AN EVALUATION OF THE SIGNIFICANCE OF THE VALUE ADDED TAX ACT IN REVENUE GENERATION IN NIGERIA

BY

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BEING A DISSERTATION SUBMITTED TO THE SCHOOL OF POSTGRADUATE STUDIES, AHMADU BELLO UNIVERSITY, ZARIA IN PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR THE AWARD OF A MASTER DEGREE IN LAW - LLM

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DECLARATION

I solemnly declare that the work in this dissertation entitled 'An Evaluation of the Significance of the Value Added Tax Act in Revenue Generation in Nigeria' has been carried out by me in the Department of Commercial Law, Faculty of Law, Ahmadu Bello University, Zaria. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was previously presented for another degree or diploma at this or any other institution. I remain solely responsible for all views expressed and errors therein.

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CERTIFICATION

This dissertation entitled "An Evaluation of the Significance of Value Added Tax Act in Revenue Generation in Nigeria" by Yakubu Moses EDE meets the regulation governing the award of degree of Master of Laws (LL.M) of Ahmadu Bello University, Zaria, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This research work is dedicated to God Almighty for his grace in making this a reality.

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LIST OF ABBREVIATIONS

AC	Appeal Cases
ALL E.R	All English Reports
BAC	Body of Appeal Commissioner
BIR	Board of Internal Revenue
CAP	Chapter
CFRN	Constitution of the Federal Republic of Nigeria
CGTA	Capital Gain Tax Act
CITA	Company Income Tax Act
CLRN	Commercial Law Report of Nigeria
Etc	Etcetera
FIRS	Federal Inland Revenue Service
FRSC	Federal Road Safety Commission
Ibid	Ibidem
IMF	International Monetary Fund
ITMA	Income Tax Management Act
ITO	Integrated Tax Office
JTB	Joint Tax Board

LFN	Laws of the Federation of Nigeria
LGRC	Local Government Revenue Committee
LVO	Local VAT Office
NRLR	Nigerian Revenue Law Reports
NTTLR	Nigerian Tax Tribunal Law Reports
PAYE	Pay As You Earn
PPTA	Petroleum Profits Tax Act
PSC	Production Sharing Contract
RMAFC	Revenue, Mobilization Allocation and Fiscal Commission
SAP	Structural Adjustment Programme
SDA	Stamp Duties Act
TAT	Tax Appeal Tribunal
TC	Tax Cases
TIN	Taxpayer Identification Number
TLRN	Tax Law Report of Nigeria
UK VAT ACT	United Kingdom Value Added Tax Act
VATA	Value Added Tax Act
VATTC	Value Added Tax Technical Committee

VATTR	Value Added Tax Tribunal Rules
V1	Volume One
Vol	Volume
WRN	Weekly Report of Nigeria

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ABSTRACT

This research work aims at evaluating the role and significance of the Value Added Tax (VAT) Act in Revenue Generation in Nigeria. This examines the role played by the Value Added Tax as one of the source of government's revenue. It also assesses the fact whether it has achieved the essence of its introduction. In this research doctrinal method of research was adopted in discussing the subject matter. This work delved into the legal framework of value added tax in Nigeria. The institutional structures for the administration of Value Added Tax were analysed with the aim to assessing their efficacy in revenue generation. It also took a cursory look at the assessment procedure of Value Added Tax. It was discovered in the course of the research that the law in Nigeria on VAT is faced with the problem of absolute tax practices, whereby taxes overlap, so that a single transaction may be subjected to a series of taxes e.g VAT on imported goods and Excise and Custom duty. The work found out that the punitive measures under the taxing law is not for deterrence but aimed at extinguishing small scale enterprises. The work recommended that the National Assembly should review the punishments in the Value Added Tax Act to accommodate it basic reasons which are reformation and deterrence. The punitive measures should aim at reforming the vatable persons to ensure voluntary tax compliance than pushing them out of the business. This work shall be of immense benefit to students of law, legal practitioners, legislators, academia and judges.

CHAPTER ONE

1.0 GENERAL INTRODUCTION

1.1 **Background to the Study**

Taxes are levied by government to raise revenue that will help in the administration of government-such as paying salaries and allowances to civil servants. Revenue raised by taxation enable the government to provide infrastructural facilities like schools, hospitals, housing, roads, defence, law and order and other socio-economic and cultural facilities[1].

According to Feyikemi Balogun, Ajumogobia and Okeke[2], the issue of taxation is fast gaining relevance in the Nigeria society in recent times as it has become a viable alternative source of government revenue, a tool of social engineering and societal class structural adjustment by the various tiers of government.

Nigeria introduced the Valued Added Tax Act in 1993[3] to impose and charge value added tax on certain goods and services and to provide for the administration of the tax and matters related thereto. Value Added Tax (VAT) was introduced by the Federal Government of Nigeria in 1993 to replace Sales Tax. The aim was to increase the revenue base of government and make funds available for developmental purposes that will accelerate economic growth[4]. Propelled by the objectives of imposing tax government at various levels device different methods of generating revenue in other to attain and sustain its set objectives. The state governments in particular are looking inwards towards taxation to augment the revenue received from the federation account to meet their ever increasing capital and recurrent expenditure. If only the government will judiciously

[1] John D.C., Lecture Note on Company Taxation (Unpublished), Faculty of Law, A.B.U., Zaria, (2012) P. 4.
[2] Commercial Law Report of Nigeria Annual Review 2007, P. 40.
[3] Decree No. 2 (now Cap V1 in the Laws of the Federation of Nigeria 2004).
[4] Adereti, S.A., Sanni, M.R., & Adesina, J.A., Value Added Tax and Economic Growth of Nigeria, European Journal of Humanities and Social Sciences, 2011 Vol. 10 No. 1 (Special Issue), P. 455 @ 456.

utilise the revenue generated from Value Added on goods and services the infrastructural position of this country would have improved beyond what it is now.

1.2 **Statement of the Research Problem**

The tax system plays an important role in enhancing rapid development. Value Added Tax is a consumption tax payable on the goods and services consumed by any person whether government agencies, business organisations or individuals. The target of VAT is consumption of goods and services...[5] Among other the problems with respect to this research include:

1. The law in Nigeria on VAT[6] is faced with the problem of absolute tax practices, whereby taxes overlap, so that a single transaction may be subjected to a series of taxes e.g VAT on imported goods and excise and custom duty.
2. Also there are inherent inadequacies in some of the provisions of the Value Added Tax Act[7]. By virtue of section 46 of the Act the term supplies is shrouded with ambiguity, contrary to the general tax rules, and as such calls for a more apt definition as to such ambiguities.
3. The structure for VAT administration leaves much to be desired. The Federal Inland Revenue Service[8] operates under the auspices of the ministry of finance with attendant bureaucratic bottle neck of civil service; this is a clog in the wheel of progress.

[5] Ibid p. 80.
[6] Value Added Tax Act Cap V1 Laws of the Federation on Nigeria, 2004.
[7] Cap V1 Laws of the Federation of Nigeria 2004.
[8] Section 7, Ibid.

4. The punitive measures under the taxing law should be for deterrence not extinguishing small scale enterprises. By virtue of the provision of the Act[9], tax evaders are to pay fine or be imprisoned for a period of three years. Of concern also is that the Act[10] authorises the FIRS to seal up the premises from where economic activity is carried on within the territory of Nigeria for failure to register with the Board. These suggest a punishment which could hamper the development of small scale businesses with the capability of incarcerating their productive capacity if not folding the business.

With the problem of absolute tax practices which result to tax overlap, does the law permit double taxation on a single transaction in the instant case the payment of VAT and Custom duty on imported goods.

Would the ambiguity in the Value Added Tax Act as to definition of terms as against the general tax rule not result to the loss of revenue by government and would the taxable persons not leverage on it to avoid payment of tax.

If the premises where economic activity takes place are sealed up due to failure of registration by the taxable person would that not defeat the essence of the law by slowing down the development of small scale businesses from where the revenue is to be generated?

[9] Section 26, Ibid.
[10] Section 32, Ibid.

1.3 **Aim and Objectives of the Research**

The aim of this research is:

a) To evaluate the general principles of the Value Added Tax law in Nigeria with the aim of identifying the lacunae contained in the law and to proffer suggestions to remedy the deficiencies identified towards a more robust revenue system.

The objectives of the research are as follows:

a) This research examines the effect of ambiguous definition such as the term supplies in the VAT Act as against the general principle of taxation and consider whether such definition is capable of causing loss in revenue generation.

b) The research also highlighted the practical problems associated with the effective administration of VAT law in Nigeria. An attempt would be made to proffer pragmatic methods of achieving total autonomy of the FIRS. The hope at the end of the day is that VAT law in Nigeria will be more efficient in achieving the desired governmental and social objectives.

c) This work critically analyse the punitive measures as enshrined in the VAT Act and the consequences of such punishment on small scale business in Nigeria and also devising a better way out.

1.4 Scope of the Research

This research work shall cover the taxation imposed and charged on the value-added to goods and services as encapsulated under Value Added Tax Act, Cap V1 Laws of the Federation of Nigeria, 2004. This work shall endeavour to discuss and highlight the

various legal and administrative facets, economic and technical issues significant and applicable to the operation of the Value Added Tax law in Nigeria.

The research also made recourse to related area such as the practice and procedure of Tax Appeal Tribunal and its jurisdiction over VAT.

1.5 Research Methodology

The methodology adopted in this research is mainly desk based otherwise known as doctrinal method of research. This research shall strictly be library based through the thorough x-ray of the research materials. In this research, references are made to statutes and case books which are the principal sources of materials. The secondary sources are textbooks, articles, magazines, journals, newspapers and the internet. The relevant assembled authorities are utilised to answer the research questions this work.

1.6 **Literature Review**

This research ventured into reviewing series of available literatures ranging from primary to secondary among which are textbooks, statutes, casebooks, journals, newspapers and magazines.

According to Abdulrazaq, M. T.[11] in his book titled Revenue Law and Practice in Nigeria stated that "the yield from VAT is a fairly accurate measurement of the growth of an economy since purchasing power (which determine yield) increase with economic growth, VAT is a self-assessment tax that is paid when returns are being rendered". The

[11] Malthouse Press Limited, Lagos (2011) P. 268

author succinctly discussed VAT in his book but did not discuss the impact of some of the exemptions granted by the law. This work would vividly discuss some of the exemptions and their consequential impact. The measurement of the economic growth is hinged on the fact that VAT is a consumption tax charged on goods and services. To ensure proper growth of the economy the law should compel all persons, irrespective of their status or positions, to pay VAT.

In the work of Ola, C. S.[12] Nigeria Income Tax Law and Practice, where he opined that "Inland revenue division resembled a declawed footless pussycat if they are not independent like the audit department. They should constitute an independent department of their own to avoid political interference". This was brilliantly analysed by the author but did not looked at the attendant bureaucratic bottle necks of civil service. The research will endeavour to consider the effect of bureaucratic bottle necks and the importance of the independence of the tax authority such as FIRS for effective generation of revenue.

Abdulrazaq, M.T.[13] in his book Principles and Practice of Nigeria Tax Planning and Management, where he asserted that tax system determines the directions in which people may become wealthy by determining the direction in which they may not. It is therefore, impossible to regard taxes as merely a means of obtaining revenue; and Nigerian tax offences and penalties, where he opined that fiscal offences should be met with fiscal punishment in other not to incarcerate or stultify the productive capacity of tax evaders. The author has eruditely elucidated the issue but did not specifically treat the effect of imprisoning taxable persons or sealing up the premises of business and there is need to proffer pragmatic solutions. This work would make effort to practically discuss the effect of such punishments on small scale enterprises.

[12] (macmillan), 1985.
[13] (Batay Publication), Ilorin, 1993.

According to Agbonika, J.A.A.[14] in her work titled Problems of Personal Income Tax in Nigeria prior to the adoption of VAT, however, there were some kinds of expenditure taxes like the general sales tax, excise duty payable on goods etc. All of these have now been subsumed under the Value Added Tax vide the Value Added Tax Decree No. 102 of 1993, now VAT Act 2004. The author discussed the topic extensively but it is humbly observed that custom and excise duty is still imposed as tax not subsumed under VAT Act. This shall be looked into.

The above referenced erudite scholars have written so verse on Value Added Tax but did not make a critical analysis of some of the exemptions in the legislation under consideration such as goods imported for the President, Commander-in-Chief of the Armed Forces of Nigeria. Flowing from the above reviewed books in this work, it is worthy of note that this work majorly centred on evaluating the significance of Value Added Tax in revenue generation in Nigeria.

This work also reviewed the penalties for tax evasion to ensure that proportionate punishment would be administered without jeopardising the interest of the society.

1.7 **Justification**

This research work ventured into unravelling the significance of the Value Added Tax Act to the revenue generation of Nigeria. Value Added Tax as one of the source of government's revenue it has contributed immensely in increasing the revenue base of the federation.

[14] Ababa Press Ltd, Ibadan (2012) Pp. 132-133.

This research work also assisted in detecting the ambiguities in the provisions of the Value Added Tax Act and make valuable suggestions to proffer solutions. It will also help to highlight and tackle the problems occasioned by obsolete tax practices in the system. It is the hope of this research that a more efficient and functional structure for VAT administration in Nigeria will be recommended.

This research work will be of benefit to those in academia, legal practice, Judges, Students of law and even legislators. The Federal Inland Revenue Service will find this work very useful. Also institutions such as Tax Appeal Tribunal will benefit immensely from this research work. For students of law, it would help them in preparing for their examinations. The identified lacunae would assist the legislators to carry out the necessary amendments as pointed out.

1.8 **Organizational Layout**

This research work shall be divided into chapters.

The focal point of chapter one is general introduction which gave a background to the study for proper understanding even by the common man. The statement of the research problem, the aim and objectives, the scope and research methodology adopted were discussed. The chapter also includes a literature review of some of the books consulted and the justification for undertaking this research.

Chapter two considered conceptual clarification of basic terms. These are the general principles of the VAT law as contained in the conceptual aspect of supplies, consideration, taxable persons, taxable supply of goods and services and vatable person(s). It also looks at the exemptions and zero-rating. This chapter also considered

the Meaning, Nature and Scope of Value Added Tax. It also took a cursory look at Value Added Tax and Tax Policy.

In chapter three the work delved into discussing the legal and institutional framework of Value Added Tax where laws on VAT were considered. It also treated the issue of VAT administration in terms of the structure and functions of the administrative organs (The Federal Inland Revenue Service, The VAT Directorate and Vale Added Tax Technical Committee Technical Committee).

Chapter four discusses the issue of assessment of value added tax in terms of assessment and collection procedure, payment of the tax, returns and remittances, power of inspection, duties

Of tax officers, VAT records and Accounts, objection and appeal, offences and penalties for tax evasion.

Chapter five summarises the work by identifying the findings and making recommendations for possible review and onward reform.

CHAPTER TWO

CONCEPTUAL CLARIFICATION

2.1 **Introduction**

This chapter precisely clarify some of the basic concepts and terms that are commonly used and applicable in Value Added Tax administration. Some of the concepts discussed in this chapter include supplies, consideration and taxable persons. The meaning, nature and scope of value added tax is also considered in this chapter. The tax policy was also considered.

It is an axiom of law that something is not expected to stand if placed on nothing[1]. The basic principle of taxation is to the effect that an individual should not be taxed except where it is specifically stipulated by law[2]. A *taxable person*[3] can only be taxed where there is a legislation enacted by the national or state assembly. In other words, no person must be made to pay tax except the taxing Acts or Laws specifically provided for it[4]. It is upon this premise that Value Added Tax (VAT) Decree was not imposed or charged in Nigeria until after the enactment or promulgation of the legislation by the Military government in 1993 despite its decision to adopt it in 1992. From the time when Value Added Tax Decree (now Act), was introduced in Nigeria, it has undergone series of amendments. The most recent of all the amendments is the Value Added Tax (Amendment) Act of 2007[5]**.**

By virtue of the enabling legislation the extent of the imposition and charging of the Value Added Tax in Nigeria is "on the supply of all goods and services other than those

[1] Fashawe v. A.G.F. [2007] 8 W.R.N 125 at 155. See also U.A.C. Ltd vs. Macfoy (1961) 3 All E. R. 11 pg. 69
[2] Tenant v. Smith (1892) A.C. 150
[3] Section 46 of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[4] Coldness Iron Co. v. Black (1881) 9 T.C. 287.
[5] ACT No. 12, 2007.

goods and services listed in the First Schedule to this Act"[6]. For example, exempted goods include all medical and pharmaceutical products, basic food items, books and educational materials etc while exempted services are medical services, services rendered by Community Banks, People's Banks and Mortgage institutions[7] etc.

It is important to note that the phrase "value added" has been described as "the increase in the value of goods and services in the process of their production or delivery"[8]. It has also been defined "as the amount of value a firm contributes to a good or service by applying its factors of production namely – land, labour, capital and entrepreneurial ability"[9].

The charges of VAT only arise upon the fulfilment of some basic requirements. The transaction purported to be charged must be establish that it amounts to a *supply*. It must also satisfy the requirement that the supply was for a *consideration*. The supply must also amount to either a *supply of goods* or a *supply of services*. Finally, it must amount to a *taxable supply.* Any transaction that has fulfilled these requirements is said to be subject to VAT. Failure of any transaction to satisfy the requirements a mentioned above will not be subject to VAT. This was the position of the court in the case of *CNOOC V. Attorney General of the Federation & 2ors*[10] The facts of this case are that the suit was commenced by originating summons dated and filed on the 30th of October, 2007. The Plaintiff submitted three questions for determination by the Court and sought for reliefs upon the determination of the questions. The questions are:

1. Whether the assignment by the 3rd Defendant of part of its contractor rights in the production sharing contract in respect of Oil Mining Lease 130 to the Plaintiff

[6] Section 2 of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[7] See Part I and II, First Schedule to the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[8] Ola C.S op. cit. P. 584.
[9] Josephine A.A. Agbonika op. cit. P. 133.
[10] (2011) 4 TLRN 185 @ 187-188.

being a transfer of a chose in action qualifies as the supply of goods or services pursuant to the provisions of the Value Added Tax Act, Cap. V1 Laws of the Federation of Nigeria, 2004.

2. Whether the said assignment by the 3rd Defendant is subject to the provisions of section 1 of the Value Added Tax Act, Cap V1 Laws of the Federation of Nigeria, 2004.
3. Whether it is lawful for the 2nd Defendant to demand or collect or enforce the collection and or payment of Value Added Tax from the Plaintiff and 3rd Defendant jointly or severally in respect of the said assignment of part of the 3rd Defendant's contractor rights as aforesaid, the said transaction not being one in respect of which Value Added Tax has been imposed under and by virtue of the Value Adde Tax Act, Cap V1, Laws of the Federation of Nigeria, 2004.

It was held that the 3rd Defendant's contractor rights to Production Sharing Contract (PSC) do not constitute either 'goods or services' contemplated by the Act. Consequently, the assignment of such rights does not fall under the VAT Act. The Plaintiff is therefore not liable to the 2nd Defendant for any sum whatsoever as VAT on the purchase of the 3rd Defendant's contractor rights in the PSC.

At this point it is imperative to consider issues such as supply, consideration, taxable persons, taxable supply and exemption and zero rating.

2.2 **Supplies**

Supply is the amount of goods produced or available at a given price[11]. Supplies mean any transaction, whether it is the sale of goods or the performances of a service for a

[11] Bryan A. Garner, Black's Law Dictionary, Eight Edition.

consideration, that is, for money or money's worth[12]. This suggests that for any supply to fall within the ambit of the VAT Act it must, as a condition precedent, be for money or money's worth. But lord Reading C.J., defines supply in its natural and ordinary meaning as to amount furnish or serve[13]. By this definition it presupposes that for any transaction to amount to a supply, there must be two parties to it. That is, on the one hand there must be a person who serves or furnishes goods and services while on the other hand a person who receives same. Where a supply relates to tangible movable property a supply would have been said to have occurred where there was a whole transfer of the property, possession of goods or an undivided share. For instance, where a taxable person makes the supply of computers to his customers and the taxable person parted with the whole computers including his interest therein and their possession, then supply has taken place.

Where it relates to supply of services any service provided for a consideration[14] suffices as a supply including grant, assignment or surrender of any right and achieving what is to be done under a contract regardless of whether or not this gives rise to any positive activity[15]. However, this position seems to have received a different interpretation in the recent case of CNOOC v. A.G. Federation & 2ors[16] to the effect that the assignment of such rights does not fall under the VAT Act to constitute either goods or services as contemplated by the VAT Act. Albeit the judge in his wisdom rightly pronounced that if, in this country, we need to charge VAT on such incorporeal property like the contractor rights we need to borrow a leaf from the U.K VAT Act, 1994 by incorporating the provisions of section 5 (2) of the said Act[17]. It is submitted that there is an urgent need to

[12] Section 46 of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[13] See Williams v. Pearl (1916) 114 L.Jk 898 @ 901 cited in Carlton Lodge Club v. Customs and Excise Commissioners (1974) 3 All E.R 789.
[14] Section 46 of the Value Added Tax Act, Cap V1, Laws of the Federation of Nigeria, 2004.
[15] See Customs & Excise Commissioners v. Tilling Management Services Ltd (1979) 2 All E.R 106.
[16] Supra
[17] Supra ratio 3.

effect such an amendment. Failure to so do will result to loss of so much revenue in sensitive transactions of this nature.

2.3 Consideration

Consideration has been defined as something (such as an act, forbearance or a return promise) bargained for and received by a promisor from a promisee which motivates a person to do something, especially to engage in a legal act[18]. This entails that consideration must not necessarily be money in cash, but it could also be money worth received by a person from another to either supply goods or services.

For the purpose of VAT, the value of taxable goods and services shall be determined thus- if the supply is for a money consideration, its value shall be deemed to an amount which with the addition of the chargeable is equal to the consideration[19]. For example, where Mr. A supplies items to Mr. B in which Mr. B paid in cash to the tune of N100,000. The tax due is N5,000 which 5% is deemed built into the value of the goods. But if the supply is for a consideration not consisting of money, the value of the supply shall be deemed to be its market value[20]. On the other hand, where Mr. A supply items to Mr. B in which Mr. B promised to render professional service instead of cash payment, the tax due which is 5% will be determined by the current market value of the goods.

Where the supply of taxable goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be such part of the

[18] Bryan A. Garner, Black's Law Dictionary, Eight Edition.
[19] Section 5 (1) (a) of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[20] Section 5 (1) (b) Ibid.

consideration as is properly attributed to it[21]. In this instance, the tax due will be charged only on the amount that is properly attributed to the taxable supply.

Consideration could either be in cash or kind, or both[22]. Accordingly, consideration must have direct bearing to particular goods or services supplied which is itself taxable. There must be a corresponding supply for every consideration received to qualify as consideration to be subjected to VAT. For instance, where a taxable person supplies furniture to his customer and the customer pay the value of the furniture supplied in cash such amount of money would be subject to VAT. An example of charging VAT on consideration made in kind is where taxable person supplies furniture to his customer and the customer in turn rendered service of skills worth of the furniture so supplied; VAT will be charged base on the market value of the furniture.

It is also crucial to decipher the rationale for any payment made with aim unravelling whether or not it has any nexus with the supply of goods or services. This was the position of the court in the case of *Apple and Pear Development Council v. Customs and Excise Commissioners*[23] where the court held that there must be a direct link between what has been provided and the consideration received. The consideration for a transaction is that which is given, and this is determined objectively upon the facts of the transaction by reference to the terms agreed[24]. The determining factor is whether a consideration is due, not whether it has been received. Thus, cash received for a retail amounts to consideration whether it is placed in the till or diverted by employee before

[21] Section 5 (2) Ibid.
[22] Sections 5 & 6 of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[23] (1985) S.T.C. 383. See also Naturally Yours Cosmetics Ltd v. Customs & Excise Commrs (Case 230/87) [1988] STC 879, ECJ.
[24] Abdurazaq, M.T., *Revenue Law and Practice in Nigeria*, Malthouse Press Ltd, Lagos, (2010) P. 276.

getting as far as the till[25]. Therefore, the link between the supply and consideration is very vital to the just determination of VAT in any transaction.

It is pertinent to note that, in principle, a supply is outside the scope of VAT unless it is made for a consideration[26]. Whether or not a consideration is due is determined at the time when the supply is treated as taking place for the purposes of charging tax in accordance with the agreement made between the parties[27]. Where goods or services are supplied gratuitously, they cannot be turned into a supply made for a consideration by a subsequent voluntary payment[28]. Equally, where a supply is made for a consideration evidenced by a tax invoice cannot be turned into a supply for no consideration merely by issuing a credit note[29]. A consideration paid in respect of a transaction made either by supply of goods or services would be subjected to VAT after the fulfilment of the above circumstances.

2.4 **Taxable Persons**

By virtue of section 12[30] a taxable persons includes individual or body of individuals, family, corporations, sole trustee or executor or a person who carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income there from by way of trade or business or a person or agency of government acting in that capacity. This definition as contained in the amended Act is more elaborate and the scope of a taxable person is wider. Unlike the provisions of section 46 of the VAT Act where the use of the words a person who independently carries

[25] Benton v. Customs & Excise Commissioners [1975] VATIR 138.
[26] Section 46 of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[27] Potters Lodge Restaurant v. Customs & Excise Commissioners LON/79/286, 105 Taxation 421.
[28] Warwick Masonic Rooms Ltd v. Custom and Excise Commissioners BIR/79/33; 104 Taxation 503.
[29] British United Shoe Machinery Co v. Customs and Excise Commrs [1977] VATTR 187.
[30] Value Added Tax (Amendment) Act, ACT No. 12, 2007.

out economic activity. Such words are capable of so many interpretations. Some may refer to it only as an individual not a corporate entity or body of individuals. Flowing from the amended Act the word 'person' is given a legally base definition to include artificial person such as corporate entities, family, body of individuals, sole trustee, executors e.t.c.

A taxable person shall, within six months of the commencement of the Act or within six months of the commencement of business, whichever is earlier, register with the board for the purpose of the tax[31]. A taxable person who fails to register under the Act, is guilty of an offence and liable on conviction to a fine of ₦5,000.00 and, if after one month, the person is not registered, the premises where the business is carried on shall be liable to be sealed up[32]. A taxable person is given the right to only one registration irrespective of the number of businesses. This could give rise to the challenge proper and effective collection of VAT where the taxable person has many branches. It is suggested that the states where their branches are located shall be saddled with the responsibility of the collection. This could be easily achievable through the Integrated Tax Office.

The Value Added Tax Act made a very heavy weather on punishment relating to failure on the part of a taxable person's failure to register for the purposes of the tax. It is expected also that to make provision for the procedure for deregistration. Where a person ceases making supply of taxable goods and services would he still remain liable to the extent of his existing registration? This among other things should have been considered equally during the previous amendment.

[31] Section 8(1) of the Value Added Tax Act, Cap. V1 Laws of the Federation of Nigeria, 2004.
[32] Section 32 Ibid.

2.5 Taxable Supply

Any supply of goods or service that does not fall within the ambit of the exempted goods and services under the VAT Act is referred to a taxable supply. There are conditions precedents that must be fulfilled before a supply could be taxable. These are:

i) It is made in Nigeria

ii) It is made by a taxable person

iii) It is made in the furtherance of a business.

For a supply to qualify as taxable the above requirements must be complied with.

2.5.1 Supplies Made in Nigeria

For a supply to be subjected to Value Added Tax Act, it must be in Nigeria. In the course of supply of goods they would have been said to have been supplied where they are either removed from Nigeria or removed to Nigeria. Any supply made outside the shores of this country is not within the ambit of the VAT Act.

In the case of services, services are supplied in the country where the supplier belongs. To qualify as a service subject to VAT in Nigeria, the supplier of the service must have made same in the country irrespective of their performance.

2.5.2 Supplies Made by Taxable Person

Supply will be qualified and subjected to VAT where they are made by a taxable person. A taxable person is he who has fulfilled the requirement of registration under the Act.

Section 12 of the Value Added Tax (Amendment) Act[33] provides that taxable persons includes individual or body of individuals, family, corporations, sole trustee or executor or a person who carries out in a place an economic activity, a person exploiting tangible or intangible property for the purpose of obtaining income there from by way of trade or business or a person or agency of government acting in that capacity.

2.5.3 Supplies in Furtherance of Business

As a condition precedent, a supply will be within the scope of VAT for the purposes of taxation where it is made in furtherance of a business. A business has been defined to include any trade, commerce or manufacture or any concern in the nature of trade, commerce or manufacture[34]. Furtherance has been defined as the process of helping something to develop or to be successful[35]. This entails the fact that any transaction done which is in form of a supply in furtherance of a business shall be taxable.

2.5.4 Exemption and Zero Rating

Despite the imposition and charging of VAT under the Act there are certain goods and services that are exempted and zero rated[36]. The exempted goods and services as contained in the schedule to the Act are subject to change by the Minister of Finance. The minister has the power by order[37] published in an official gazette to wit:

a) amend the rate of tax chargeable, and

b) amend, vary or modify the list set out in schedules 1, 2, and 3 of the Act.

[33] 2007.
[34] Section 46 of the Value Added Tax Act, Cap V1, Laws of the Federation of Nigeria, 2004.
[35] Oxford Advanced Learner's Dictionary, 6th Edition.
[36] Section 3 and First Schedule of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[37] Section 38 Ibid.

The output of a supply made by a taxable person is not subject to tax 5% where the supply of goods and services are zero rated. Zero rating means goods and services that are VAT free. Important to note is that such a person will be able to reclaim all the tax that he has suffered in his inputs. Non-exports are not subject to Value Added Tax, because it is zero rated. Zero rated goods and services include: non-oil exports, goods and services purchased by diplomats and goods purchased for use in humanitarian donor funded projects[38]. Also all tax directly or indirectly suffered by a taxable person in the process of producing the exported goods can be reclaimed if identified under the invoice system.

2.6 **Meaning, Nature and Scope of Value Added Tax**

Value Added Tax is a consumption tax that has been embraced by many countries world-wide. Because it is a consumption tax, it is relatively easy to administer and difficult to evade[39]. A Value Added Tax (VAT) is a form of consumption tax. From the perspective of the buyer, it is a tax on the purchase price. From that of the seller, it is a tax only on the value added to a product, material, or service, from an accounting point of view, by this stage of its manufacture or distribution[40].

The calculation of VAT is the subtraction of the cost of materials and other taxable inputs from the sale price charged on the customers considering the value added to a product. Under the VAT Act, it is only the end consumer that is taxed. This form of tax is a multi-stage tax which is imposed on the value added to goods as they undergo the stages of production and distribution including services rendered.

[38] Section 13 (b) & Part III of the First Schedule of the Value Added Tax (Amendment) Act, 2007.
[39] Abdulrazaq, M.T., *Revenue Law and Practice in Nigeria,* Malthouse Press Limited, Lagos, (2010) P. 268.
[40] http://en.wikipedia.org/wiki/Value_added_tax Retrieved on 5/9/2013.

The basis of determining the rate or value chargeable on vat-able goods and services is provided under the Act[41]. By virtue of section of 5 (3)[42] which provides that the value of taxable goods and services when supplied, the price(s) is determined at market value under an arm's length transaction. Transaction at arm's length means a transaction on normal open market commercial terms[43]. Furthermore, the section under consideration enumerates circumstances that may give rise to the determination of value added tax. Among others it includes where the supply for a money consideration, its value shall be deemed to be an amount which with the addition of the tax chargeable is equal to the consideration[44]. Secondly, where the supply is for a consideration not consisting of money, the value of the supply shall be deemed to be its market value[45]. Thirdly, where the supply of taxable goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be such part of the consideration as is properly attributed to it[46]. The combine effect of the extant section is that there is an open market for all goods and services. This presumption might not be suitable for most work of art or professional services which are often not concrete but base on skills unlike manufactured goods or services.

The yield from VAT is a fairly accurate measurement of the growth of an economy since purchasing power (which determines yield) increases with economic growth. VAT is a self assessment tax that is paid when returns are being rendered. In-built in the new tax is the refund or credit mechanism which eliminates the cascading effect that is the feature of

[41] Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[42] Ibid.
[43] Section 46 Ibid.
[44] Section 5 (1) (a) of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[45] Section 5 (1) (b) of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[46] Section 5 (2) of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.

the retail tax. The input-output mechanism in VAT also makes it self-policing[47]. Being a consumption tax, the revenue generated from VAT determines reasonably the income of individuals and economic growth of a country. Moreso, that it is the income minus consumption that equal to saving. The contrast is that the level of income determines the extent of consumption through expenses. It is the output tax minus input tax that constitutes the payable Value Added Tax. The government collects the amount equivalent to the Value Added Tax payable by the final consumer on the taxable goods and services. Although it is a multiple stage tax, it is expected to have a single effect on consumer prices and should not add more than the specified rate to the consumer price no matter the number of stages at which the tax is paid[48].

Evidence so far supports the view that VAT revenue is already a significant source of revenue in Nigeria. For example, actual VAT revenue for 1994 was ₦8.189 billion, which is 36.5% higher than the projected ₦6 billion for the year. Similarly, actual VAT revenue for 1995 was ₦21 billion compared with the projected ₦12 billion. In terms of contributions to total federally collected revenue, VAT accounted for about 4.06% in 1994 and 5.93% in 1995. As much as ₦404.5 billion was collected on VAT (5.1% of total revenue) in 2008[49]. Despite the enormous contribution of VAT in terms of total revenue generation in Nigeria its impact is not encouraging.

The revenue as shown above is collected through a laid down procedure. For maximal generation of revenue, a taxable person is expected to render a monthly return of all the taxable goods and services to the Federal Inland Revenue Service (FIRS) on or before the

[47] Abdulrazaq, M.T. *Revenue Law and Practice in Nigeria,* Malthouse Press Limited, Lagos (2010) P. 268
[48] Mathew Asabor, The Administration and Implementation of Value Added Tax, (2012). http://www.tribune.com.ng/index.php/taxation/44506-the-adminstration...Friday, 20 July, 2012.
[49] Adereti, S.A., Adesina, J.A. and Sanni, M.R., Value Added Tax and Economic Growth of Nigeria, European Journal of Humanities and Social Sciences, (2011) Vol. 10 No. 1 (Special Issue) P. 455-471.

21st day of the month[50]. Although in the principal Act before amendment it is section 15(1)[51] which provides that a taxable person shall render to the Board, on or before the 30th day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Board may, from time to time, determine.

Where the taxable person fail to render return within the prescribed period it attracts the penalty of five per cent per annum plus interest at the commercial rate of the amount of tax remittable in addition to the tax[52]. Where a taxable person fails to render returns or renders an incomplete or inaccurate return, the FIRS shall assess him base on best of judgment[53]. Owing to the fact that VAT is a self assessed tax the intervention via best of judgment by FIRS is often the last resort. Under the Act there is no stipulated time frame within which the tax payer is expected to respond to the best of judgment as assessed by the FIRS. it is the submission of the researcher that in order not to render the best of judgment a nullity, the tax payer should be afforded a reasonable notice[54] within which to respond to same.

2.7 Value Added Tax and Tax Policy

Tax policies are adopted by national government(s) to enhance development. Tax policy of every country is propelled by certain set goals. The revenue raised via tax is meant to be used by the states to carry out certain states obligations as contained in the constitution, such as health care system, housing, transportation, education, defence,

[50] Section 7 of the Value Added Tax (Amendment) Act, 2007.
[51] Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[52] Section 19 (1) of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[53] Section 18 Ibid.
[54] Section 36 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended).

pensions for the elderly and unemployment benefits. Taxation is one of the oldest economic phenomena by which the cost providing essential services for the generality of a given set of people within a geographical area, is funded[55]. The tax policy is expected to outline the fundamental objectives of a country's tax to direct the policy actions of government. The policy should be directed towards achieving a targeted goal by improving the welfare of the entire citizenry.

Historically, before the arrival of British to this part of West Africa which is known as Nigeria, there were various systems of taxation. Tax administration was clearly more elaborate in the then Northern part of Nigeria, partly because of the entrenched Islamic System of Taxation introduced by Arabs from North Africa. There was little or no system of taxation in the South, East and Western part of Nigeria. Taxes in pre-colonial Nigeria were paid either in cash or tribute paying to acknowledge the hegemony of vassal states or kingdom conquered by the stronger chiefs, emirs and obas etc at a point in time[56].

In Nigeria, the taxation system dates back to 1904 when the personal income tax was introduced in Northern Nigeria before the unification of the country by the colonial masters. It was later implemented through the Native Revenue Ordinances to the Western and Eastern Regions in 1917 and 1928 respectively. Among other amendments in the 1930s, it was later incorporated into Direct Taxation Ordinance No. 4 of 1940. Since then different governments have continued to try to improve on Nigeria's fiscal regime is characterised by unnecessary complex, distortionary and largely inequitable taxation laws that have limited application in the formal sector that dominates the economy. It is pertinent that the fiscal policy aimed at revenue generation should be project driven in

[55] Tamunonimim A. Ngerebo and A. Masa, Appraisal of Tax System in Nigeria (A Case Study of Value Added Tax), Research Journal on Organisational Psychology & Educational Studies, (2012), www.emergingresource.org

[56] John, D.C., Lecture Note on Company, First Semester (Unpublished), Faculty of Law, A.B.U., Zaria (2011/12) P. 2.

order to encourage tax payers for the purpose of voluntary compliance. The government should equally ensure fiscal prudence. This will minimise the cost of revenue generation on the side of government and tax evasion or avoidance on the side of the tax payers.

Recently the Nigerian government undertook various tax law reforms to improve tax administration and to increase tax yield. The Value Added Tax (Amendment) Act, 2007; was for instance intended to widen the value added tax base and improve the machinery for its collection[57]. This suggests that tax policy of a country is often hinged on the objectives of taxation. It also involves the strict adherence of the canon of taxation which is to the effect that government should carefully tax the citizenry in such a way that taxes will not only be equitable, neutral and just it should make sure that the taxpayer becomes certain of his/her liabilities so as to give room for administrative efficiency in tax collection and mobilization[58]. The objectives of taxation include raising of revenue, wealth redistribution, price stability, economic development and revitalisation, providing employment e.t.c.

Tax policy is better appreciated by a proper understanding of what the government is aimed at achieving through federal taxation. Owing to this, it has been rightly observed that the federal tax system in Nigeria refers to the range of taxes over which the federal government has exclusive or shared jurisdiction. The system also covers the machinery put in place by government for the administration and collection of such taxes[59]. It is suggested that in putting up a tax policy in Nigeria welfare of the citizenry should be

[57] Okafor Regina, Tax Revenue Generation and Nigerian Economic Development, European Journal of Business and Management, (2012) Vol. 4, No. 19 P. 49-57. www.iiste.org

[58] See Adam Smith's Canons of Taxation (n.pub) as cited in John, D.C's Lecture Note on Company Taxation, First Semester (Unpublished), Faculty of Law, A.B.U., (2011/12) P. 5.

[59] Okafor Regina, Taxation Revenue Generation and Nigeria Economic Development, European Journal of Business and Management, (2012) Vol. 4 No. 19 P. 49-57. www.iiste.org

given priority by providing basic social amenities in practical terms not only generating it without using it for development purpose.

The Nigeria tax system is basically structured as a tool for revenue collection. This is a legacy from the pre-independence government. Based on 1948 British tax laws and have been mainly static since enactment. The need to tax personal incomes throughout the country promoted the Income Tax Management Act (ITMA) of 1961. In Nigeria, personal income tax (PIT) for salaried employment is based on a 'pay as you earn' (PAYE) system, and several amendments have been made to 1961 ITMA Act. For instance, in 1985 PIT was increased from ₦600 or 10 per cent of earned income to ₦2,000 plus 12.5 per cent of income exceeding ₦6,000. In 1989, a 15 per cent withholding tax was applied to savings deposits valued at ₦50,000 or more while tax on rental income was extended to cover chartered vessels, shops and aircraft. In addition, tax on the fees of directors was fixed at 15 per cent. These policies were geared to achieving effective protection of local industries, greater use of local raw materials, generating increased government revenue among others.

The productivity and competitiveness of business enterprises was tremendously increased through taxes after the implementation of Structural Adjustment Programme (SAP). There has been serious encouragement by reducing the burden of companies and individuals and promoting export of locally manufactured goods. In order to achieve the change in policy direction attempts were made towards the introduction of capital allowance, continuous reduction of company and income taxes, reviewing custom and excise duties, expanding the duty draw back scheme and manufacturing-in-bond scheme, implementation of VAT e.t.c.

There is need for experienced and highly skilled personnel to handle tax matters due to the complexity involved in the tax policy. The personnel should equally be subjected to regular training, refresher courses and seminars on modern tax practice. If done, tax officials experienced in management science will enhance their understanding of computerised tax stimulation models. When experienced in tax law, the personnel will ensure the execution of judgment by court to recover tax. Tax deductibility will also be easier in a transaction where the personnel are experienced in accounting. It will go a long way to ease the implementation of tax policies.

CHAPTER THREE

LEGAL AND INSTITUTIONAL FRAMEWORK OF VALUE ADDED TAX

3.1 Introduction

This chapter specifically deals with the legal and institutional framework of Value Added Tax administration in Nigeria. It also discusses the enabling law of VAT, institutional structures and functions of the Federal Inland Revenue Service (FIRS), Value Added Tax Technical Committee, Tax Appeal Tribunal, Joint Tax Board, State Tax Authority and Local Government Revenue Committee.

It also critically analyse the enabling legislations of the various bodies mentioned above with a view to appraising their efficacy. This will enable us consider the ability of the established structures to deal with the scheme of Value Added Tax.

3.2 Laws on Value Added Tax

Taxes are imposed by statutes, which must be clearly and logically legislated upon by the legislature[1]. Statutes are enacted either by the National or State assembly is the basis for taxation. Prior to the enactment of the Value Added Tax Act there has been series of arguments to the effect that the agencies of the United Nation known as International Monetary Fund (IMF) and the World Bank have greatly influenced its enactment.

The argument is hinged on its previous influence over the establishment of Structural Adjustment Programme (SAP) in Nigeria. The agencies have severally advised the Nigerian government on the need to reform the tax system. It was meant to reduce the

[1] John, D.C., Lecture Note on Company Taxation, First Semester (Unpublished), Faculty of Law, A.B.U., Zaria, (2011/12) P. 11.

over dependence on revenue generated from petroleum aimed at servicing the external debt. The advice was on its entirety advantageous to Nigeria. There are plethoras of statutes that regulate revenue generation in Nigeria. These include the Constitution, Acts and Decrees, edicts and bye-laws. These are the statutes that enable the government to enact tax laws. They shall be considered one after the other.

3.2.1 The Constitution

The Constitution is the grundnorm. The Constitution is supreme and its provision have binding force on the authorities and persons throughout the federation[2]. The validity or otherwise of any other law is derived from the constitution. Section 1 (3)[3] which stipulates that if any other law is inconsistent with the provisions of the constitution, the constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void. The constitution is not a tax law per se, but it empowers the federal government through the National Assembly to enact tax laws. Section 4(2)[4] which provides that the National Assembly have power to make laws for the peace, order and good government of the federation or any part thereof with respect to any matter in the exclusive legislative list set out in part 1 of the second schedule to the constitution. The federal government is sanctioned by the constitution to promulgate laws imposing taxes. Items 58 and 59[5] of the exclusive legislative list expressly empower the National Assembly to impose tax to the exclusion of the State Houses of Assembly.

Where the matters to be legislated are neither on the exclusive list nor specifically allocated to the federal government on the concurrent legislative list, the states are

[2] Section 1 (1) Constitution of the Federal Republic of Nigeria, Cap. C23, Laws of the Federation of Nigeria, 2004.
[3] Ibid
[4] Ibid
[5] Part 1, 2nd Schedule, Ibid.

empowered by the constitution to make laws[6]. Of importance to note is that this is by far the most significant legislative source of income taxes in Nigeria[7].

3.2.2 Acts and Decrees

Acts are the laws enacted by the National Assembly during a civilian regime. Decrees are laws promulgated by the armed forces during military interregnum. Most of the tax laws are promulgated by the military government while others are by the civilian regimes. For instance, Value Added Tax was promulgated during a military regime in 1993.

Every tax law is usually aimed at addressing a particular area of human endeavour. It is often aimed at either introducing a fresh tax law or by bringing about new techniques or mechanism for ultimate enforcement of the existing law.

3.2.3 Laws by State Government

The state government is empowered by virtue of the constitution to enact laws[8]. The law enacted by the house of assembly of a state is known as law. The House of Assembly of a state has the power to make laws with respect to any matter not in the exclusive legislative list as set out in part I of the second schedule and any matter included in the concurrent legislative list set out in the first column of part II of the second schedule of the constitution[9]. By virtue of Item 9 of the Part II to the Second Schedule[10] a House of

[6] Section 4 Ibid
[7] John, D.C., Lecture Note on Company Taxation, First Semester (Unpublished), Faculty of Law, A.B.U., Zaria, (2011/12) P. 7.
[8] Section 4 (7) of the Constitution of the Federal Republic of Nigeria, Cap. C23 Laws of the Federation of Nigeria, 2004.
[9] Section 4 (7) (a) & (b) Ibid.
[10] Ibid

Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing such collection.

Part II of the schedule to the Act[11] provided for the tax and levies to be collected by state government which include Capital Tax (Individual), Personal Income Tax with regards to Paye As You Earn (PAYE) and Direct taxation, Stamp Duties (Documents executed by individuals), Road Taxes, Right of Occupancy fees on land in the Urban Areas of the state, Withholding Tax (Individual), Pool Betting and Lotteries, Gaming and Casino Taxes, Naming of Streets in the state capital, Market Taxes and Levies, Business Premises Registration in respect of Urban area of a state and Development Levy.

Owing to the powers conferred on the state government it has enacted tax laws. Laws made by the state government regulating taxation within a state are veritable source of tax law in Nigeria.

3.2.4 Bye-Laws of Local Government

The Local Governments have the power to legislate and impose tax[12]. Local Government as one of the tiers of government within our Federal System has a list of items which it is empowered to legislate and impose tax on[13]. The items among others which the local government can charge and impose taxes include: Collection of rates, Radio and Television licences, Establishment and maintenance of cemeteries, Slaughter slap fees, Licensing of bicycles, Trucks, Canoes, Wheel barrows, and Carts, Shops and kiosks rates,

[11] Taxes and Levies (Approved List for Collection) Act, Cap. T2 Laws of the Federation of Nigeria, 2004.
[12] Section 1 (b) of the Fourth Schedule of the 1999 Constitution (as amended) and Part III of the Taxes and Levies (Approved List for Collection) Act, Cap. T2 Laws of the Federation of Nigeria, 2004.
[13] Mobil Producing (Nig.) Unlimited v. Tai Local Gov't Council & 2Ors (2004) 10 CLRN P. 99 @ 100.

Tenement rates, on and off liquor licence fees, Domestic Animal Licence fees, Wrong Parking Fees, Marriage, Birth and Death registration fees, Motor Park Levies, Naming of streets registration fee excluding streets in the state capital, Signboard and Advertisement fees[14] etc.

For purposes of effective tax administration and revenue generation, the three tiers of government should endeavour to adhere strictly to their respective areas of taxing powers as encapsulated in the Taxes and Levies (Approved List for Collection) Act[15]. If this is done it would also curtail the circumstance of double taxation.

3.2.4 Value Added Tax Act

This is the principal Act that regulates the administration of Value Added Tax in Nigeria. Section 1[16] imposed and charged the tax known as Value Added Tax in Nigeria. The Value Added Tax Act is a federal legislation enacted by the National Assembly. It was introduced in Nigeria in 1993 by the then military administration. This work dwell much on the Value Added Tax Act and it rely on it.

3.3 **Value Added Tax Administration**

Pursuant to Section 25 (1)[17] the Federal Inland Revenue Service (FIRS) shall have power to administer all the enactments listed in the First Schedule to the Act among which is the Value Added Tax Act and any other enactment or law on taxation in respect of which the National Assembly may confer power on the Service. The FIRS is the body charged with

[14] See generally the provisions of the Fourth Schedule of the 1999 Constitution (as amended) and Part III of the Taxes and Levies (Approved List for Collection) Act, Cap. T2 Laws of the Federation of Nigeria, 2004.
[15] Cap. T2 Laws of the Federation of Nigeria, 2004. See also Knight, Frank and Ruthley v. A.G. Kano State (1998) 7 NWLR (Pt 556) 1.
[16] Value Added Tax Act, Cap V1, Laws of the Federation of Nigeria, 2004.
[17] Federal Inland Revenue Service (Establishment) Act, No. 13, 2007.

the responsibility of administering and managing VAT. It is a federal agency responsible for the management and administration of federal taxes with inherent power to do such things as it may deem necessary and expedient for the assessment and collection of the tax and equally account for all amounts so collected[18] to the Federal Government of Nigeria.

The administration and management of the Value Added Tax is so important in terms of revenue generation so much that it occupies a unique position in the tax system. To ensure its effective administration, among others, a VAT Directorate was established as one of the directorates of FBIR. Local VAT Offices (LVOs) were equally established in all the State capitals and some major towns in each States with the ultimate plan to have an LVO in each of the 774 Local Government Councils. Each of the LVO was under the supervision and control of the Zonal Office in the area. The Zonal Co-ordinator on his part reports regularly the activities and performances of the LVOs in his zone to the VAT Director in Abuja.[19]

The VAT tax is administered and controlled by the federal government vide the already existing tax structure of the Federal Inland Revenue Service in collaboration with the Nigeria Custom Service and the State Inland Revenue Service. The net proceeds from VAT are shared among the Federal, States and Local governments. The sharing formula of the revenue accruing from VAT is 15% to the Federal Government, 50% to the State Governments and the Federal Capital Territory Abuja and 35% to the Local Governments.[20] The innovation lies in the proviso to this section to the effect that the

[18] Section 7 of the Value Added Tax Act Cap. V1, Laws of the Federation of Nigeria, 2004.
[19] Abiola Sanni, Current Law and Practice of Value Added Tax in Nigeria, British Journal of Arts and Social Sciences (2012), Vol. 5 No. 2 P. 199-200. http://www.bjournal.co.uk/BJASS.aspx
[20] Section 11 para (a), (b) and (c) of the Value Added Tax (Amendment) Act, No. 12, 2007.

principle of derivation of not less than 20% shall be reflected in the distribution of the allocation amongst states and local governments.

The introduction of the principle of derivation in the sharing of the net proceeds from VAT would definitely bring about high yield from the various tiers of government. This will also enhance competition by the respective tiers of government depending on their needs.

In order to maximize the revenue generated via the administration of VAT there must be administrative cost efficiency. The tax authority should ensure that the cost of compliance or generating the revenue from the tax payers does not exceed the proceeds of the tax itself. There should equally be a statutory authority enabling them to perform both management and technical functions in the administration of the Act.

3.4 **The Structure of Value Added Tax Administration**

The structural design of the Value Added Tax to ensure its smooth administration is the skeleton upon which the revenue flesh is built. In other words, the structure is the machinery laid down or established by statute through which the targeted revenue is generated. The methods adopted by the various structures are as spelled out in their enabling laws.

3.4.1 Federal Inland Revenue Service

Establishment of Federal Inland Revenue Service

The Federal Inland Revenue Service is established by virtue of section 1(1)[21]. The Service is a body corporate with perpetual succession and a common seal. It may sue or be sued in its corporate name and may acquire, hold or dispose of any property, movable or immovable, for the purpose of carrying out any of its functions under the Act[22]. This enable the Service to sue, that is, institute an action against any taxable person who is in default. The taxable person is also entitled to commence an action against the Service in its corporate name in the event of over assessment. It is important to state that an officer of the service shall be entitled to protection under the Public Officers Protection Act[23] whenever his duties are carried out within the ambit of the law.

The provisions of the Public Officer Protection Act shall apply in relation to any suit instituted against any member, officer or employee of the Service[24]. The Federal Inland Revenue Service has such powers and duties as conferred on it by its Act or on such matters on which the National Assembly has power to make law.[25] The object of the service shall be to control and administer the different taxes and laws specified in the First Schedule or other laws made or to be made from time to time by the National Assembly or other regulations made there under by the government of the federation and to account for all taxes collected.[26]

It should be noted that where either the Executive Chairman, a member of the Board or any other officer acts ultra viresly, the provisions of the Public Officer Protection Act will

[21] Federal Inland Revenue Service (Establishment) Act, 2007.
[22] Section 1(2)(a)(b) & (c) Ibid.
[23] Section 38 Ibid
[24] Section 55 Ibid.
[25] Section 1 (3) Ibid.
[26] Section 2 Ibid.

not apply to such a person. This also suggests that officers of the Service should do everything possible to ensure that their actions are within the law or authorised by law.

The Service has a body that plays a supervisory role over it affairs for effective tax administration. The body that performs such overall supervision of the service is known as the Federal Inland Revenue Service Board.

3.4.1.1 Composition of the FIRS Board

(a) The Executive Chairman of the Service;

(b) Six members appointed by the President representing the six geo-political zones;

(c) A representative of the Attorney-General of the Federation;

(d) The Governor of Central Bank of Nigeria or his Representative;

(e) A representative of the Minister of Finance not below a Director;

(f) The Chairman of the Revenue Mobilization, Allocation and Fiscal Commission or his representative;

(g) The Group Managing Director of Nigeria National Petroleum Corporation or his representative;

(h) The Controller-General of Custom Service or his representative.

(i) The Registrar-General of Corporate Affairs Commission or his representative; and

(j) The Chief Executive Officer of the National Planning Commission or his representative[27].

[27] Section 3 (2) Ibid

The members of the Board, other than the Executive Chairman, shall be part-time members[28]. The Chairman and other members of the Board with the exception of the ex-officio members shall hold office for a term of four years renewable once only on terms and conditions[29].

3.4.1.2 Functions of the Board

The Board performs the following functions:

i. Provides the general policy guidelines relating to the functions of the Service;
ii. Manages and superintends the policies of the Service on matters relating to the administration of the revenue assessment, collection and accounting system under the Act;
iii. Reviews and approves the strategic plans of the Service;
iv. Employs and determines the terms and conditions of service including disciplinary measures of the employees of the Service;
v. Stipulates remunerations, allowances, benefits and pensions of staff and employees in consultation with the National Salaries, Income and Wages Commission; and
vi. Do such other things which in its opinion are necessary to ensure the efficient performance of the Service under the Act[30].

The power given to the Federal Inland Revenue Service Board is too much. The Board should be more concerned with providing the general policy guidelines relating to the Service instead of employing and determining the terms and conditions of service. This

[28] Section 3(3) Ibid
[29] Section 4 Ibid
[30] Section 7 Ibid

function given them can easily be abused particularly that most of them are politicians i.e political appointees of the President. They can easily compromise the standard of employment where their candidates are involved to the detriment of other qualified candidates.

Importantly also is that the Federal Inland Revenue Service Board should dwell mostly on managing and superintending the policies of the Service on matters relating to the administration of the revenue assessment, collection and accounting system under the Act which is one of the core values of the Board. The responsibility of stipulating remuneration, allowances, benefits and pensions of staff and employees should not be that of the Board. This should strictly be the responsibility of the National Salaries, Income and Wages Commission. The commission should be allowed to perfume its functions optimally. If allowed to perform such functions properly it would bring about unification of salaries nationwide across all agencies and parastatals.

On the other hand, the functions of the Service include:-

(a) Assess persons including companies, enterprises chargeable with tax;

(b) Assess, collect, account and enforce payment of taxes as may be due to the Government or any of its agencies;

(c) Collect, recover and pay to the designated account any tax under any provision of the Act or any other enactment or law;

(d) In collaboration with the ministries and agencies, review the tax regimes and promote the application of tax revenues to stimulate economic activities and development;

(e) In collaboration with the relevant tax enforcement agencies, carry out the examination and investigation with a view to enforcing compliance with the provisions of the Act;

(f) Make, from time to time, a determination of the extent of financial loss and such other losses by government arising from tax fraud or evasion and such other losses (or revenue forgone) arising from tax waivers and other related matters;

(g) Adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud and evasion;

(h) Adopt measures which include compliance and regulatory actions, introduction and maintenance of investigative and control techniques on the detection and prevention of non-compliance;

(i) Collaborate and facilitate rapid exchange of information with relevant national and international agencies or bodies on tax matters;

(j) Undertake exchange of personnel or other experts with complementary agencies for purposes of comparative experience and capacity building;

(k) Establish and maintain a system for monitoring international dynamics of taxation in order to identify suspicious transactions and the perpetrators and other persons involved;

(l) Provide and maintain access to up to date and adequate data and information on all taxable persons, individuals, corporate bodies or all agencies of government involved in the collection of revenue for the purpose of efficient, effective and correct tax administration and to prevent tax evasion or fraud;

(m) Maintain database, statistics, records and reports on persons, organisations, proceeds, properties, documents or other items or assets relating to tax administration including matters relating waivers, fraud or evasion;

(n) Undertake and support research on similar measures with a view to stimulating economic development and determine the manifestation, extent, magnitude and effects of tax fraud, evasion and other matters that affect effective tax administration and make recommendations to the government on appropriate intervention and preventive measures;

(o) Collate and continually review all policies of the Federal Government relating to taxation and revenue generation and undertake a systematic and progressive implementation of such policies;

(p) Liaise with the office of the Attorney General of the Federation, all government security and law enforcement agencies and such other financial supervisory institutions in the enforcement and eradication of tax related offences;

(q) Issue taxpayer identification number to every taxable person in Nigeria in collaboration with States Board of Internal Revenue and Local Government Councils;

(r) Carry out and sustain rigorous public awareness and enlightenment campaign on the benefits of tax compliance within and outside Nigeria;

(s) Carry out oversight functions over all taxes and levies accruable to the Government of the federation as it may be required, query, subpoena, sanction and reward any activities pertaining to the assessment, collection of and accounting for revenues accruable to the Federation; and

(t) Carry out such other activities as are necessary or expedient for the full discharge of all or any of the functions under the Act[31].

In exercise of these functions, the officials of Service should be mindful of their limitations. In adopting measures which include compliance and regulatory actions, introduction and maintenance of investigative and control techniques on the detection and prevention of non-compliance[32] it should take into cognisance the provision of section 36. Section 36[33]which is to the effect that a tax officer must be armed with warrant issued by a judicial officer and should be accompanied by law enforcement officers. If this requirement is adhered to it would curtail some embarrassing situations and avoid the breach of the law in performing their functions.

3.4.2 Value Added Tax Technical Committee

The Value Added Tax Committee[34] is established by virtue of Value Added Tax Act[35] which is also referred to as "the Technical Committee". The Technical Committee shall comprise:

(a) A chairman who shall be the chairman of the Federal Board of Inland Revenue;

(b) All directors in the Federal Inland Revenue Service;

(c) The legal adviser to the Federal Revenue Service;

(d) A director in the Nigerian Customs Service;

[31] Section 8 Ibid
[32] Section 8 (1) (h) Ibid
[33] Section 36 (3) Ibid
[34] Section 21 of the Value Added Tax Act Cap V1, L.F.N. 2004.
[35] Cap V1, Laws of the Federation of Nigeria, 2004.

(e) Three representatives of the State Governments who shall be members of the Joint Tax Board.

The chairmanship of this technical committee should not have been given to the chairman of the FBIR due to the onerous responsibility of his office.

The Technical Committee as one of the institutions established for effective administration of the Value Added Tax is saddled with the following responsibilities as it functions:

a. Consider all the tax matters that require professional and technical expertise and make recommendations to the Board;
b. Advise the Board on the duties required in the administration of the tax[36]; and
c. Attend to such other matters as the Board may, from time to time, refer to it[37].

This body, to an extent, is supposed to be independent of the Board owing to the nature of its functions. The primary responsibility of the VATTC is to consider tax matters that require professional and technical expertise which afterwards make recommendations to the Board. Being it that the core function of the VATTC is hinged on professional and technical expertise the Chairman of the Board should not chair this Committee. Especially that the recommendations of the Committee is to the Board which he is chairing.

The proceedings, subject to such directions as the Board may, from time to time, give; the Technical Committee shall determine its quorum and otherwise regulate its own

[36] Section 7 Ibid
[37] Section 22 Ibid

procedure[38]. The Federal Inland Revenue Service may post to the Technical Committee such staff as the Technical Committee may require for the discharge of its functions[39].

The chairman of the Federal Inland Revenue also serves as the chairman of the Technical Committee. This responsibilities shouldered by the chairman are rather too much and may likely result to ineffective administration of the tax. Being it a technical committee, it will be in the overall interest of the government to appoint professionals such as lawyers, chartered accountant e.t.c of cognate experience in tax matters to head such committee with their expertise.

In Nigeria today, the private sector has been contributing enormously both in national development and revenue generation to the government. In the composition of such important committee the private sector ought to be taken into consideration by the enabling law. These will enhance proper representation of the private sector and increase revenue generation since bulk of the revenue is generated from the private sector. The private sector should be accorded the right to participate in the decision making process of the administration of VAT. Moreso, that this will curtail the excesses of tax evasion and avoidance by the private sector.

3.4.3 Tax Appeal Tribunal

The Tax Appeal Tribunal (TAT) is established in accordance with Section 59(1) of the Federal Inland Revenue Service (Establishment) Act, 2007. TAT formerly took off pursuant to the Tax Appeal Tribunals Establishment Order 2009 issued by the Minister of Finance, Federal Republic of Nigeria as published in the Federal Government Official

[38] Section 23 Ibid
[39] Section 24 Ibid

Gazette No. 296, Vol. 96 of 2nd December, 2009. By this enactment, TAT replaces the former Body of Appeal Commissioners (BAC) and Value Added Tax Tribunals[40].

Accordingly, TAT adjudicates on all tax disputes arising from operations of the various tax laws as spelt out in the fifth schedule to the FIRS Establishment Act. By virtue of the Act[41], TAT has jurisdiction over disputes arising from the under listed laws:

a. Companies Income Tax Act (CITA)
b. Petroleum Profits Tax Act (PPTA)
c. Personal Income Tax Act (PITA)
d. Stamp Duties Act
e. Capital Gains Tax Act
f. Value Added Tax Act

TAT also have jurisdiction over matters arising from Taxes and Levies (Approved list for collection) Act; as well as other laws, regulations, proclamations, government notices or rules related to these Acts.

TAT was established by the Federal Government, being part of the ongoing reforms of the tax system in Nigeria, to adjudicate on all tax disputes or controversy arising from operations of the various Tax Laws as spelt out in the Fifth Schedule to the FIRS (Establishment) Act 2007 as stated above.

Pursuant to the Tax Appeal Tribunals Establishment Order 2009, TAT is established in eight zones to cover the six geo-political zones namely: Abuja, Lagos, Ibadan, Benin, Enugu, Kaduna, Jos and Bauchi. The Coordinating Secretariat is situated at Abuja.

[40] http://tat.gov.ng
[41] Section 59 (2) FIRS (Establishment) Act, 2007.

A Tribunal shall consist of five members to be appointed by the Minister[42]. The Chairman for each zone shall be a legal practitioner who has been so qualified to practice for a period of not less than 15years with cognate experience in tax legislation and tax matters.[43] Consequently, the Tax Appeal Tribunal Chairmen and Commissioners were inaugurated on the 4th of February, 2010 while the secretariat staff resumed duties at their respective posts on July 1st, 2010 after a two-week induction training. This marked the formal take-off of the new Tax Appeal Tribunal in Nigeria. All proceedings before the Tribunal are guided by the Tax Appeal Tribunal (Procedure) Rules 2010[44].

Tax Appeal is an important component of the tax system and the new tax policy offers a step by step objection and appeal process which gives the complainant an opportunity to explore other dispute resolution mechanisms before gaining access to the regular court system. According to the Establishment Act, both the tax payer and relevant tax authority can initiate the appeal process. A person aggrieved by an assessment or demand notice made upon him by the Service or aggrieved by any action or decision of the Service under the provisions of the tax laws may appeal against such decision, or assessment or demand notice within a period of 30 days[45]. On the other hand, if the Service is aggrieved by the non-compliance by a person in respect of any provision of the tax laws; it can within a period of 30 days, file an appeal at the appropriate zone of the Tribunal[46].

The establishment of the TAT would go along a way in reducing the incidence of tax evasion. It would also provide an avenue for effective involvement of parties; ensure fairness and transparency of the tax system. It would equally enhance the tax payers'

[42] Section 2(1) of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act, 2007.
[43] Section 2(2) Ibid.
[44] http://tat.gov.ng
[45] Section 13(1) & (2) of the Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act, 2007.
[46] Section 14 Ibid.

confidence in our tax system; provide opportunity for expertise in tax dispute resolution.

Furthermore, it is also pertinent to note that the establishment of TAT would lessen the experience of delays in adjudication of tax matters as in our regular court system. It gives more credence to justice rather than technicalities. The introduction of TAT saves time in the adjudication of tax matters in the interest of the economy.

In spite of the advantages and benefits that accompanied the establishment of the Tax Appeal Tribunal, a recent decision restraining the TAT from adjudicating federal and companies tax matters by the Federal High Court in the case of TSKJ Construces Internacionals Sociadade Unipessoal LDA vs. Federal Inland Revenue Service[47](unreported), the facts of the case is that the Appellant obtained a contract for the construction of the Nigeria Liquidified Natural Gas (LNG) plant from the Nigeria LNG Limited (NLNG). In executing the said contract, the Appellant used TSKJ Nigeria (TSKJN), it's subsidiary to render logistic support service in the course of executing the said contract. The Respondent is a statutory body responsible for the collection of Federal Taxes for the government of the Federal Republic of Nigeria. The Appellant filed a self assessment on deemed profits basis (Turnover Assesment)meaning that the profit of the Appellant could not be ascertained. The appellant made deduction of recharges being the cost paid to its local subsidiary.

The Respondent disallowed the said deduction on the ground that the deduction is not allowed under the Turnover basis assessment. As a result, additional assessment was issued by the Respondent in respect the wrong deduction the Appellant Assessment made. The appellant objected to the additional assessment whilst the Respondent issued a Notice of Refusal to Amend.

[47] Suit no: FHC/ABJ/TA/11/12.

Consequent upon this, the appellant filed an appeal at the TAT of the Abuja Zone but its reliefs were dismissed. Dissatisfied with the judgment of the TAT, an appeal was filed at the Federal High Court (FHC), Abuja challenging the jurisdiction of the TAT to hear and determine the matter.

The court allowed the appeal and held that the Tax Appeal Tribunals in Nigeria are restrained from adjudicating on tax matters and directed the Minister of Finance to disband the eight Tax Appeal Tribunals recently approved and constituted.

Suffice to state at this juncture that albeit this judicial pronouncement has attracted so much interest but in the interim all comments are reserved because the matter is presently on appeal before the court of appeal which makes it *sub judice*

3.4.4 Joint Tax Board

The Joint Tax Board[48] (JTB) is the body saddled with the responsibility of administering the income tax[49]. The Board shall consist of the following members, that is:-

(a) The chairman of Federal Board of Inland Revenue who shall be chairman of the Board; and

(b) One member from each state, being a person experienced in income tax matters nominated by the state;[50]

(c) Co-opted as members are, the representative of the following bodies:

i. Federal Road Safety Commission (FRSC);

ii. Revenue Mobilization, Allocation and Fiscal Commission (RMAFC);

[48] Section 86 (1) of the Personal Income Tax Decree 1993 Act, Cap. P8 L.F.N 2004.
[49] Personal Income Tax Decree 1993 Act, Cap. P8 L.F.N 2004.
[50] Section 86 (2) Ibid.

iii. Federal Capital Territory Administration;

iv. Federal Ministry of Finance; and

v. Federal Inland Revenue Service[51].

The nomination of a member to the Board from the state could be done either by name of office, from time to time, by the Commissioner charged with responsibility for matters relating to income tax in the state in question. The nomination shall be evidenced by notice thereof in writing delivered to the secretary to the Board[52].

An officer experienced in income tax matters shall be appointed by the Federal Civil Service Commission to be the Secretary to the Board and appoint such other staff as the Board may deem fit to be necessary, from time to time, including on secondment or transfer, from any public service in Nigeria[53]. The Secretary is not a member of the Board but shall be responsible for maintaining records of the Board's proceedings and for signifying all decisions of the Board[54]. The Legal Adviser of the Federal Board of Inland Revenue shall be in attendance at meetings of the Board and shall serve thereat as adviser to the Board[55].

The legal adviser to the Federal Inland Revenue Service Board should not double as the legal adviser to the Joint Tax Board. The JTB should have its own separate legal adviser from that of the Federal Inland Revenue Service Board. The role of the legal adviser is so vital that he should be independent of that of the Board. Where the legal adviser to the Board is saddled with arduous responsibility it would likely affect the entire system and the country as a whole where a wrong step is suggested due to workload.

[51] http://www.jtb.gov.ng/node/1
[52] Section 86 (2) (b) of the Personal Income Tax Act Cap. P8 L.F.N. 2004
[53] Section 86 (3)
[54] Section 86 (4) Ibid
[55] Section 86 (8)

3.4.4.1 Powers of JTB

The enabling law cloth the JTB with legal power to exercise the following functions to wit:

(i) Exercise the power or duties conferred on it by express provisions of the Act, and any other powers and duties arising under the Act which may be agreed by the Government of each territory to be exercised by the Board;

(ii) Exercise powers and perform duties conferred on it by any enactment of the Federal Government imposing tax on the income and profits of companies, or which may be agreed by the Minister to be exercised or performed by it under the enactment in place of the Federal Board of Inland Revenue;

(iii) Advise the Federal Government, on request, in respect of double taxation arrangement concluded or under consideration with any other country, and in respect of rates of capital allowances and other taxation matters having effect throughout Nigeria and in respect of any proposed amendment to the Act;

(iv) Use its best endeavours to promote uniformity both in the application of the Act and in the incidence of tax on individuals throughout Nigeria;

(v) Impose its decisions on matters of procedure and interpretation of the Act on any State for purposes of conforming with agreed procedure or interpretation[56].

The Joint Tax Board must ensure that its role of advising the Federal Government on double taxation is properly carried out. The JTB ought to have advised the Federal

[56] Section 86 (9) (a)-(e) of the Personal Income Tax Act, Cap. P8 L.F.N. 2004.

Government on the propriety or otherwise of the Sales Tax imposed by Lagos State Government alongside VAT albeit it is now sub judice.

It should also step up their commitment in promoting uniformity both in the application of the tax laws and in the incidence of tax on individuals throughout the federation.

The Board meets on quarterly basis to appraise the performance of the members and to deliberate on tax issues of national importance to develop new strategies to carry out its functions.

3.4.4.2 Functions of JTB

The functions of the JTB are summarised as follows:

1. Advising all tiers of Government on tax matters, so as to evolve an efficient tax administration system in the country;
2. Resolving areas of conflict on tax jurisdiction among member state;
3. Using its best endeavours to promote uniformity in both application of the tax laws and in the incidence of tax on individual throughout the country;
4. Imposing it's on matters of procedure and interpretation on income tax matters on member state[57].

The said functions of JTB as enumerated under the Act also had a judicial blessing in a recent case where the court held that:

> *The Joint Tax Board is a regulatory body established to co-ordinate the nature of taxes allowable by the appropriate tier of government. The Joint Tax Board is the said body. To leave taxation at large at the whim and caprice of the different tiers of*

[57] http://www.jtb.gov.ng

> *government would expose the entire citizenry to undue multiple and overlapping taxes and levies. Taxation should be a tool of social engineering, of societal class structural adjustment in the hands of a responsive and sensitive government*[58].

The decision, in this respect, was hinged on one of the basic functions of the JTB which is to advise all tiers of Government on double taxation, promote unity and resolving areas of conflict on tax jurisdiction.

Notwithstanding the quarterly general meetings and committee meetings, the Board also organises retreat for members. The retreat is used as an avenue to consider other vital issues that cannot be accommodated during the normal meetings. All members of the Board are mandated to attend the Boards meeting and other activities. It is also of interest to know that the Board carry out its functions via committees. The committees report to the board. Members can be assigned to the committees and be always ready to make a meaningful contribution as they are expected to be actively involved in the activities of the committees.

3.4.5 State Tax Authority

The Act established for each state, a Board to be known as the State Board of Internal Revenue (referred to as "the State Board") whose operational arm shall be known as the State Internal Revenue Service (referred to as the "State Service")[59].

The State Board comprise the following:

(a) The executive head of the State Service as chairman;

[58] Eti-Osa Local Government v. Rufus Jegede & Anor (2007) 5 CLRN Pg. 67 @ 68 Ratio 2.
[59] Section 87 (1) of the Personal Income Tax Act, Cap. P8 L.F.N. 2004

(b) The directors and heads of departments within the State Service;

(c) A director from the State Ministry of Finance;

(d) The Legal Adviser to the State Service;

(e) Three other persons nominated by the Commissioner for Finance in the State; and

(f) The secretary of the State Service[60].

The Chairman of the State Service shall be a person who is experienced in taxation and he is appointed from within the State Service by the Governor of the state in question. The three persons to be appointed into the State Service by the Commissioner of Finance shall be made base on their personal merits. The Secretary of the State Service shall be an ex-officio member

Any five members of the State Board, of whom one must be the Chairman or a Director, shall constitute a quorum[61]. The Secretary of the State Service shall be appointed by the Board from within the State Service[62].

Notwithstanding that the Legal Adviser to the State Service is a member of the State Board, he may appear for and represent the State Board or State Service in his professional capacity in any proceedings in which the State Board or State Service is a party, and the Legal Adviser shall not in such circumstances give evidence on behalf of the State Board or State Service[63].

The State Board is the body charged with carrying out the following responsibility as its functions:

[60] Section 87 (2) Ibid
[61] Section 87 (3) Ibid
[62] Section 87 (4) Ibid
[63] Section 87 (5) Ibid

(a) Ensuring the effectiveness and optimum collection of all taxes and penalties due to the government under the relevant laws;

(b) Doing all such things as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Commissioner;

(c) Making recommendations, where appropriate, to the Joint Tax Board on tax policy, tax reform, tax legislation, tax treaties and exemption as may be required, from time to time;

(d) Generally controlling the management of the State Service on matters of policy, subject to the provision of the law setting up the State Service; and

(e) Appointing, promoting, transferring and imposing discipline on employees of the State Service[64].

The State Board is autonomous in the day-to-day running of the technical, professional and administrative affairs of the State Service[65]. The State Board may, by notice in the Gazette or in writing, authorise any person to perform or exercise on behalf of the State Board any function, duty or power conferred on the State Board[66].

Pertinent to note is that there is also a Technical Committee of the State Board[67]. The Technical Committee have the powers to co-opt additional staff from within the State Service in the discharge of the duties; consider all matters that require professional and technical expertise and make recommendations to the State Board; advise the State Board

[64] Section 88 (1) (a)-(e) Ibid
[65] Section 88 (2) Ibid
[66] Section 88 (3) (a) Ibid
[67] Section 89 (1) Ibid

on all its powers and duties and attend to such other matter as may, from to time, be referred to it by the Board[68].

The nexus between State Tax Authority and Value Added Tax is that the State Tax Authority ensures the efficacy and optimum collection of all taxes and penalties due to the government under the relevant laws including VAT. For instance, where a taxable person(s) in a particular state which is due for the payment of VAT and it is not within the tax net of FIRS, the STA can draw the attention of the FIRS of its existence. By doing this the derivation principle introduced in the sharing formular of tax proceeds of VAT would definitely encourage the states to do more.

3.4.6 Local Government Revenue Committee

The Act established for each local government area of a State a Committee to be known as the Local Government Revenue Committee (referred to as "the Revenue Committee")[69].

The Revenue Committee shall comprise:

a) Supervisor for Finance as chairman;
b) Three local government councillors as members; and
c) Two other persons experienced in revenue matter to be nominated by the chairman of the local government on their personal merits[70].

The functions of the Revenue Committee include:

[68] Section 89 (2) (a) –(d) Ibid
[69] Section 90 (1) Ibid
[70] Section 90 (2) Ibid

(1) The Revenue Committee shall be responsible for the assessment and collection of all taxes, fines and rates under its jurisdiction and shall account for all amounts so collected[71].

The revenue committee is autonomous of the local government treasury and shall be responsible for the day-to-day administration of the department which forms its operational arm[72].

By extension of the institutional structures for the administration of the VAT Act, the Revenue Committee is the body charged with the responsibility of generating revenue internally within its jurisdiction to boost development.

Being it that the Local Government is the most closest to the people at the grassroot, it Revenue Committee knows better the taxable persons that often comply with the tax law. There are so many taxable persons that are not within the tax net of the FIRS.

The LGRC do not know that there is a derivative formular in the sharing of the proceeds of VAT. If they are properly educated, they would make more commitment in the generation of VAT.

[71] Section 91 (1) Ibid
[72] Section 91 (2) Ibid

CHAPTER FOUR

ASSESSMENT OF VALUE ADDED TAX

4.1 **Introduction**

This chapter venture into discussing assessment and the procedure for the assessment and collection. It also looked at the basic requirement of a valid assessment as contemplated by the Value Added Tax Act in Nigeria. This chapter also delve into discussing the obligations of taxable person to ensure voluntary compliance through keeping VAT records and account, making returns and remittances. Duties of tax officers were equally discussed.

Assessment is the determination of the rate or amount of something, such as a tax or damages[1]. It is the evaluation of payable tax on taxable persons to ascertain the amount that is due as value added tax. In other words, the essence of assessment is for the ascertainment of the tax due from a tax payer in a particular assessment year. The overriding objective of assessment function is to ensure that all taxpayers, within a defined jurisdiction, are brought into the tax net and assessed correctly in order to plug all possible leakages[2]. Every taxable person is assessed of payable VAT base on the tax year. The tax year is also known as the assessment year which commence from 1st January to 31st December to correspond with the financial year.

It is expected that at the commencement of every assessment year, each tax payer is required to complete and deliver an income tax return form to the revenue division of revenue centre. The tax payer will file return of income and claim for allowances with particulars relating to:

[1] See Blacks' Law Dictionary 8th Edition
[2] See The Nation Newspaper of Monday, April 21, 2014 pg. 40.

a) Income of the year just ended, whether taxable or not and whether already subject to tax by deductible at source or not,
b) Deductible expenses in generating the income(s) and
c) Personal income tax relief and allowances.

Important also is the fact that where the tax agent or assessment officer as the case may be is dissatisfied with the particulars of information disclosed on the income tax return forms; he is empowered to summon the tax payer(s) to furnish further particulars of returns or in the alternative order the taxpayer to produce proper documents and books of accounts on the trade or business.

The assessment officer also has the option of resorting to information from local tax collecting officials or agents for further details. The tax officials sometimes also tour their various tax areas of coverage which afford them the opportunity of direct contact with the taxpayer and interview them personally for a better method or technique for effective assessments.

4.2 **Tax Assessment and Collection Procedure**

There are laid down procedures for VAT assessment and collection. VAT is a self-assessment scheme in which the vat-able person is expected to render a return of goods and services supplied and purchased in the preceding month to the Federal Inland Revenue Service[3]. In theory, VAT is seen as a complete self-assessment tax but in practice during the collection of such tax, assessment plays a vital role. The relevance of assessment in this instance is largely because of the behaviour of the tax payers.

[3] FIRS Information Circular No. 9403 of 19th September, 1994.

According to law a taxable person shall render to the Board, on or before the 21st day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Board may, from time to time, determine[4]. Procedurally, this is the first step to be taken. It is done by the taxable person himself. The taxable person is expected to file a return of all transactions that relates to VAT. The filing must be done on or before the end of the month.

The second step to be taken by procedure is where a taxable person fails to render returns or renders an incomplete or inaccurate returns, the Board shall assess, to the best of its judgment, the amount of tax due on the taxable goods and services purchased or supplied by the taxable person[5]. The Board is sanctioned by law to give best of its judgment in the circumstance where a taxpayer fails to render or file returns, or renders incomplete or inaccurate returns. It has been held in the case of *Federal Board of Inland Revenue v. Owena Motels Ltd*[6] that where the Service has raised an assessment based on the best of its judgment, and no objection was raised by the person assessed within thirty days after notification, the assessment has become final and conclusive. Where it appears to the Board that taxable person's tax return is incomplete or inaccurate or where he neglected or refused to make a return, the Board is authorised to:

a) Issue a best of judgment assessment.
b) He is liable to civil penalties if he fails to comply with a demand for documents or information.
c) Prosecute him/her under a number of provisions.

[4] Section 15 of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria, 2004.
[5] Section 18 ibid.
[6] (2010) TLRN p. 87 at pp 93 and 94. See also Federal Inland Revenue Service v. Nigeria Service Supplies Limited (2013) NTTLR Vol. 1 p. 65-71.

4.2.1 Validity of Assessment

The validity of assessment is hinged on certain rules which same must be complied with. (i) Defined Period

Firstly, an assessment must precisely define the period of time to which it relates and is invalid unless it does so[7]. In other words, an assessment must specifically describe the period of time to which it relates. Such an assessment may be in respect of one, two or more accounting period.

(ii) Service of Assessment Notice

Secondly, the taxpayer must be served with the assessment notice[8]. In other words, the vatable person must be notified with the assessment. To effect service of notice of assessment it can be done via personal service on the vatable person, registered post or an agent of the taxable person. It is the law that service of notice of assessment is a condition precedent to recovery under the law[9]. In the case of Berry v. Farrow[10] where it was stated that all notices or forms required or allowed to be served on a taxable person can be served either personally on him or be left at his usual or last place of abode. The fact of this case is that the plaintiff instituted an action contending that no valid assessment had been made on him for the year in question. He consequently challenged the proceedings taken to recover the amount assessed and that same is null and void. It was held by the court that there was no valid assessment on him for the year in dispute. It is imperative to

[7] Customs and Excise Comrs (1970) VATTR 115.
[8] Section 19 (2) of the Value Added Tax Act, Cap V1 Laws of the Federation of Nigeria, 2004.
[9] See Senior Inspector of Taxes v. J.O. Adigun Suit No. 1/1617 in the High Court of Justice, Ibadan.
[10] (1914) 1, KB 632.

note also that an assessment served on a partnership is deemed to be a notification to the past and present members of the firm jointly assessed[11].

(iii) Assessment must be for a Right Reason

The third aspect is that the assessment must be made for the right reason[12]. An illustration is that where a taxpayer is assessed but the reason for making the assessment is unfounded in law, the assessment will fail even if the taxpayer is due because it is expected that same should be administered in accordance with the provisions of the Act[13]. For the Board to validate an assessment which is wrong in law to enable them claim from the vatable person it must make an additional assessment[14].

Where an assessment is found to be lower than the amount due, the FIRS are entitled to issue a best of judgment assessment where the period concerned is still in time. Time limit does not apply for VAT offences.

(iv) Federal Inland Revenue Service Best of Judgment

Important to note also is the fact that an assessment made under VAT Act[15] must be made to the best of the FIRS judgment[16]. This means that they "...will fairly consider all material placed before them and, on that material, come to a decision which is reasonable and not arbitrary as to the amount of tax which is due"[17]. To arrive at and determine the tax payable by a taxable person in the event of failure to render returns or renders inaccurate or incomplete returns the Board is expected to be just and considerate. This to

[11] Customs and Excise Comrs v. Evans Conus (1982) STC 342.
[12] Silvermere Golf and Equestrian Centre Ltd v. Customs and Excise Comrs [1981] VATTR 106
[13] Section 1 of the Value Added Tax Act Cap V1 Laws of the Federation of Nigeria, 2004.
[14] See Customs and Excise Comrs v. Sooner Foods Ltd [1983] STC 376.
[15] Cap. V1, Laws of the Federation of Nigeria, 2004.
[16] Section 18 ibid.
[17] Abdulrazaq, M.T., Revenue Law and Practice in Nigeria, Malthouse Press Ltd Ibadan (2010) P. 303-304.

a very large extent is meant to safeguard the taxable person from an arbitral assessment by the FIRS.

(v) Recovery at Tax Appeal Tribunal

> It is importance to note is that where the matter of a taxable person's duty to pay a value added tax has gone through the full hog, from a failure to render returns, through failure to pay, a best of judgment assessment, notification of tax assessed and failure still to pay or object to assessment, the Service may exercise the only available option of recovery through proceedings at the Tax Appeal Tribunal[18].

4.3 Returns and Remittances of Value Added Tax

Every vatable person is to remit to the relevant local VAT office the net. VAT payable, which is the excess of the output tax over the input tax while filling the VAT return. Remittances are supposed to be made together to the VAT returns filed. The VAT carries a single rate of 5% on vatable goods and services. Zero rates are assumed for export while there are goods and services exempted from the tax[19]. A taxable person is required to render returns for goods or services purchased or supplied by it, to the Federal Inland Revenue Service on monthly basis[20].

For imported goods, there is hardly a distinction as to whether the goods are for private use or for business reasons. It is therefore not expressly stated whether the taxable person can make a separate claim for repayment. However, the importer being a taxpayer can make a separate claim for it to be repaid. Although, such taxpayers claim for repayment is

[18] See Federal Inland Revenue Service v. Nigeria Services and Supplies Limited (2013) NTTLR 1 P. 65 @ 66.
[19] See Section 3 of the Value Added Tax (Amendment) Act, 2007 and Olatunji, O. C., A Review of Value Added Tax (VAT) Administration in Nigeria, Medwell Journals (2009) Vol. 3 Pages 61-68. See also http://www.medwelljournals.com 6/27/2013.
[20] Federal Inland Revenue Service v. Nigeria Services and Supplies Ltd (Supra).

subject to the discretion of the FIRS. The FIRS would allow the claim where they are satisfied that to disallow it would result in a double charge to tax. Where the Service allows it should be only to the extent necessary to avoid the double charge.

4.4 Power of Inspection of Value Added Tax

Although by its very nature VAT is a self assessment tax that the taxpayer is expected to render returns voluntarily without been checkmated, supervised or inspected. Due to human nature inherent in every taxpayer, the statute enabled the tax authority to embark on routine inspection of the taxpayers records. The Act[21] stipulates that an authorised officer may at any time enter without warrant any premises upon which he has reasonable grounds to believe that a person is carrying on business in order to ascertain whether the Act is being complied with (whether on part of the occupier of the premises or any other person), and on entry he may carry out such inspections and make such requirement as may be specified by the Service. A person acting under the authority of FIRS, is empowered to enter any premises on any reasonable grounds to believe that they are used in connection with taxable supplies of goods and services, and that goods held for supply are to be found on those premises[22]. There is no warrant required for the inspection and the officer or any other person authorised by the Board may take with him such persons as he considers necessary for carrying out his functions under the Act[23].

Moreso, whatever new power tax inspectors are given in their battle against evasion the least valid argument is that other public officials already have them. For instance, VAT is

[21] Section 39 (1) of the Value Added Tax Act, Cap V1, Laws of the Federation of Nigeria, 2004.
[22] Abdulrazaq, M.T., Revenue Law and Practice in Nigeria, Mlathouse Press Ltd, Lagos, 2010 P. 301.
[23] Section 39 (2) of the Value Added Tax Act, Cap. V1 Laws of the Federation of Nigeria, 2004.

collected by a trader and others on behalf of the government (FIRS) and the Decree has granted powers of forcible entry to recover the tax[24].

However, in the case of civil liberty, no citizen should suffer his home to be forcibly broken into by a civil servant in the name of the law except when less drastic steps have failed and, or no other course is left open. Forcible entry is a last resort, which should not be made lawful without proven need, certainly not to meet administrative convenience or even the circumstance of the rare and extreme case. Thus, the power given under the section to the authorised officer to demand documents and the right to break in to get them is not part of the battle against evasion so much as part of the counter attack upon the resentful mood of the people. In the present, corrupt civil service in Nigeria one can be rest assured, hence the provision is inviting for a war. A fully policed tax system would become unworkable, tax men do of course have a professional interest in the tools they are given to do their job, but they are not noted for their interest in any civil liberties except their own. That is why they are not always the best judges of politics of taxation.

Consequently, powers do exist, some of them of long standing and other to force the dilatory uncooperative, evasive or potentially fraudulent taxpayer into the open.

Moreover, the more powers of coercion put in the hands of the tax gatherer, the more likelihood of alienation from the public. Power or use of coercion would often lead to resistance not cooperation and it is cooperation that would make our VAT system more efficient.

After gaining access to the premises an authorised FIRS officer has a number of powers to obtain the information he requires. These include:

i. Inspect and check the operation of a computer;

[24] Supra

ii. Inspect the premises and any goods found on the if he has reasonable cause to believe that taxable supplies of goods are made from those premises;

iii. Demand production of documents, inspect them, take copies of them, or remove them for a reasonable period;

iv. Demand information concerning certain matters;

v. Demand assistance in inspecting and checking the operation of a computer;

vi. Take sample of goods to determine whether they are taxable;

vii. Search premises and persons, and seize documents;

viii. Require a gaming machine to be opened and checked;

ix. Obtain access to recorded information held by third parties;

x. Require a trader to account for goods acquired or imported for the purposes of the business[25].

4.5 Duties of Tax Officers

The Board controls the tax officers as to discharge of their duties, their duties cover all aspects of taxation in Nigeria. The focal point of the tax officers duties are geared towards effective generation of tax. The responsibility of tax officers range as follows:

a) To receive and examine the tax returns and other information from tax payers and other sources.

b) To make and ensure assessments on the returns of the payable tax.

c) Issue an assessment known as best of judgment assessments[26]. This duty is exercised where no return is received, or the information therein is false.

[25] Abdulrazaq M.T., Revenue Law and Practice in Nigeria, Malthouse Press Ltd., Lagos, (1962) P. 301

d) To issue additional assessments. Where there is reasonable belief that the initial was not adequate in the event of emergence of new facts as regards the tax payer's income.

e) Handle objections raised by taxpayers on assessment issued through the Service. In the event where the objection was not resolved or the taxpayer is dissatisfied with it, he can appeal to the Tax Appeal Tribunal[27].

f) Handles the claims for repayment when the tax has been overpaid by the taxpayers.

g) Issuance of tax deduction cards that is related to the payment as you earn (PAYE) system and excising a general oversight of its administration by employees.

h) Representation of the Service at the hearing of appeals filed by taxpayers.

Of important also is the fact that some officials of the service take steps that enables the taxpayers to make due their tax liabilities with the revenue service. They ensure that the service of the under listed items is effected properly:

i. Notice of assessment.

ii. Return of income forms.

iii. Summons and Affidavits, and other supply of information. The tax officers do not handle money or actually collect taxes. Moreso, tax officers are classified or listed into four categories depending on their experience and number of years in service. There are chief inspectors of taxes, principal inspectors of taxes, senior inspectors of taxes and inspectors of taxes[28].

[26] Section 18 of the Value Added Tax Act, Cap V1 Laws of the Federation of Nigeria, 2004.
[27] Section 10 (4) of the Value Added Tax (Amendment) Act, 2007.
[28] Oriwodola J.A., Personal Taxation in Nigeria, JAA Nig. Ltd, Lagos, 1993.

4.6 Assessment of Value Added Tax

The Value Added Tax Act was enacted in 1993 but came into force on the 1st January 1994. The Federal Inland Revenue Service (FIRS) is saddled with the responsibility of administering the VAT system in Nigeria. There is VAT directorate within the FIRS at the headquarters with zonal and local VAT offices all over the federation. Thus, Value Added Tax is assessed in accordance with the various provisions of the Act as follows:

a) Taxable Goods and Services

The tax is charged and payable on the supply of all goods and services other than those goods and services listed in the first schedule[29]. VAT is levied on goods and services at a single rate of five percent[30]. A list of goods and services exempted from VAT are contained in the schedule, which include; all medical and pharmaceutical products, basic food items, books and educational materials, newspapers and magazines, baby products, commercial vehicles and commercial vehicle spare parts, fertilizer, locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment, plant and machinery imported for use in the export processing zone, plant, machinery and equipment purchased for utilisation of gas in downstream petroleum operations and all exports, medical services, services rendered by community banks, peoples' bank and mortgage institutions, plays and performances conducted by educational institutions as part of learning and all export services[31].

[29] Section 2 of the Value Added Tax Act, Cap V1, Laws of the Federation of Nigeria, 2004.
[30] Section 3 of the Value Added Tax (Amendment) Act, 2007
[31] See Section 3 and First Schedule of the Value Added Tax Act, Cap. V1, Laws of the Federation of Nigeria 2004.

However, VAT is charged on non-exempt imports into Nigeria[32]. All Goods and services that are exempted under the Act are zero rated that is, vatable at zero percent[33].

b) Vatable Person

A taxable person is a person who independently carries out in any place an economic activity as a producer, wholesale trader, supplier of goods, supplier of services (including mining and other related activities) or person exploiting tangible property for the purpose of obtaining income there from by way of trade or business; and includes a person and an agency of Government acting in that capacity[34]. In the case of *Federal Inland Revenue Service v. Oba International Services Limited*[35] it was held that a person is said to be a taxable person where he complied with the provision of the Act by registering with the Service.

In the case of *Federal Inland Revenue Service v. Nigeria Service and Supplies Limited*[36] it was held that under section 8 of the Value Added Tax Act, 1993, a person becomes a taxable person upon registering itself with the Federal Inland Revenue Service.

There are some manufacturers that have not registered with FIRS to be referred to as taxable person(s) and they are not willing to so do. The tax officers of the FIRS must go extra mile to ensure that such persons are brought into its tax net.

A taxable person enjoys some rights with corresponding obligations.

[32] Section 6 ibid.
[33] Section 3 of the Value Added Tax (Amendment) Act, 2007
[34] Section 46 of the Value Added Tax Act, Cap V1 Laws of the Federation of Nigeria, 2004.
[35] (2013) Vol. 1 NTTLR 101 at 103
[36] (2013) Vol. 1 NTTLR 65 at 66.

Rights of a Taxable Person

Some of the rights enjoyed by a taxable person include:

i. To be given Taxpayer Identification Number (TIN) free of charge immediately on request or be provided with a reason for failure to issue TIN.
ii. To object to a disputed VAT assessment as specified in the VAT Act.
iii. To appeal against a notice of refusal to amend a VAT assessment as specified in the VAT Act.
iv. To claim INPUT Tax (on goods purchased or imported directly for resale and goods that constitute stock-in-trade) by deducting it from OUTPUT Tax.
v. To demand for proper identification from any person claiming to be an official of FIRS
vi. To be granted refund on excess VAT paid with the option of using it to offset future VAT liability[37].

Obligations of a Taxable Person

Some of the corresponding obligations of a taxable person are:

i. Register with FIRS and obtain Taxpayer Identification Number.
ii. Charge, collect and remit VAT.
iii. Make full voluntary disclosure of all taxable goods and services.
iv. File VAT returns on or before the due date as specified in the VAT Act.

[37] See generally FIRS 2014 Tax Year Planner

v. Declare and pay VAT in full on or before the due date, through approved collecting banks into approved government accounts, and obtain e-ticket and receipt after payment.

vi. Keep proper records of business and ensure that the monthly sales are in agreement with the monthly VAT returns.

vii. Always keep and issue tax invoices clearly stating VAT charged.

viii. Cooperate with any authorised officer of FIRS while on official business.

ix. Always notify FIRS of any change in matters relating to business[38].

Worthy of note is the fact that a trader who supplies taxable goods and services is a taxable person regardless of whether or not he takes the necessary steps to register[39].

c) Value Added Tax Registration

The requirement of the law is that a taxable person shall, within six months of the commencement of the Act or within six months of the commencement of business, whichever is earlier, register with the Service for the purpose of the tax[40]. The registration with the Service is to be done by all manufacturers, importers and suppliers of goods and services.

The vatable person is expected to Register with FIRS and obtain Taxpayer Identification Number for onward remittance of VAT charged and collected on or before the tax due date.

[38] Ibid.
[39] Abdulrazaq, M.T., Revenue Law and Practice in Nigeria, Malthouse Press Limited, Lagos, (2010) P. 290
[40] Section 8 of the Value Added Tax Act, Cap V1, Laws of the Federation of Nigeria 2004.

d) Value Added Tax Returns

By virtue of section 15[41] a taxable person is mandated to render to the Service a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Service may determine from time to time.

A manufacturer or supplier of taxable goods and services is to render a return to the Integrated Tax Office (ITO) on or before the 21st day of the month next following that in which the supply was made. Thus, every vatable person must keep records of all supplies made and received. He must also make a return on form VAT 002. He has to fill in details of supplies made and received during the period and pay the net VAT due to the ITO or claim a refund if tax is owed to him. Every importer of goods into Nigeria is to render VAT returns on all imports into Nigeria to the ITO on the due date.

It should be noted that if the input tax exceeds the output tax, a taxable person shall be entitled to a refund of the excess tax from the Board on production of such documents as the Board may, from time to time, require[42].

Where a taxpayer wants to claim refund of VAT, he need to show the amount it is entitled to claim through credible evidence. This was illustrated when Tax Appeal Tribunal of Lagos Zone in the case of *Botro Marine & Oil Services Limited vs. FIRS*[43] held that the claim for VAT refund is guided by S. 13 and 13A of the VAT Act 1993 (as amended to date). A speculative 'object clause' contained in a Company's Memorandum of Association is not sufficient proof that a contentious transaction at the centre of tax dispute is in accordance with the provisions of the said Sections. FIRS Form VAT007 is the repository of VAT input-output setoff

[41] Ibid
[42] Section 16 (1) (b) Ibid
[43] (2014) 13 TLRN 95.

claims. Negligence in filing VAT Returns as prescribed by Law tilts the scale of discretionary powers of the Tax Authority against the taxpayer. A good taxpayer must first discharge its duties according to the law before seeking redress in case of being aggrieved. The Appellant has not tendered evidence to justify how much VAT it has suffered and how much VAT it has collected to prove its claim for refund.

The facts of this case is that the Appellant is an oil servicing company engaged in buying and selling of drilling pipes and also the business of importation of pipes and supplying same to major oil companies in Nigeria. The Appellant claim that it is also entitled to VAT refund on all transactions in 2007 and 2008 being an oil servicing company engaged in buying and selling of Drilling Pipes, referring to Exhibits 6A and 6B respectively to show permits and licence that it falls within the category of companies qualified as an importer of manufactured pipes and sales of such products. The Respondent avers that the Appellant has failed to produce sufficient statutorily required documentary evidence that it is entitled to the several refunds on its advanced tax payments between 2006 and 2008.

Importers are required to pay VAT on imports to the ITO while compliance is to be enforced by the Nigeria Customs Service before releasing the imported goods after a certificate of compliance issued by the VAT office is presented[44]. The Nigerian Customs Service plays a vital role in the collection of VAT on imported goods. The law is that the Nigerian Custom Service shall, before releasing taxable

[44] Maureen Ugwa and Embuka Anna, 'Pay As You Consume'. In: Gauge, A Quarterly Publication of the Federal Inland Revenue Service April – June 2012, P. 10

goods to its importer, demand the Value Added Tax Compliance Certificate issued by the FIRS Board on those goods[45].

e) Value Added Tax Records and Accounts

A person who is registered under the Act[46] shall keep such records and books of all transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due[47].

Every taxable person is required to keep proper records and accounts of all transactions, operations, imports and other activities sufficient enough to calculate the correct amount of VAT payable. This includes cash book, sales and purchase day book, ledger account, balance sheet among others. Specifically for VAT purposes, Tax invoice are to be issued for supplies and VAT Accounts are also to be kept[48].

A taxable person within the definition of the law must keep records of all supplies made and received. The rationale for such VAT records and accounts is to ensure accountability and stewardship on the part of the taxpayer. Failure to comply with the requirement for records and accounts attracts penalty.

Where no return has been made by the taxpayer the tax authority is empowered by law to examine such records or other relevant records and make a return.

[45] Section 16 (3) of the Value Added Tax Act, Cap V1, Laws of the Federation of Nigeria, 2004.
[46] Section 8 Ibid
[47] Section 11 Ibid
[48] Abdulrazaq, M.T., Introduction to VAT in Nigeria, Ababa Press Ltd, Ibadan, 2nd Edition (2011) P. 41.

4.7 **Offences and Penalties under the Value Added Tax Act**

There are different types of offences prescribed under the VAT Act[49] and stiff penalties. The penalties are meted on different type of offences ranging from furnishing of false document, evasion of tax, failure to make attribution, failure to notify change of address, failure to issue tax invoice, resisting an authorised officer, issuing of tax invoice by an unauthorised person, failure to register, failure to keep proper records and accounts, failure to collect tax, failure to submit returns, aiding and abetting commission of offence, offence by body corporate etc.

The offences usually arise out of different circumstances in the course of business transactions by the taxpayer. The penalties are imposed on conviction after a proof beyond reasonable doubt of any offence as stipulated under the Act.

Where a taxpayer furnishes the service with a false document or in furnishing an information to the Service, makes a statement which is false in any material particular shall be guilty of an offence and liable to a fine twice the amount under declared.[50]

Where a person who participates in or takes steps with a view to make evasion of the tax by him or any other person, shall be guilty of an offence and liable on conviction to a fine of N 30,000 or two times the amount of the tax being evaded, whichever is greater, or to imprisonment for a term not exceeding three years[51].

Where a taxable person who neglects, refuses or fails to notify the Service of any change of address within one month of such change of business address is liable to pay a penalty of ₦ 5,000[52]. This particular provision of the Act is to curtail some of the mischief of

[49] Section 25 – 37 of the Value Added Tax Act, Cap V1, Laws of the Federation of Nigeria, 2004.
[50] Section 25 Ibid.
[51] Section 26 Ibid.
[52] Section 28 Ibid.

taxable person. A taxable person may mischievously decide to change his business address to an unknown destination to the Service staff. The law makes it mandatory for taxpayers to put the Service on notice whenever they change business address. It is humbly suggested that the law should have been that the notice of change of address should be given to the Service before moving from the known address to the Service.

Failure to issue tax invoice for goods sold or services rendered, is guilty of an offence and liable on conviction to a fine of 50%of the cost of the goods or services for which the invoice was not issued[53]. It is also imperative that the staff of the Service should endeavour to make investigation on all goods purchased by the taxpayer because some of them will issue invoice on some goods and may not issue on others.

Where a taxable person who fail to register as enshrined under the Act[54] is guilty of an offence and liable on conviction to a fine of ₦5,000 and if after one month the person is not registered the premises where the business is carried on shall be liable to be sealed up. The later part of this penalty among others is quit harsh and likely to crumble businesses. Moreso, that most of the taxpayers in Nigeria are petty traders.

The law makes the penalties of the officers of the Service very stringent, any officer of the Service who aids or abets the commission of any of the offences under the VAT law shall also be guilty of an offence and is liable on conviction to a fine of ₦ 50,000.00 or imprisonment for five years[55].

Importantly also is the fact that corporate bodies are not left out of the penalty net. Where any of the offences is committed by a body corporate or firm or other association of individuals every director, manager, secretary or other similar officer of the body

[53] Section 29 Ibid.
[54] Section 32 Ibid.
[55] Section 36 Ibid.

corporate, or every partner or officer of the firm, or every person concern in the management of the affairs of the association, or every person who was purporting to act in any capacity as aforesaid is severally guilty of that offence and liable to be proceeded against and punished for the offence in like manner as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance[56]. By virtue of the above section the Act has help indirectly with the principle of lifting the veil. Company Directors, Secretaries, Managers, Partners etc cannot shield their selves as long as the offence was committed with their knowledge and consent.

In the light of the above, since the law has provided penalty for any of the above conduct by a taxpayer it is then pertinent for the Service to endeavour to produce evidence of proof beyond all reasonable doubt as required for the standard of criminal prosecution.

The FIRS may be left with two options where the criminal standard of proof is met. They may prosecute under relevant penalty provision of the VAT legislation or general criminal legislation, where this is done, the collection of any fines imposed is the responsibility of the court.

On the other hand, the FIRS can also compound the proceedings by accepting a pecuniary penalty in lieu of the criminal prosecution. Where the proceeding is compounded a debt arises under the contact made between the Service and the taxpayer and same is to be collected as a debt due to the government.

[56] Section 37 Ibid.

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 **Summary**

Value Added Tax (VAT) was introduced by the Federal Government of Nigeria in 1993 to replace Sales Tax to impose tax on some categories of goods and services. This research was set out to evaluate the VAT as a veritable source of revenue in Nigeria. Being it a consumption tax i.e the tax is collected as the people consume goods and services that are subject to tax. This tax can hardly be evaded by a taxpayer because as long as he consume or supply eatable goods and services. It is a veritable source of revenue to the federal government.

The punitive measures as identified under the Value Added Tax Act are capable of hampering the development of small scale business from where the tax is to be generated. The taxing authority should rather impose default penalties for any breach of the provision of the Value Added Tax Act having at the back of mind that the sole aim of the tax is to boost government revenue.

Due to the identified problem of absolute tax practices whereby taxes overlap and single transaction may be subjected to series of taxation. An attempt by government to harmonise the law on custom and excise duty and Value Added Tax on imported goods would salvage the situation of double taxation.

By its very nature the Value Added Tax is a self assessment tax whereby the taxable person is expected to render returns voluntarily of all taxable supplies and purchases made within the preceding month of the return. Despite its self assessment nature, assessment plays a vital role at the course of making returns.

Owing to the increasing demand by the citizenry of a country on its government, revenue generation has become a veritable tool to raise fund to meet up its responsibility. With the introduction of Value Added Tax in Nigeria, the yield from VAT related tax has busted immensely on the revenue base. The successes of revenue generation achieved through VAT have not been without challenges. Despite the challenges it has contributed enormously.

The importance of revenue generation for purposes of good governance has been succinctly said by Fashola, B. R[57]., that in Nigeria and throughout the world, it is becoming increasingly clear that a government cannot do more than it is financially empowered to do, and that taxation remains the golden key to (sustainable) economic advancement.

5.2 Findings

The research work made the following findings:

1. The law in Nigeria on Value Added Tax is faced with the problem of absolute tax practices, whereby taxes overlap, so that a single transaction may be subjected to a series of taxes e.g VAT on imported goods and excise and custom duty.
2. It also discovered that there are inherent inadequacies in some of the provisions of the Value Added Tax Act[58]. By virtue of section 46 of the Act the term supplies is shrouded with ambiguity, contrary to the general tax rules and that the Federal Inland Revenue Service Board determines salaries, income and wages of its employee.

[57] Obatola, O.S., The Rudiments of Nigeria Taxation, Asco Publishers, Lagos, (2013) p. 316 2
[58] Cap V1 Laws of the Federation of Nigeria 2004

3. There is administrative ineptitude that the Chairman of the Federal Inland Revenue Service Board doubles as the Chairman of the Value Added Tax Technical Committee.
4. Weak penal provisions against infringement of VAT: the punitive measures under the taxing law should be for deterrence not extinguishing small scale enterprises. By virtue of the provision of the Act[59], tax evaders are to pay fine or be imprisoned for a period of three years. Of concern also is that the Act[60] authorises the FIRS to seal up the premises from where economic activity carried on within the territory of Nigeria for failure to register with the Board. These suggest a punishment which could hamper the development of small scale businesses with the capability of incarcerating their productive capacity if not folding the business.

5.3 Recommendations:

Hinged on the above findings of the research, the research work suggests the following recommendations:

1. It is recommended that the law in Nigeria with regards to VAT on imported goods and excise and custom duty should be harmonised. If this is done it will curtail the circumstance where taxes may overlap. With this the taxpayer would not be exposed to paying double taxes over a single transaction.
2. It recommended that section 46[61] that defined the term supplies in the Value Added Tax Act should be amended and be made more apt. This would avoid a situation of confusion and contradiction. Tax statutes are not supposed to

[59] Section 26, Ibid.
[60] Section 32, Ibid.
[61] Ibid

be ambiguous. Importantly also is that the Federal Inland Revenue Service should not determine remuneration, salaries and wages of its employees. It should be the sole responsibility of the National Salaries, Income and Wages Commission.

3. The Value Added Tax Technical Committee should be chaired by a different person from that of the Federal Inland Revenue Service Board. The responsibility of the office of the Chairman to the Federal Inland Revenue Service Board is quite tedious. On the other hand, the function of the Value Added Tax Technical Committee is based on professional and technical issues. If the offices are separated it would bring about effectiveness in the performance of their various responsibilities that would ensure high returns of revenue generation.
4. There should be a review of the punishments as contained in the Value Added Tax Act to accommodate it basic reasons which is reformation and deterrence. The punitive measures should aim at reforming the eatable persons to ensure tax compliance by voluntary remittance than pushing them out of the business.

5.4 Conclusion

From the discoveries of this research it suffice to state that the Value Added Tax has its peculiar challenges such as the incidence of tax overlap, inadequacies in the definition of terms, administrative inaptitude, lack of autonomy and weak penal measures. Public institutions should endeavour to encourage research by supporting researchers, making available information and access to research materials.

If the above suggestions and recommendations are carried out it would enhance the effectiveness of VAT administration in Nigeria through a robust tax system and also bring about high yield in revenue generation. This research work is of benefit to the students of law, legal practitioners, the academia, Judges, and even legislators.

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