in Abuja on 15 May 2011

Harvey, C. and Robinson M: 1995 “*The Design of Economic Reforms in the context of Political Liberalisation: the Experiences of Mozambique, Senegal and Uganda*”. Discussion Paper No. 353 Institute of Development Studies Brighton

Ibrahim M. J. "Colonial Taxation in the Capital Emirate of Northern Nigeria": *African Economic History* No. 26 (1998)

Ipaye A.R. (2009) "Road to Effective Internally Generated Revenue Collection – The Lagos State Experience" being a paper presented at the Imo State Tax Summit held on 18 August 2009

Ipaye A. R. (2010): Speech Delivered by the special guest of honour, Mr. Ade Ipaye at The Chartered Institute of Taxation of Nigeria Joint District Society Quarterly Meeting Held On Thursday, April 8, 2010 At The Chartered Institute of Taxation of Nigeria Headquarters, Lagos, Nigeria

Ipaye A. R. (2011) "Options and Ways of Curbing Tax Evasion and Avoidance in Lagos State" being a paper presented at the Lagos State polytechnic Alumni Association Quarterly Lecture held at the Renaissance Hotel Agidingbi Ikeja Lagos Nigeria on June 28, 2011

Isah B H: (2011) "Solid Mineral Resource Development in Sustaining Nigeria's Economic and Environmental Realities of the 21st Century" in *Journal of Sustainable Development in Africa* (Vol. 13, No. 2 2011) Clarion University of Pennsylvania, Clarion Pennsylvania
Jean Jacques Rousseau's treatise published in 1762 intended to explain the appropriate relationship between individuals and their government

Konyin A. (1996-1997) "On the Trail of a Spectre- Destabilization of Developing and Transitional Economies: A case Study of Corruption in Nigeria" published in *Journal of International Law*.

Maarten de Zeeuw and Abdulrazaq T. (2005) "Tax Policy Assessment for Lagos State Government" a report of the tax performance of Lagos State prepared by the State and Local Government Program (SLGP) for the Department For International Development CNTR: 00 0512A SLGP Consultants' Report Number 318, May 2005

Mahesh C. P.: (2007) "Corruption in Tax Administration". In World Bank publication on *Performance Accountability and Combating Corruption* edited by Anwar Sha Washington D.C

Odd-Helge Fjeldstad: "Corruption in Tax Administration: Lessons from institutional reforms in Uganda" Chr. Michelsen Institute Working Papers 2005:10

Rapu S.C. (2006) "Tax Assignment and Revenue Sharing in Nigeria: Challenges and Option" published in *Central Bank of Nigeria Journal on Economic and Financial Review* Vol. 44 No. 1 March 2006 Pages 1 – 36

Salisu. M.A. (2000) "Corruption and Economic Growth in Nigeria" presented at the International Economics Study Group (IESG) Easter Conference 2000, University of Wales Conference Centre, Gregynog

Tom O'Neill: 2007 "Curse of the Black Gold: Hope and betrayal on the Niger Delta" published in the *National Geographic Magazine* in February 2007

NEWSPAPER PUBLICATIONS

Elebiju A. "All Things Not Bright and VATable" in *Thisday Lawyer* of 28 June 2011

Okele O. (1999) "Indirect Taxation can Upstage Oil Revenue" published in the *Guardian Newspaper* of 31 August 1999

Tokunbo A, Ejifor A and Ahamefula O. (2011) UN: Cleaning up Ogoniland pollution could take 30 years; *ThisDay Newspaper* of 5 August 2011.