LEGAL APPRAISAL OF TAXATION OF SMALL AND MEDIUM BUSINESS ENTERPRISES IN NIGERIA

BY

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LLM/LAW/6788/2011 – 2012

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

APRIL, 2016

DECLARATION

I declare that this dissertation titled LEGAL APPRAISAL OF TAXATION OF SMALL AND MEDIUM BUSINESS ENTERPRISES IN NIGERIA has been carried out by me in the Department of Commercial Law. The information derived from the literature has been duly acknowledged in the text and a list of references has been provided. No part of this dissertation was previously presented for another degree or diploma at this or any other institution to the best of knowledge.

…….. ……..

Bartholomew Ifeanyi ODIAKA **Date**

LLM/LAW/6788/2011 – 2012

CERTIFICATION

This dissertation titled, LEGAL APPRAISAL OF TAXATION OF SMALL AND MEDIUM BUSINESS ENTERPRISES IN NIGERIA meets the regulations governing the award of the degree of Master of Laws (LL.M.) of the Ahmadu Bello University, Zaria and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

I dedicate this work first of all to the Mighty God, who gave me the courage, endurance and patience throughout this programme. Then to my son, O'Brien Nwabueze Odiaka for his love and obedience me.

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TABLE OF ABBREVIATIONS

ABU	Ahmadu Bello University
BIRS	Board of Internal Revenue Service
BAC	Body of Appeal Commissioners
CGTA	Capital Gains Tax Act
CIT	Companies Income Tax
CITA	Companies Income Tax Act.
CITA	Company Income Tax Act
CAC	Corporate Affairs Commission
CAC	Corporate Affairs commission
CTL	Corporation Tax Laws
ETD	Education Tax Decree
FBIRS,	Federal Board of Internal Revenue Service
FGN	Federal Government of Nigeria
FIRS	Federal Inland Revenue Service
FIRS	Federal Inland Service
FRN	Federal Republic f Nigeria
GDP	Gross Domestic Product
GNP	Gross National Product
ITMA	Income Tax Management Act
ITP	Income Tax Provision Act
IMF	International Monetary Fund
ITD	International Tax Dialogue
JTB	Joint Tax Board
JTB	Joint Tax Board
JTB	Joint Tax Board
JTB-TIN	Joint Tax Board and Tax Identification Number
LGRC	Local Government Revenue Committee
LL.M	Master Degree of Laws
MTP	Miscellaneous Taxation Provisions
NCEMA	National Centre for Economic Management and Administration
NERFUND	National Economic Reconstruction Fund
NRMAFC	National Revenue Mobilization Allocation and Fiscal Commission
NASSI	Nigeria Association of Small Scale Industries
NNPC	Nigeria National Petroleum Corporation
NIT	Nigerian Income Tax
NWLR	Nigeria Weekly Law Report
PAYE	Pay as You Earn
PITA	Personal Income Tax Act
PITA	Personal Income Tax. Tax Authority
PPTA	Petroleum Profits Tax Act

SMBEs	Small and Medium Business Enterprises
SMEEIS	Small and Medium Enterprise Equity Investment Scheme
STALGRC	State Tax Authority and Local Government Revenue Committee
SAP	Structural Adjustment Programme
TIN	Tax Identification Number
TINS	Taxpayer Identification Number System
VAT	Value Added Tax Act
VATA	Value Added Tax Administration
VATTC	Value Added Tax Technical Committee
WB	World Bank

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ABSTRACT

The tax regime of small and medium business enterprises was a snow ball of international agitation specially international monetary fund (IMF). To Nigeria Government to diversify her revenue base from Petroleum tax which consisted of 80% percent of the total revenue. Consequentially, the idea of SMBE tax was introduced in furtherance of tax reforms a committee was constituted in 1991 and January 1993, after the feasibility study of SMBE the report submitted to the Federal government with a recommendation to introduce SMBE Tax. On the other hand, the government viewed Small and Medium Business Enterprises as a very important sector of the economy that has employed many persons. Most big companies started at this level before progressive and attractive. That is why the government has paid special attention to it and as a sector to the Nigerian economy, it is still not progressing as expected and the resultant effect is still far beyond expectations. The objectives of this research are to analyze the effect of tax policy in the growth of SMBE in Nigeria. The methodology employed in this work is the doctrinal method. The problem of this research is despite the tax policies put in place for rapid growth of the sectors in returns for the government to drive huge revenue from it has fail because it is not in commiseration with the government intensions as a result of the following? Over taxation is also a problem of SMBE that is meant to be promoted, encouraged and made very attractive for potential investors in the country and the world as a whole. Also it reveled that tax collectors are not well trained and informed about government policies as regards the protection and encouragement of Small and Medium business Enterprises in Nigeria. Most particularly, they do not consider the size of a particular business in tax assessment. To proffer some solutions, tax assessment and collection should be defined with respect to which government should collect certain taxes from Small and Medium business Enterprises. This will avoid the three tiers of government collecting taxes from the same particular organization. Government should also put a policy in place to avoid illegal taxes, such as community levy, boys or youth levy as well as association or union levy, also Some of the findings arrived at in this study are absence of a harmonized and gazzetted tax regime, which would enable manufactures to build in recognized and approved levies and taxes payable and also the fact that an effective administration of this sector is lacking there should be an average or tax exemption placed on these young industries to encourage and protect them and to attract potential investors.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background To The Study

In any given economy, the issue of taxation is of tremendous importance because it serves as revenue generation forum to the government hence; its role cannot be in doubt. Taxation can also be employed as an instrument of economic policy formulation and implementation including a means of wealth redistribution in the economy.

Small and Medium Business Enterprises (SMBE) are newly introduced tax policy for revenue generation income and redistribution. Thus, taxes are a source of revenue to the government. In its first month of operation SMBE in this country yielded revenue of ₦5.4 billion to the government. Apart from petroleum tax, it is obvious that no other form of taxation either direct or indirect equal the revenue yield of SMBE.[1]

Consequently, the idea of SMBE tax was introduced in furtherance of tax reforms. The Federal Government set up in 1991 a study group to review the country's indirect tax system.[2] The study group among other things recommended the administration of SMBE tax in Nigeria and the government accepted the recommendation and therefore, set up a SMBE committee which carried out a feasibility study on SMBE and came up with a report submitted to the Federal Government with a recommendation to introduce SMBE tax in the country in January 1993.[3]

In addition, a full scale of SMBE tax in Nigeria which extended from the manufacturers through the wholesalers to the retailers and to the ultimate consumers has been impracticable at present. However, a study group in 1991 did recommend for tax on SMBE, and the government accepted that for the immediate future, a modified SMBE tax law should be

[1]Lawal, S.Y., (2000) Treatise on Nigeria Tax System, Bayero University, Kano Publishing Co. Ltd. p. 30
[2]Ibid.
[3]Ibid.

introduced, levied and collected from manufacturers or wholesalers and importers levels. Unlike under the sales tax, services should be made subject to the modified SMBE and only a single rate tax of 5% should be levied.

The tax derived from Small and Medium Business Enterprises (SMBE) constitute a heavy revenue which is essential ingredients in the lubrication and development of any economy.In Nigeria, Small and Medium Scale Enterprises dominate the economy.SMBE are sub-sectors of the industrial sector which play crucial roles in industrial development. Following the adoption of the Economic Reform Programme in Nigeria in 1981, there have been several decisions to switch from capital intensive and large scale industrial projects which was based on the philosophy of import development to Small and Medium Business Enterprises which have better prospects for developing domestic economy, thereby generating the required goods and services that will propel the economy of Nigeria towards development.[4]

In designing public policies, particularly tax policies, governments have usually targeted their strategies to large companies. Therefore, there is a need to devise methods to encourage the growth and development of these enterprises so as to ensure that they reach their full potentials. Subsequently, a favourable business and regulatory environment needs to be created for them to thrive. The focus on this study on supporting SMBEs growth through tax policy because most large companies have their roots in small and medium enterprises; they started out as SMBEs before expanding. This means that the future large corporations are the SMBEs today that should be nurtured to ensure their growth.

For some decades now, Nigeria has depended on oil for its major income and foreign exchange. Oil accounts for about 80 % of federal government revenues, and 95 % of foreign

[4]Oni, E. O.et.al. (2012) Development of Small and Medium Scale Enterprises: The role of Government and other Financial Institutions Arabian Journal of Business and Management Review (OMAN Chapter) Vol. 1, No.7; p.13

exchange earnings.[5] The National Centre for Economic Management and Administration (NCEMA) reports that Nigeria, with a population of now 190.5, is Africa's most populous country and the continent's largest economy yet it still remains one of the poorest oil producing countries. With a continuously declining per capita income, comparatively unfavourable social indicators, dynamic world economy and the fact that countries are looking into alternative sources of energy it is time to begin to look into alternative sources of income for sustenance in the long run when the demand for oil may dwindle. Even with the present rates of petroleum products, Nigeria's Gross Domestic Product (GDP) is below ideal with the Small and Medium Business Enterprises(SMBEs) contributing, therefore it would not hurt to diversify the economy even before the demand for petroleum products finally diminishes. This means it is time to begin to give more attention to the other sectors of the economy.[6]

This translates into looking at non-oil based sectors in Nigeria such as agriculture, manufacturing, commerce and tourism. These industries are primarily made up of SMBEs as such it goes without saying that SMBEs are important to the Nigerian economy. The country is blessed with fertile farmlands, vast mineral deposits and a wealth of human resource, making it a very favourable place for small arid medium enterprises. These resources have placed Nigeria in a prominent position in Africa. For governments, however, large companies are a more attractive, more clear-cut and less complex set than SMBEs. Furthermore, they are generally perceived to be the seedbed for indigenous entrepreneurship and generate all the many small investments, which would otherwise not have taken place. Therefore, Nigeria needs to further the development of its private sector by creating an environment favourable to the growth of SMBEs, strengthening the factors that lead to business success, and addressing

[5] Ibid

[6] Adebisi, J.F. and Gbegi, D.O., (*2013)* Effect of Multiple Taxation on the Performance of Small and Medium Scale Business Enterprises. (A Study of West African Ceremics Abeokuta, Kogi State) Mediterranean Journal of Social Sciences Published by MCSER-CEMAS-Sapienza University of Rome Vol. 4 No 6 July 2013. P.32

the problems threatening the existence and advancement of small and medium enterprises. With the dismantling of trade and other barriers, the world has been transformed into a global village.[7]

1.2 Statement Of The Research Problem

For some decades now, Nigeria has depended on oil for its major income and foreign exchange. Oil accounts for about 80 % of federal government revenues, and 95 % of foreign exchange earnings.[8] The National Centre for Economic Management and Administration (NCEMA) reports that Nigeria, with a population of now 190.5, is Africa's most populous country and the continent's largest economy yet it still remains one of the poorest oil producing countries. With a continuously declining per capita income, comparatively unfavourable social indicators, dynamic world economy and the fact that countries are looking into alternative sources of energy it is time to begin to look into alternative sources of income for sustenance in the long run when the demand for oil may dwindle. Even with the present rates of petroleum products, Nigeria's Gross Domestic Product (GDP) is below ideal with the Small and Medium Business Enterprises(SMBEs) contributing, therefore it would not hurt to diversify the economy even before the demand for petroleum products finally diminishes. This means it is time to begin to give more attention to the other sectors of the economy

Therefore the research questions are as follows:

1. Are the laws on the establishment of SMBES in the country adequate.
2. Do the present tax policies in the country encourage establishment and growth of SMBES?

[7] Ibid
[8] Ibid

3. Are the various tiers of government in the country doing enough to give tax education to the Nigeria business community and the tax officials?
4. How Transparent is tax Administration in Nigeria?

1.3 The Aims And Objectives Of This Study

The aims and objectives of this study is the legal appraisal of taxation of Small and Medium Business Enterprises in Nigeria:-

a) To establish the adequacy or otherwise of the laws on the establishment of SMBES in Nigeria
b) To establish whether the present tax policies in the country encourage establishment and growth of SMBES.
c) To educate tax officials and the business community and payment of tax
d) To establish the transparency and non- transparency of tax administration in Nigeria.

1.4 Significance Of The Study

It is trite to say that SMBEs play a great role in the economic development of any country. To keep SMBEs increased and sustained, one of the areas that is important to consider is the taxation policy. This work is therefore geared towards educating the key players who are involved in the taxation of SMBEs. The work will certainly benefit tax administrators, owners of SMBEs, tax practitioners and other persons who are interested in knowing the tax systems of SMBEs.

1.5 Scope And Limitations Of The Study

Taxation is a concept that is very complex and challenging especially as concern businesses that are still growing. This work is an appraisalof taxation of SMBE in Nigeria. It explores the various laws that give us information on the taxation of these enterprises given the importance of such sector to our economy. It also explores the activities of various officials involved in the administration of tax in this sector. We also covered the legal bases of taxation

of SMBE, the structure of tax administration of this sector and the kind of taxes that enterprises of this nature are likely to pay.Tax assessment and collection procedures are also examined, duties and obligations of tax officers, returns and remittances by officials as it affects the Small and Medium Business Enterprises.

1.6 Research Methodology

The doctrinal method[9] of research is employed here. That is to the study of primary and secondary sources. Primary sources include statutes such as constitution, edicts, bye laws. Secondary sources include: books, journals, articles, magazines, periodicals, newspapers, other dissertations and the internet sources.

1.7 Literature Review

The Nigerian tax system as it affects SMBE is composed of the laws and its administrations. The law determines the liability of the tax payer. Some of the materials to be Reviewed in this dissertation are documentary data sources from textbooks, statutes, and articles.

One of the earliest authors on corporate tax laws is Ola,[10] In his book, the learned Author discussed topics such as *Assessment of Companies and Statutory Corporations, Pioneer Companies including Excess Profit Tax*, taxation of partnerships and agency businesses as well as petroleum profit tax. He discussed the topics under the provisions of Companies Income Tax Act 2004.[11] Discussed topics do not represent the current position of the law on corporation taxes any longer. As a matter of fact, the 1961 Act had undergone several amendments and modifications. It was transformed into 1990 Act and now Company Income Tax Act, Cap. 8, Laws of Federation of Nigeria 2004. Similarly the Federal Inland

[9]Aboki. Y., *Introduction to Legal Research Methodology*; Zaria: Tamaza publishers, 2004. p. 2

[10]Ola C.S., (1984) *Income Tax Law for Corporate and Unincorporated Bodies in Nigeria,* Heinemann, Ibadan, p. 231 – 365.

[11] Sec. 40(6) CITA Cap C 21 LFN 2004

Revenue Service which is the official body responsible for the administration of corporation tax laws in Nigeria has been restructured and reorganized to catch up with some modern trends in our tax system. All these are not considered in the treatment of the topic by the learned author. This research work would appraise these emerging trends in corporation tax system.

Besides, no matter how progressive a tax system is, its objectives cannot be realized, if it is not properly enforced. One conspicuous gap in Ola's book is that it failed to treat enforcement procedures under corporation tax laws. This dissertation is out to fill that lacuna. Allied to this, the author treated the topics on corporation taxes in his book on *the law as it was.* This research will go a step further to analyze the law regarding the topic under consideration from the perspective of law as it should be.

Finally, the book substantially contains obsolete opinions which can hardly be free from faults today considering modern trends in commerce. The implication is that, the book is majorly now a history which can only be seen and read for its historical purpose. Therefore, there is the need for an intensely fresh research on the topic.

Another erudite scholar that had also written on the topic under this research topic is Ayua.[12] He treats the topic as "Taxation of Companies Profits. He considered the basic principles of corporation taxes such as charge to companies income tax, exempted income, basis of assessment, rules for calculating a company's profits, deductions allowed, taxation of dividends of companies and petroleum profits tax, company income tax offences and penalties.[13] With due respect to the learned Author, his work lacks in the perspective, considering the modern trends of globalization and electronic commerce as they affect some principles and operations of SMBE and corporation tax laws in Nigeria. This has been considered in this dissertation. He equally did not examine the contents and mechanics of

[12]Ayua, I.A. 1991, *The Nigerian Tax Law,* Spectrum Law Publishing, Ibadan, p.163.
[13]Ibid pp. 163 – 208.

bilateral tax treaties, within the context of corporation tax laws, as it affects SMBE. This research work will cater for this. The only way by which the tax administrators can live up to expectation is by ensuring that the corporation tax laws are strictly enforced.

It is a common knowledge that majority of officials of revenue authorities are ignorant of the purpose and procedure for tax enforcement. They Rope in darkness to the extent that instead of levying distress they seal-up SMBE and companies premises. The latter is an illegal means of tax enforcement. Like Author Ola, Author Ayua's work missed out this important topic in his work. Therefore this research work is broader in contents and scope than their works.

Abdulrazaq,[14] is one of the foremost experts in the law of taxation in Nigeria. His textbook titled: "Abdulrazaq Nigerian Revenue Law, is one of the recent literature that treats the subject matter of this research work. The Author treats the topic as "Companies Income Tax" (CIT)[15]. He honestly concedes to the fact that the work is not comprehensive enough. Rather, it is offered as a statement of the fundamental principles of revenue law and it aims to state those principles in as readable and intelligible a form as the subject matter[16]. According to the Author, *"*the principle it states are those which practitioners in the field ... will need to have at their finger tips. The text did not reveal the solution to every problem"...[17]

With due respect to him, this research humbly observes that his work is lacking in some important aspects which a recent work like his, ought to have contained. Some of the problems which his work did not proffer solution to are: on tax incentives, enforcement methods and procedures on SMBE, tax implications of merger and acquisitions etc to the extent that this research work shall critically analyze them and distinguishes it from his work.

[14]Abdulrazaq, M.T.,(2005) *Nigerian Revenue Law*, Malthouse Press Ltd. Lagos,.
[15]Companies Income Tax Act. Cap C21LFN 2004.
[16]Ibid
[17]Ibid.

Again, as instructive as his work seems, he treats the *law as it is*. No appraisal as to justification or otherwise of the current position of the law. More importantly the Author did not provoke the minds of future researchers and to this extent, a new research work is imperative to build on his efforts.

Kanyip[18] examined some critical issues in Companies Income Tax in Nigeria. These include tax incentives regime, classical methods of taxing companies and its implications for business, and investor friendly environment. The considerations of these issues are insightful and thought-provoking, but not all embracing. The learned law Lord admitted this when he stated that: Since taxation issues are generally infinite, we propose to dwell on only few areas.

Perhaps for the reason of constraint in scope, the learned writer's work left out the issues of administration, enforcement, tax treaties, and some other cogent concepts in Companies Income Tax Laws in Nigeria. This dissertation covers some of these lacunas and to that extent; it is wider in scope than his lordship's work. This work is distinguishable from his work.

Arogundade[19] is a seasoned tax administrator who has written on the Companies Income Tax in Nigeria, attempted an in-depth analysis of the taxation of incomes from the perspective of a local and cross-border transactions in Nigeria. As the title of the book suggests, he considered all income taxes in Nigeria and their international dimensions. This dissertation as consider only the SMBE taxes and their effects on revenue generation.

[18] Kayip, B.B (2002) taxation issues in foreign investment (1998) MPJFIL Vol. 2, No. 1 p. 107 – 126; see also kayip B.B companies income tax, in Abdulrazaq M.T (ed) CITN Nigeria Tax Guide & statutes, p.117,

[19] Arogundade, J.A, (2004) Petroleum and international tax FIRS management of federal Board of Inland Revenue and technical committee before retirement

Arogundade's work is not comprehensive. He equally labored very hard to transfer abstract knowledge to practical equivalent that can benefit stakeholders in the Nigerian tax system. Notwithstanding this, the author openly conceded to the fact that there are loopholes in his work. He states that:

> The book discuses tax issues purely from the point of view of a tax administrator who sees the system as it is. He sees the law, its interpretation and the application as his main focus. His training as a tax administrator does not allow him to go outside the tax laws as legislated, the interpretation as decided by the judiciary or the procedures as regulated, to substitute his own judgment. Nevertheless, he is conscious of the changing world and best practices elsewhere to stress the need to re-focus the system as it should be.[20]

This is what we intend to achieve by this dissertation, and to that extent his work is distinguishable from this research work both in scope and perspective.

Olakunle[21] is another famous author on company income tax law in Nigeria. His work was predicated on the provision of the Companies Income Tax, Act 1961 which was substantially consolidated and amended. The opinions expressed and position taken in his work can hardly be regarded as being current nowadays. More so the Companies Income Tax Law and administration has undergone series of reform and restructuring. This research work will consider them in their recent contents and context and their effects on revenue generation in Nigeria. This distinguishes this thesis from his work.

Some accountants of repute have written on Corporation Tax Laws. One of them is Ani,[22] in his book" The corporation tax laws have since undergone many amendments which are not incorporated in his work. This dissertation shall incorporate them. Apart from the fact that the author treated the topic from accounting perspective, the author remarked in the preface to the book thus,

[20]Arogundade, J.A. op cit p. 10

[21]Orojo, O. *Company Income Tax Law in Nigeria*, Sweet & Maxwell, 1979

[22] Ani A.A 2006 Companies income tax and petroleum profit Tax in Nigeria

> This is the first time that any real attempt has been made to breakdown Companies Income Tax and Petroleum Profits Tax in all their ramifications. I have no doubt that further research into this subject must be conducted in order to contribute to its development and improvement.

The framework for the administration of tax and the administration of the tax, occupied a unique position in the tax system. Furthermore, the Nigerian tax system constitutes the legal basis of the system, the various types of taxes include the tax bases, tax rates and their administrative machinery. Moreover, the major taxes in terms of revenue, economic and equity significance are enacted under federal laws such as the constitution, which confers on the federal legislature an exclusive legislative power to make any law on taxation, while section 4 (7) (a) – (c) of the Constitution FRN, 1999 confers the state with residuary legislative power to make other tax laws under the concurrent legislative list. Similarly a Commission recommended or confers an exclusive power upon parliament to make laws for Nigeria or any part thereof with respect to taxes on the income and profits of companies, while concurrent power is conferred on the parliament to make laws for Nigeria or any part thereof with respect to certain uniform principles in respect of personal income. Hence, this led to the enactment of an Act[23] by the Federal Government in order to exercise these powers.

Consequently, all bills of rising revenue must originate in the House of Representatives. The Senate, however, may propose or concur with amendments of tax bills in the final analysis, the senate contributes a great deal to the end character of revenue measures. All these tally with the federal fiscal system – a derivative of a true federal system of government, and very unlike when federal constitutional and political powers are encapsulated by a military regime with the fiscal centralism which have stunted the development of the states and local governments.

[23]Personal Income Tax Act Cap p. 21 LFN, 2004

Thus, in delving more into what a good revenue tax system should be, it is observed that economists have not produced any single set of practical criteria for designing a tax system. Unfortunately, the literature on taxation has produced a number of mutually inconsistent principles better thought of as guidelines.

In addition, SMBE is relevant to VAT Act, 2007 and is viewed as, "a multi-stage tax imposed on the value added to goods as they proceed through the stages of production and distribution, and on services as they are rendered". It is "a tax on the supply of goods and services which is eventually borne by the final customer but collected at each stage of the production and distribution chain." Value Added Tax as related to SMBE in Nigeria, is also, "the latest and probably the final stage in the historical development of general sales taxation". The origin of Value Added Tax is however, traced back to 1918 when the tax was recommended, "as a substitute for the turnover tax in operation at the time"[24]. It was thus, called the "Improved Turnover Tax" or "Refined Turnover Tax," since it was also a multi-stage tax but was refined to eliminate multiple taxation source.[25]

1.8 Organizational Layout

This dissertation comprises of five chapters. The first chapter deals with the Background of the study in which we see the historic of event as regards SMBE in Nigeria. This is followed by the Statement of the problem where we identify the reason to delve into this research. The Objectives of the study then follows which tells us the why of this work. Significance of the study is also seen to give us the importance of the study to the various stakeholders concern. The Scope of this study tells us the limits of this work. That is, the areas that is hoped to be covered. The research methodology too is looked into wherein the kind of procedure to be used in this researched is followed in order to get information and material.

[24] Ibid
[25] Lawal, S.Y., (2000) Treatise on Nigeria tax system, Bayero University, Kano publishing CO.ltd. p.30

Literature on this topic by other writers is properly reviewed to see how we can cover the gaps left out by them.The organizational layout shows us a brief rundown of the whole work.The researcher then goes to chapter two to examine conceptual clarifications and legal framework of Small and Medium Business Enterprises (SMBE) in Nigeria. Under conceptual clarifications the Meaning, Nature and Scope of SMBE areexamined. The Meaning, Nature and Scope of SMBE Taxation are also seen. As concern the legal framework of (SMBE) in Nigeria, the researcher also examined the role of the constitution, legislation; acts, statutes, bye laws and tax policies related to SMBE.Chapter three,deals with the Institutional Structure of SMBE Administration. Here, the researcher looked at SMBE Administration, The structure of SMBE Administration, Federal Board of Inland Revenue and Services, the SMBE technical committee, Joint Tax Board, body of Appeal Commissioners, State tax authority and Local Government Revenue committee. Chapter four deals with the assessment of SMBE taxation.Here, the tax assessment and collection procedures is examined, duties and obligations of tax officers, returns and remittance of tax officers, assessment of SMBE, power of inspection of value added tax, the right appeal, offences the penalties of value added tax, court judgment on value added tax and advantages and disadvantages of SMBE. The last part of this work is chapter five. We are to examine here the findings, recommendation, summary and conclusion.

CHAPTER TWO

CONCEPTUAL CLARIFICATIONS AND LEGAL FRAMEWORK OF SMALL AND MEDIUM BUSINESS ENTERPRISES IN NIGERIA

2.1 Introduction

This research first of all looks at the various concepts that are found in this work in order to situate the reader on the specific meaning of what we are discussing about. Sometime, terms may mean different thing under different subjects. So, defining a concept under which it is used in a particular situation is very necessary. Under this chapter the first section deals with conceptual clarifications of key terms used in this research and the second will treat the legal framework of small and medium business enterprises in Nigeria as is seen bellow.

2.2 Conceptual Clarifications

In the course of this study, the Researcher came into contact with same concept that require clarifications for readers to get acquainted or familiar with such terms, meaning of these particular terms. Terms have different meanings and interpretations depending on the usage. Conceptual clarifications are concerned with explaining the meaning of concepts. Without clear concepts, however, scholars are apt to at cross purposes, and policy-makers find it difficult to distinguish between alternative policies. Scholars have argued that the elucidation of the language of educational works is by no means an idle exercise in semantics, but in many instances a most effective way to solve substantive problems of research.[26] Conceptual explanation attempt to specify the logical structure of given expressions; taking its departure from the customary meanings of the terms, explanations aims at reducing the limitations,

[26] Abdulrazaq, M.T (2005) Nigeria Revenue Law, malthouse press Limited, Lagos

ambiguities, and inconsistencies of their ordinary usage by propounding a reinterpretation intended to enhance the clarity and precision of their meanings.

2.2.1 Meaning, Nature and Scope of Small and Medium Business Enterprises (SMBEs)

Small scale enterprises have so many definitions due to different criteria employed by different people and institutions in defining it. There is no single, uniformly accepted definition of a small firm. Firms differ in their levels of capitalization, sales and employment. Hence, definitions which employ measures of size (number of employees, turnover, profitability, net worth, etc) when applied to one sector could lead to all-firm being classified as small, while the same size definition when applied to a different sector could lead to a different result.

Scholars, researchers and international bodies have always attempted to provide a standard definition of SMBEs. No such definitions have been accepted universally. However, the followings are some definitions of small and medium scale enterprises: the World Bank Document,[27] defined small and medium enterprises as one whose total fixed assets (excluding land) plus cost of investment do not exceed ten million naira in constant 1985 price [28].

In countries such as the United State American , Britain and Canada, a small-scale business is defined in terms of annual turnover and the number of paid employees. In Britain, small-scale business is defined as that industry with an annual turnover of 2 million pounds or less with fewer than 200 paid employees.[29]

In Japan, small-scale industry is defined according to the type of industry, paid-up capital and number of paid employees. Consequently, small and medium-scale enterprises are defined as: those in manufacturing with 100 million yen paid-up capital and 300 employees,

[27](Report No 71 14) of 1988

[28] Mead (1998) sees SMBEs as firms with less than 50 employees and at least half the output is sold

[29] Ibid

[30]those in wholesale trade with 30 million yen paid-up capital and 100 employees, and those in the retail and service trades with 10 million yen paid-up capital and 50 employees.[31]

For the purpose of this research, small and medium-scale enterprises are defined as those with investments in machinery and equipment not exceeding 500,000 Naira and 2 million Naira, respectively, with not more than 50 and 100 paid employees, respectively. This definition does not reflect the characteristic of typical Nigerian small-scale enterprise in terms of their capital base and number of employees. The definition may at best relate to medium-scale enterprises. Small scale enterprises in Nigeria require a separate definition as SMBE in Nigeria Comprises.[32]

(1) One man business

(2) Partnership business

(3) Co-operative business

(4) Family business

(5) Private limited company

(6) Public limited company

in which taxation is covered by enabling laws of Valued Added Tax.

The Monetary Policy Circular of the Central Bank of Nigeria[33] defined small-scale enterprises as enterprises whose annual turnover was not more than ₦500, 000. In the 1990 budget, the Federal Government of Nigerian defined small-scale enterprises for purposes of commercial bank loans as those with capital investments not exceeding ₦500,000 and for Merchant Bank Loans, those enterprises with capital investments not exceeding 2 million naira

[30] Abdulrazaq. M.T ., (2005) Nigerian Revenue law, Malthtouse press Ltd. Lagos

[31]Research Journal on finance and Accounting, available at http:// www.iiste .org accessed on 14/03/2014 at 4:00pm

[32] Ibid

[33]No. 22 of 1988

(excluding cost of land) or a maximum of ₦5 million. The National Economic Reconstruction Fund (NERFUND) put the ceiling for small-scale industries at ₦10 million. The Small and Medium Enterprise Equity Investment Scheme (SMEEIS) sees the SMBE as "any enterprise with a maximum asset base of ₦500 million (excluding land and working capital), and with no lower or upper limit of staff". However, for tax purposes, Section 40 (6) of the Companies Income Tax Act[34], alludes to companies with a turnover of ₦1 million and below operating in the manufacturing, agricultural production, solid mineral mining, and export trade sectors as SMBEs; while subsection 8 of theCompanies Income Tax Act states that as from 1988 all companies engaged in trade or business with a turnover of ₦500,000 and below qualify as small and medium enterprises.

2.2.3 Meaning, Nature and Scope of Small and Medium Business Enterprises (SMBEs) Taxation

SMBEs taxation which is under the provision of Value Added Tax (VAT) is a very important form of consumption tax introduced in Nigeria in 1993, to replace the sales tax which itself was introduced in 1986. It is a multi-stage tax imposed on the value added to goods as they proceed through the stages of production and distribution, and as services as they are rendered. Thus, every country possesses its own bewildering array of taxes, and though many development countries have adopted relatively low rates of income and consumption taxes. These rates have been varying almost annually.

The Act[35] defines the basis for determining the value of vatable goods and services, particularly the Customs and Excise Duties. In its attempt to ensure that the appropriate value of supplies is stated, the Act[36] provides for the determination of prices at the market under an arm's length transaction. However, this provision assumes that there is an open market for all

[34]Cap C21 LFN 2004
[35]Value Added Tax Act, 2004 Cap VI.
[36]Section 5, Value Added Tax Act, 2004 Cap VI LFN.

goods and services sold, although this may be an appropriate assumption for manufactured goods and services with tariffs, the assumption is an obvious over-generalization for most professional services and work of art.

More so, Value Added Tax is a consumption tax relatively easy to administer and difficult to evade. The yield from Value Added Tax is a fairly accurate measurement of the growth of an economy, since purchasing power which determines yield increase with economic growth. Value Added Tax 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 which was the features of the retail sales tax. It is the equivalent of the value added tax paid by the final consumer of the product that will be collected by the government. Although Value Added Tax is a multiple stage tax, it has single effect and does not add more than the specific rate to the consumer price no matter the number of stages at which the tax is paid.

Furthermore, Value Added Tax applies to each firm at each level of production and distribution.[37] A firm adds value to items purchased from the other firms by processing and other capital goods. It then sells the resulting products to consumers or to other firms. Therefore, the difference between the sales proceeds and the cost of the materials and other items purchased from other firms is its value added, which is the tax base of Value Added Tax.Thus, by limiting Value Added Tax liability of each firm to the value added to the final productions that was input, Value Added Tax avoids multiple taxation. Accordingly, if the basic principle of taxation is to be achieved the marginal sacrifices of the sum total of federal and state taxation, must be equal for each person, or as nearly equal as possible, thus giving

[37]Davies, A.G.,(1969) *Main Features of the VAT System* in CADMAR M.H. (ed.) *Taxation Economies* London (Macmillan & Co. Ltd)

similarly placed persons in different states.[38] This implies that equity of marginal sacrifice cannot occur automatically in a federation unless federal government taxes all people with taxes closely related to ability to pay. Though Value Added Tax accedes easily to this, and given its advantage of neutrality to investment, the canon of equity is made to apply not only in the taxing of all economic states but also in the taxing of only the value added at each state.

2.3 Legal Framework Of Small And Medium Business Enterprises (Smbes) Taxation In Nigeria

The scope of the change of value added tax on SMBE in Nigeria based on the enabling legislation is on the Provision of goods and services. However, a number of hurdles must be surmounted before a charge arises.

First and foremost, it is necessary to establish that a transaction amounts to a 'supply'

Secondly, the supply must be made for a 'consideration'.

Thirdly, it must amount to either a 'supply of goods or a supply of services',

Lastly, it must amount to a 'taxable supply'. Hence, a transaction which fails to meet all the above, is not within the SMBE Tax.

More so, a taxable person plays a significant role in the supply of goods and services captured by SMBE tax (Value Added Tax). Therefore, all the above mentioned including the goods and services exempted from the scope of SMBE tax and zero rating as been considered.

[38]Adedeji, A., (1969) *Nigeria Federal Finance* London (Hutchinson Education Ltd) p. 172.

a) Supplies

The word 'supply' in its ordinary and natural sense means to 'furnish' or 'serve'.[39] This implies or indicates that there are two parties to a supply, viz, the person who furnishes or serves goods or services, and the person who receives them. Thus, in relation to goods that is, tangible movable property, a supply results from transferring the whole property, an undivided share, or the possession of goods. Whereas, in relation to supply of service, anything provided for consideration amounts to 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.[40] However, the fact that a trader receives money, goods or services from another person does not necessarily indicate that the trader has made a supply and that the money, goods or services are consideration for it. Hence, SMBE is required to account for tax chargeable on a supply made by other persons in certain circumstances.

More so, a transaction does not cease to be a supply merely because a contract of sale is void. For instance, the sale of a stolen car, and a mere illegality is not a bar to the imposition of tax on SMBE. Consequently, the nature of supply is determined at the time of supply and cannot be re-written by reference to the unilateral act of one party or an agreement between both parties.

a) Consideration

This may be either in cash or in kind, or both.[41] Thus, in *Apple and Pear Development Council v. Customs and Excise Commissioners*,[42] it was held that there must be a direct link between what has been provided and the consideration received. Hence, it is necessary to

[39]Lord Reading, C.J. in Williams v. Pearle (1916) 114 LJK 898 at 901 cited in Carlton Lodge Club v. Customs and Excise Commissioners (1974) 3 All ER 789.
[40]Customs and Excise Commissioners v. Tilling Management Service Ltd (1979) 2 All ER 106.
[41]Value Added Tax Act, Section 5 and 6
[42](1985) S.T.C. 383.

identify the reason what the payment is made in order to discover whether or not it is linked to a supply of goods or services. However, the mere fact that a sum of money has been received does not necessarily mean that there is a corresponding supply.

Moreover, whether or not a consideration is due, is determined at the time when the supply is treated as taking place for the purpose of charging tax in accordance with the agreement made between the parties. Therefore, if goods or services are supplied gratuitously, they cannot be turned into a supply made for a consideration, by a subsequent voluntary payment. Similarly, a supply made for a consideration evidenced by a tax invoice cannot be turned into a supply for no consideration merely by issuing a credit note. Thus, both supplier and customer must adjust their SMBE accounts if an increase or decrease in consideration is agreed after the end of the prescribed accounting period in which the supply was made. Once the amount of the consideration for a supply has been agreed, it is fixed for SMBE Tax purposes. Consequently, it is necessary to draw a distinction between a step in the calculation of consideration and a step in the calculation of a sum payable which involves offsetting two separate considerations. In the former, case, SMBE is chargeable by reference to the single consideration passing[43], while in the latter case; SMBE is chargeable by reference to the separate consideration passing so that net sum payable is irrelevant for SMBE purpose.[44]

Furthermore, supplies made for a consideration for the purpose of Value Added Tax can be classified under the following:

a) Supply of goods

b) Supply of services

[43]National Coal Board v. Customs and Excise Commissioners 91982) STS 863.

[44]Davies v. Customs and Excise Commissioners (1975) STC 20.

a. Supply of Goods

Any transfer of the whole property in goods is a supply of goods[45]. The term "whole property" indicates that all rights of ownership existing in the goods must be transferred without retaining any reversionary right. A transfer of the whole property in goods, from X to Y is a supply of goods from X to Y, and cannot be a supply from X to any other person. A transfer of the whole property in goods may also amount to contact for sale, in which cases, it amounts to a composite supply of gods, or a contract work and materials, in which case only the material elements comprises a supply of goods under this heading.

b. Supply of Services

This includes procuring a gathering at which goods are sold, procuring a group payment, agreeing to act as agent, making payments under a credit card scheme, redeeming vouchers at a discount, granting a commodity option, covenanting to refurbish premises, accepting a lease procuring discounts for members or a buying group, relinquishing a trade name, providing publicity, among others.[46]However, any service provided for a consideration which the grant of assignment or surrender of any right, it does not include functions supply of services, unless it is specifically treated as a supply of goods or a supply of services is taxable. Thus, which a trader is obliged to carry out on his own behalf.

2.3.3 Taxable Supplies

This is a supply of goods or services which does not amount to an exempt supply. A taxable supply is charged to tax if all the following conditions are met;

a) It is made by a taxable person;

[45]Section 42, VAT Act, 2004.
[46]Second Schedule VAT Act, 2004.

b) It is made in Nigeria;

c) It is made in the course of furtherance of business.

Thus, a taxable supply that does not meet any of these conditions is outside the scope of Value Added Tax.

a) Supplies made by a taxable person: A taxable person is a trader who is required to be registered for the purposes of Value Added Tax, this definition includes manufacturers, wholesalers and importers.

b) Supplies made in Nigeria: The following rules are applied in determining whether a supply of goods or services is made in Nigeria.

i. **Goods:** Goods situated in Nigeria are supplied in Nigeria if they are either removed to Nigeria or removed for Nigeria in the course of their supply. The supply of goods under the Nigerian Value Added Tax has to be in Nigeria. Supplies made outside Nigeria are however outside the scope of the scope of Value Added Tax.

ii. **Services:** The general rule is that, services are supplied in the country where the supplier belongs. Therefore, if a supplier is a citizen in Nigeria, his services are made in Nigeria, regardless of whether or not they are performed there. The place where a supplier belongs is determined by the location of his business establishment or some other fixed establishment, if he has one or his usual place of residence.

iii. **Supplies made in the course/furtherance of business:** A business includes any trade, commerce, club, association or organization providing facilities or advantages to its members for a subscription or other consideration, admitting persons to any premises for a consideration, activities of bodies carrying out statutory duties, where supplies are made to the public for a consideration, among

other things. Therefore, a person who accepts an office in the course of his trade, profession or location is treated as supplying his services as holder of the office in the course of his trade. However, Value Added Tax is charged on goods imported into Nigeria directly from a third country where the customs duty if any, arises while the goods are in Nigeria. An importation of goods does not include a movement of goods between two places in Nigeria. Value Added Tax on imported goods is charged and payable as if it were a duty of customs. Hence, customs legislation is applied to Value Added Tax in the same manner as it applies to Customs and Excise Duties chargeable on imported goods.[47]

2.3.4 Taxable persons:

VAT is collected through registered persons who are known as "taxable persons". A taxable person is obliged to register with the Federal Inland Revenue Services for VAT collection "within six months of the commencement of the Act or within six months of the commencement of business, whichever is earlier."[48] Failure to register attract a penalty of ₦10, 000.00 for the first month in which the failure occurs; and ₦5,000.00 for each subsequent month.[49] Since a period of six months has elapsed after the promulgation of the Act, it presupposes that every taxable person is now obliged to register as soon as it commences business. There has been a suggestion that all new businesses should be granted a period of six months' grace after the commencement of business to register for VAT.[50] If the suggestion were to be adopted, it might lead to the unintended effect of denying taxable persons the opportunity to set off their inputs against the output VAT. Since VAT can only be lawfully collected after registration it means that until then the taxable person will not have any output VAT against which the input tax can be offset.

Although, the Act imposes an obligation on every taxable person to register, there was the initial concession, which allowed retailers a period of three years to register. Going by the bare

[47] Abdulrazaq M.T (2005) Nigerian revenue law, Malthouse press ltd, Lagos
[48] section 8 (1) , VAT Act.
[49] Section 8(2), VAT Act.
[50] Balogun, B (1997) "Issues in Value Added Tax", (Unpublished) paper presented at a National Seminar on Critical Issues on Tax and Tax Management, May 14, p.5 Lagos

statutory provisions, every retailer is obliged to register for VAT be collecting tax due upon the supply of goods and services to its customers since 1996 after the expiration of the concession period. This however, seems to be a tall order judging by little or no formal regulation of commercial activities of the retail level in Nigeria. The futility of collecting sales tax at the retail level in Nigeria was underscored by the Supreme Court in the case of *Aberuagba v A.G. Ogun*[51] State thus:

> In developed countries where retail trade is carried on in departmental stores, supermarkets, drug stores and shops where all sales are accounted for and the business addresses registered, it is convenient and save for any government to appoint retailers as its agents for the collection of Sales Tax. Every penny collected will ordinarily reach the government. The position is entirely different in Nigeria. This is notorious fact that except in few departmental stores, shops and drug-stores, where accounts of sales are kept, the bulk of the retail trade is carried on by swam of amorphous trades in the market places and in their homes, on our streets and highways, under our bridges and trees. They do not keep record or account of their business dealings and they cannot be reached by any Government. It would be a bonanza to those retail traders to appoint them as agents for the collection of any sales tax. Except in the case of the few retailers that the Researcherhas mentioned, not a kobo would reach the government. Consequently, for any meaningful sales tax to reach the government, it must be collected by agents, such as distributors, whose accountability to the government for the tax collected is assured. However, the legislation sets out the circumstances in which a person is to be registered for Value Added Tax purposes, but fails to make specific provisions for the cancelation of registration. Hence, it is expected that a person ceases to be liable to be registered and the Board[52] may cancel his registration if they are satisfied that, he has ceased to make taxable supplies or taxable services, and he is neither liable nor entitled to register under any other provision. The registration is cancelled with effect from the day on which he ceases to make taxable supplies or taxable services, or a mutually agreed later date. Thus, irrespective of the level of sales at any time, all registered persons are required to comply with all the provisions of the law including making returns, paying the tax and keeping records.[53]

[51][1995] NWLR (Pt.3) 385

[52]Board of Internal Revenue Service 2007.

[53]Bello, J.S.C. (As he then was).at p.399.

2.3.5 Exemption and Zero Rating

A wide range of goods and services are exempted by the Act,[54] however, the schedule may be varied by a statutory instrument. It provides that, "the secretary may by order publish in the gazette:

2.3.5.1 *Goods Exempt*

1. All medical and pharmaceutical products.
2. Basic food items.
3. Books and educational materials.
4. Baby products.
5. Locally produced fertilizer, agricultural and veterinary medicine, farming machinery and farming transportation equipment.
6. All exported goods.
7. Plant and machinery imported for use in the Export Processing Zone.
8. Plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations.
9. Tractors, ploughs, agricultural equipment and implements purchased foragricultural purposes.[55]

2.3.5.2 *Services Exempt*

1. Medical services
2. Services rendered by Community Banks, People's Bank and Mortgage Institutions;
3. Plays and performances conducted by educational institutions as part of learning and
4. All exported services."[56]

[54]VAT Act, 2004.
[55] Art. 3 VAT 1996 No 31

The meaning and scope of the exempted goods and services are not defined in either the Statute or the FIRS Circulars. For example, the scope of what is meant by "basic food" is not clear. Generally, what is a basic food depends on the status in life of an individual and varies from person to person. The present practice by the FIRS is to limit the meaning of basic food to uncooked and unprocessed food items, while processed food items such as spaghetti, corn flakes, baked beans and cheese are taxable. It is submitted that in the absence of clear definition of what constitutes basic food item, the current practice which imposes tax on processed and manufactured foods is open to challenge. This will also accord with the principle that ambiguity in tax laws should be construed in favour of the taxpayer.[57]

At inception, there were seven exempted goods and three exempted services. Initially, the trend was to extend the exempted goods and services from time to time ostensibly in response to lobby from interest groups. In 1996 the exempted items were increased to twelve while the services were increased to four.[58] Apparently being wary of the gradual erosion of the revenue base of VAT and perhaps curb the growing demand for tax exemption, a policy was adopted to restrict the scope of exemptions by reducing the number of goods and services on the First Schedule and therefore broadening the base of VAT. Against this background, newspapers and magazines and commercial vehicles and commercial vehicle spare parts which were part of the original seven exempted items were deleted by Decree No. 30 of 1999. Only five out of the original seven exempted goods survived till today in the first schedule under the Laws of the Federal Republic of Nigeria, 2001 while all the exempted services had been retained with a new addition.

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[56] Ibid

[57] Abiola, S. (2012) Current Law and Practice of Value Added Tax in Nigeria British Journal of Arts and Social Sciences Vol.5 No.2 available at http://www.bjournal.co.uk/BJASS.aspx accessed on 13/07/2014

[58] See generally Finance (Miscellaneous Taxation Provisions) Decree No. 30 of 1996., Finance (Miscellaneous Taxation Provisions) Decree No. 31 of 1996, Finance (Miscellaneous Taxation Provisions) Decree No. 32 of 1996.

Furthermore, exemption is something of a misnomer. An exempt person must absorb the Value Added Tax on the goods and services paid for by him for the purposes of his business. Thus, there is no deduction of input tax against output tax.For instance, if pharmaceutical products are exempted from Value Added Tax, what happens to the Value Added Tax already collected on the input tax against output tax for instance, if pharmaceutical products are exempted from value Added Tax, what happens to the value Added Tax already collected on the inputs for manufacturing the drugs since they are vatable? Consequently, exemption has a hidden effect and is most disadvantageous where the person supplies goods or services to a taxable person since the hidden tax cannot be passed on.

Thus, if the supply of goods or services is zero related, the supply by a taxable person that is, his output, is not chargeable to tax at 5% but at a zero rate. Consequently, such a person is able to reclaim all the tax that he has suffered on his inputs. One of the main advantages of Value Added Tax is that exports are zero rated and are therefore subjected to no Value Added Tax whatsoever. All elements of tax suffered by an exporter can be identified under the invoice system and, therefore, all the tax directly or indirectly suffered in the production of exports can be reclaimed.[59]

2.4 The Development of Small and Medium Business Enterprises Tax Law In nigeria

The need to introduce SMBE Tax in Nigeria has always been argued on the fact that the International Monetary Fund (IMF) and the World Bank; two international monetary agencies have been closely identified with the establishment and operation of Structural Adjustment Programme (SAP) in Nigeria. Since 1987 with the introduction of this programme, these bodies have been advising the government that the tax system needed reform, so as to make the government revenue less dependent on the revenue derived from petroleum, in order to service external debts. However, the various statutes on SMBE tax are considered below.

[59]Abiola, S. (2012) Op. cit p. 7

2.4.1 The Constitution

The Constitution empowers the Federal Government to enact tax laws or to impose tax. The federal government is allowed to make laws imposing the stated taxes, although the administration may be done by the states which impose personal income Tax[60].

In the same vein, the statutes are empowered to enact laws in respect of any matter whatsoever, provided such is neither on the exclusive legislative list nor specifically allocated to the federal government on the concurrent legislative list and it is not that on which the federal government is empowered to make laws in accordance with any provisions of the constitution[61]. The power to impose tax is not expressly vested in the states as done to the federal government, but must be assumed in view of the unambiguous provision of the constitution and of the constitutional maxim "delegates non protest delegare".[62]

2.4.2 Acts and Decrees

An Act is a decree or legislative enactment or written instrument in verification; A Decree is an ordinance set forth by civil or other authority, or an authoritative decision having the force of law.[63] Some Acts and Decrees have, however, been passed in this country.[64]

Tax legislation is aimed at introducing or declaring a new formula for taxation or to check abuses of existing laws. Consequently, draftsmen are expected to express clearly without ambiguity, by the words of the statutes, what was meant by the provisions of a particular enactment.

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[60] Part 1, second schedule, Section 4, 1999 constitution FRN items 15,23,57 and 58

[61]Section 4, Constitution, FRN. 1999

[62]Section 4 (7) Ibid *A Delegate Cannot Delegate*, i.e. a person to whom powers have been delegated cannot delegate them to another.

[63]Chambers Twentieth Century Dictionary 1972, *Oxford English Dictionary*, Vol. IV 1989.

[64]Petroleum Profit Tax Act, 1968; *Income Tax Management Act, 1961*; Casino Tax Act 1965, CAMA, 1990, Education Tax Decree, 1993; VAT Act 2004 and Personal Income Tax Act 1993.

2.4.3 State Government Law

As the constitution empowers the state government to enact laws. Therefore, the state government has enacted tax law which form a source of Nigerian tax laws. The states can pass law imposing payroll tax, which is levied and paid on all chargeable wages paid or payable by an employer, it may also be imposed upon employers and employees. The states can also pass law imposing fees, occupation or privilege tax pools and betting taxes, motor vehicle and driver licence taxes, entertainment tax, land registration and survey fees, property taxes and rating, market and trading license fees, among others.

2.4.4 Local Government By-Laws

The Constitution[65] confers power on the local government council over the collection of rates, radio and television license, licensing of bicycles, trucks, other propelled trucks, canoes, wheel barrows and carts, assessment of privately owned house or tenements for levying of such rates as may be prescribed by the House of Assembly of a state, the control and regulation of outdoors, advertisement and hoarding, shops, kiosk and restaurants, and other places for sale of goods to the public.

Therefore, any regulation made by the local government council governing its powers on taxation as stated above is known as local government by-laws, These by-laws on revenue matters form a source of tax laws.

2.5 Tax Policies Of SMBE

The tax policy is essentially aimed at creating awareness about the central role, which taxation can play in national development and setting out general guidelines by which this can be achieved. The tax policy and our tax laws therefore provide the platform for creating a tax conscious citizenry. Their is however need to go beyond educating the citizenry on the tax system, its role in national development and the expected contribution from various groups of

[65] 4th Schedule of the 1999 Constitution.

Nigerians, to actually creating and inculcating a tax culture amongst Nigerians. This is very necessary if government is to attain its goals of diversifying the Nigerian economy and obtaining sustainable and stable revenue from taxation.

2.5.1 Tax Policy and the Growth of Small and Medium Business Enterprises (SMBEs)

Economists argue that the resources smaller companies direct towards tax compliance are resources that could otherwise be used for reinvestment, facilitating future growth.[66] Hence, there is a belief that taxes and a complex tax system put disproportionate pressure on smaller businesses. Small taxpayers under the regular system of taxation are discriminated against, since the compliance requirements, cost of compliance and tax rate are the same for both small and large enterprises. Reducing the compliance costs and tax rate increases the small enterprises profit margin. It also increases the Government's tax revenue, since the simplified provisions for a micro enterprise historically reduce the size of the shadow economy and the number of non-complying registered taxpayers. Furthermore, SMBEs usually have to operate in an overbearing regulatory environment with the plethora of regulatory agencies, multiple taxes, cumbersome importation procedure and high port charges that constantly exert serious burden on their operations. Many Small and Medium Business Enterprises (SMBEs) have to deal with myriad of agencies at great costs.

As stated earlier they are heterogeneous and these differences in size and structure may in turn carry differing obligations for record-keeping that affect the costs to the enterprises of complying with (and to the revenue authorities of administering) alternative possible tax obligations. Public corporations, for example, commonly have stronger accounting requirements than do sole proprietorships, and enterprises with employees may be subject to

[66]Tomlin, B. (2008). Cleaning Hurdles: Key Reform to Make Small Business More Successful.(Commentary No.264).Toronto, Ontario CD. Howe Institute. available at www.cdhoweorg/pdf/commentary 264.pdf accessed on 14/05/2014

the full panoply of requirements associated with withholding labour income taxes and social contributions.[67]

An overly complex regulatory system and tax regime or one opaque in its administration and enforcement makes tax compliance unduly burdensome and often have a distortion effect on the development of SMBEs as they are tempted to morph into forms that offer a lower tax burden or no tax burden at all[68] and this results in a tax system that imposes high expenses on the society. A poorly executed tax system also leads to low efficiency, high collection charges, waste of time for taxpayers and the staff, and the low amounts of received taxes and the deviation of optimum allocation of resources. Existing empirical evidence clearly indicates that small and medium sized businesses are affected disproportionately by these costs: when scaled by sales or assets, the compliance costs of SMBEs are higher than for large businesses, Among the factors militating against Small and Medium Business Enterprises (SMBEs) tax compliance with are: high tax rates, Low efficiency, high collection charges, waste of time for taxpayers and the staff, and the low amounts of received taxes and the deviation of optimum allocation of resources.[69] Others are double taxation, no professional tax consultancy, weak tax planning, high taxation cost. Examples of double taxation are ground rent, shop taxes, motor pack rent, etc.

Although there are certain policy measure geared towards SMBE growth in Nigeria, the support needs to be increased, standardized and systematic. It is believed that it is the role of the government to provide an enabling environment and social services that support businesses

[67]International Tax Dialogue (2007).“Taxation of SMEs”.Background Paper for the International Tax Dialogue Conference, Bueons Aires.

[68]Masafo, A. (2009). “Globalization of Production and Competitiveness of Small and Medium Size Enterprises in Asia and Pacific: Trend and Prospects”. Publication of United Nation Economic and Social Commission ‘for Asia and the Pacific (ESCAP).Studies in Trade and Investment Series Paper, pg.1-31.

[69]Farzbod, J. (2000). “Investigation of the effective factors in the tax efficiency”.Unpublished Master’s Thesis, Government Management Training Center, Tehran.

and persons[70]. This means enhancing the investment climate in Nigeria for increased economic growth and subsequent tax contribution from all citizens which is necessary because a good number of SMBEs operate in the informal economy due to the fact that they deem the tax environment within which they operate unfavourable. These SMBEs constitute untapped revenue potential and an even playing field in many countries[71] as such they need to be captured by the tax net. The legislation is a necessary regulator for protection of the business environment and security of the economic agents, for establishment of the necessary social security regulations but at the same time it hampers the business with additional expenditures and administrative obstacles, which place in different positions the SMBE. The big companies have more. They can either share part of the staff or hire people to deal only with studying the legal requirements and complying with the new regulations, or contract some personal service firm to deal with their tax compliance, planning etc. For SMBE this is a great expense out of their abilities.[72] For a tax system to be efficient the tax policy needs to be designed such that the tax rates are appropriate and rational, the exemptions are lower in amount, the tax collection organization are more efficient, the tax burden of the indigent people should be lighter and the fight against corruption and tax evasion should be much more intense.[73] Tax policies can be designed in such a way that they do not only directly affect SMBEs but also indirectly push for their growth for example the practice in China where tax policy has been designed to encourage SMBE financing by granting exemptions from business tax for financial corporations that provide guarantee for loans to SMBEs and granting tax deductions to market

[70]Iwuji, G.I. (2003) Creating awareness on tax matters for small and medium units. Available at http//:www.doostoc.com accessed on 13/052014 at 12:25

[71]International Tax Dialogue, 2007 op. Cit p.

[72]Srnatrakalev, C. (2006). "Tax Policy for SME", Paper Delivered at 6th Global Conference on Business and Economics. Gutman Conference Center U.S.A. Available at http//:www.doostoc.com

[73]Shahrodi, S.M.M. (2010). "Investigation of the effective factors in efficiency of tax system".Journal of Accounting and Taxation, 2(3), 42- 44.Available at http//:www.doostoc.com

entities and venture capitalists that invest in high- tech SMBEs to the tune of 70% of the investment value.

Another way is by designing tax policies that encourage human capital training. It is stated that special tax regimes for SMBEs may he appropriate policy instruments for minimising the cost of collection.[74] It is important to note that the awareness of the dangers of inadequate attention to the taxation of SMBEs has grown. It can lead, for example, to distortions of competition as a result of uneven tax enforcement, with incentives created to limit growth and to avoid tax through artificial splitting of enterprises. Not least, voluntary compliance by larger enterprises themselves, and by wage earners, may be undermined by the (correct) perception that their smaller counterparts, or better-off neighbours, are getting away with poorer compliance.[75] Hence government intervention will help maintain in balance while helping countries exploit the social benefits from greater competition and entrepreneurship. Furthermore, policy incentives such as tax rebate for SMBEs that put effort on local sourcing of raw materials, in adding value to commodities for exports and other business ethics, should be employed by government. Similarly, government could increase funding for the development of the sub-sector through direct budgetary allocations and enhance private sector investment opportunities that will focus on specific areas of capacity enhancement. And also tax law should be simplified continuously, mainly for three reasons, namely,1 to lower both compliance costs and administrative costs,2 to reduce uncertainty faced by taxpayers; and,3 to improve the levels of voluntary compliance. Pro-business Tax regimes and enforcement should be simple, consistent and predictable.

There are a lot of inadequacies in the Nigeria tax law because the administrative cost is to high and there is uncertainty faced by the taxpayers. Hence, most of the tax regimes and

[74]Yoabin, S. (2007, October). "Tax, Small Business, Growth: Effect of Taxation on Investment and Cross—Border Trade". Paper Presented at the lTD Conference on Taxation of SMEs. Lagos

[75]International Tax Dialogue, 2007 op. Cit p.

not consistent and not predictable. There for they did not encourage the growth of SNBES in thecountry.

CHAPTER THREE

INSTITUTIONAL FRAMEWORK FOR TAX ADMINISTRATION OF SMALL AND MEDIUM BUSINESS ENTERPRISES

3.1 Introduction

This chapter examines the various structures that are put in place to see that SMBE function in a manner that will encourage growth and thus encourage others with business interest to venture into it. It examines the degree of competence of the administrators who are in charge of controlling the taxation of this particular sector in the economy. Study is made on institutional structures for tax administration of SMBE like the Federal Board of Internal Revenue Service (FBIRS), SMBE Tax Technical Committee, Joint Tax Board, Body of Appeal Commissioners, State Tax Authority and Local Government Revenue Committee. Here, an appraisal is made to their effectiveness and a critical look at the statutory provisions giving them powers to see if they can generally cope with the scheme of value added tax. An attempt is also made to analyze the policy issue raised in their implementation with a review to offering useful suggestions.

3.2 Value Added Tax Administration

Value Added Tax is a form of consumption tax that has been embraced by many countries worldwide. Because it is a consumption tax, it is relatively easy to administer and difficult to evade. It is a tax only on value added to a product or service by its manufacturer or distributor.[76]VAT is administered and managed by the Federal Inland Revenue Services (FIRS) while the Nigerian Customs service enforces the administration and collection of VAT on import. It is ultimately only the end consumer tax. The tax is collected on behalf of the

[76]Embuka, A.”Value Added Tax administration in Nigeria”. In: Dailysun p. 31 Monday, December 23, (2013)

government by government and organisations which have registered with the Federal Inland Revenue Services (FIRS) for VAT purposes.[77]

The administration of the Value Added Tax law occupies a unique position in the tax system. While a good law is important to a tax system, a good administration is a *sine qua non* to the attainment of the overall good of the system.[78]Some of the canons of a good tax system amongst others are equity, neutrality, centrality and the administrative efficiency. Only those who regard the duty of tax system as being to confiscate wealth in order to provide employment would be happy with a tax whose administrative cost exceeds the tax yield.[79]

Therefore, in ensuring that the administrative cost is kept down, the tax system must ensure that the cost of compliance by the tax payers is also kept down. The most difficult assets to find in Nigeria is the capacity and will, to make and implement effective policy decisions, independent of vested interest. Even if effective tax policy decisions are made, their efficiency in practice is dependent upon the kind of administrative machinery available. With an inept tax administrative machinery, it does not matter whether drastic changes are made in tax policies as the same level of performance will continue. A good tax policy and a bad tax policy then end up looking alike in the hands of an incompetent administration.[80]

Consequently, however good the principles of a good tax system may be, the success of tax administration is to utilize the principles and the problems of personnel then becomes central in tax administration.[81] Thus, the problem is not simply to determine what would be desirable, but also assess what is administratively practicable and within the ball part of political feasibility. Hence, what is needed is a statutory authority which performs both

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[77] Ibid

[78]Abdul-Rasaq MT Nigerian Tax Planning and Management (Batay Publication) (1993) p. 16.

[79]Tilley, J. *Revenue Law* (Butterworths) (1978) pg. 6 – 7.

[80]Kanyip, B.B. *Company Taxation in Nigeria* (unpublished A.B.U. LL,M Thesis) (1991)

[81]Samba, JN *Tax Evasion and Avoidance and National Development* (unpublished A.B.U. LL,M Thesis) (1982) pg 124

technical and management functions in the administration of the small and medium business scale tax law.

Notwithstanding, the administration of SMBE Tax[82] is placed under the Federal Board of Inland Revenue services and the Value Added Tax Technical Committee. The function of the committee is to advice the board on matters specified under the Act[83] within the scheme of administrating the law is the SMBE Tax directorate under the Federal Board of Inland Revenue, due to the fact that the affairs of the revenue are conducted by men who are susceptible to errors, the interest of the Vat-able persons are also attempted to be taken into account. Appeals against wrong assessment of the Value SMBS Added Tax payable can be heard from the administrative review channels, viz. the local SMBS Tax office, the Tax directorate and probably to a judicial review in the Federal High Court.

3.3 The Structure of Value Added Tax Administration

"… if there will be any radical social and economical transformation of the country… if the tax administration machinery will not constitute an obstacle to the introduction of desirable substantive reforms in the system. There must be a highly competent tax administration, with necessary structure, knowledge and technique for effective enforcement of tax provision"[84]

3.3.1 Federal Board of Inland Revenue

The Federal Board of Inland Revenue (FBIR),[85]comprises five officers mostly in its executive arm.They are Federal Inland Revenue Department (FIRD), with one representative from the Federal Ministry of Finance altogether making a total of six members. The FBIR's make-up has been expanded to include new members from ministries and other organizations whose functions have close bearing with the functions performed by the Board, such as the

[82]VAT Act 2004.
[83]Section 18 (a) VAT Act, 2004.
[84]Ayua, I.A. *The Nigerian Tax Law* (Spectrum Books Ltd) (1996) Ibadan.
[85]Established under Section I, Company Income Tax (1990)

Board of Customs and Excise, the NNPC and the Registrar General Cooperate Affairs Commission.

However, the numbers of Directors cover the following duties:

i) Tax assessment audit and investigation

ii) Tax collection, computerization and litigation

iii) Management, planning and research, and

iv) Petroleum Profits Tax training and intelligence.

Composition of Federal Inland Revenue Service

The Federal Inland Revenue Service is composed as follows:[86]

i) An executive chairman who is a tax expert within the FIRS, appointed by the President

ii) The Directors and Heads of Departments of the FIRS

iii) The officer from time to time holding or acting in the post of director with responsibility for planning, research and statics matters in the Federal Ministry of Finance.

iv) A member of the Board of the National Revenue Mobilization Allocation and Fiscal Commission.

v) A member from the board of the Nigeria National Petroleum Corporation (NNPC)

vi) A director from the National Planning Commission

vii) A director from the Department of Customs and Excise

viii) The Registrar General of the Corporate Affairs Commission (CAC) and:

ix) The Legal Adviser to the FIRS

[86]As specified in the Finance (Miscellaneous Taxation Provisions Amendment) Decree No. 3, 1993.

Functions of Federal Board of Inland Revenue and Services

The administrative committee of the Federal Board of Inland Revenue and Services include the following[87],

i) Imposes tax on the income of the companies operating in the country except those specifically exempted under the Act[88]

ii) Imposes taxes on gains resulting from the transfer of chargeable assets for valuable consideration. The Federal Board of Inland Revenue and Services is responsible for the administration of this tax on companies non-residents and members of the armed force and police[89]

iii) Imposes taxes on the profits of companies engaged in petroleum operations.That is, petroleum exploration, development production and sale of crude oil[90]

iv) Provide investment incentive to industries in Nigeria by granting tax holdings to companies in designated pioneer industries[91]

v) Imposes a consumption tax on certain goods and services[92]

vi) Imposes education tax on companies registered in Nigeria and establishes an education fund into which the tax collected shall be paid[93]

Consequently, the make up of the board is to improve tax administration in the country so that it can cope with the increasing volume of work brought about by rapid growth in the economy which has led to geographical and functional expansion of the tax administrative machinery. Efficiency too was expected to be enhanced in the operations of the machinery in the country. In addition, the Federal Board of Inland Revenue has considerable powers for their

[87]Abdul-Rasaq, M.T., (1993) Nigerian Tax Offences and Penalties, Batay Publications Ltd, p. 134-135.
[88]Company Income Tax Act 1979 (now 1990)
[89]Capital Gains Tax Act 1990
[90]Petroleum Profits Tax Act 1990
[91]Industrial Development (Income Tax Relief) Act 1990
[92]Value Added Tax Act 2004
[93]Education Tax Decree 1994

due implementation, by doing all such things that may be deemed necessary and expedient for the assessment and collection of the taxes they impose. The FBIRS is also responsible for the working of the various Acts under its jurisdiction and its power is adequate to ensure effective and efficient administration of the taxes they impose.

3.3.2 Value Added Tax Technical Committee

a. Establishment

The Value Added Tax Act provides for the establishment of a technical committee known as "the Value Added Tax Technical Committee" which is composed of the following:

i) A chairman, who shall be the chairman of the Federal Inland Revenue Service,

ii) A Director of Nigeria Customs Services

iii) The representative of the government who shall be members of the joint Tax Board.[94]

b. Functions

The Technical Committee is to advise the FBIRS on technical matters pertaining to the administration and policy of Value Added Tax in Nigeria. Thus, from the above composition it is glaring that all the members of the committee are government servants in one capacity or the other, either within the civil service structure or within government parastatal. Nevertheless, it appears that the idea of having only government officials on the committee denies the private sector the right to participate in the sector making process of VAT administration. This makes the system undemocratic. It amounts to taxation without representation, a result that is initially to a tax system that believes in voluntary compliance. Hence, as important as the function of the committee is, it is expected that members of key sectors of the economy should be involved, although the fact is recognized that the official tax collectors and the tax payers have never been known to be best of friends. Perhaps, this mutual distrust between the taxman and

[94]Section 17, ibid

the taxpayer would be mitigated or out rightly eliminated, if both parties recognize the fact that they needed to build a successful economy through tax. In a sense, they are parties in progress. Process of expenditure of tax collected should be mad more transparent and awareness of same should be canvassed to the knowledge of the tax payer.

Consequently, the policy formulation here is that the membership structure of the committee include representatives of the Legal and Accounting Professions, the Nigeria institute of Taxation, the Manufactures Association of Nigeria, the Nigeria Association of Small Scale Industries, the Chambers of Commerce and Industry. The rationale is that the above bodies represent at least to an extent, a segment of the taxpayers, because they would in their respective capacities ensure compliance with the VAT law by their members and issue that is important, considering the rate of tax evasion and avoidance in the country.

3.3.3 Joint Tax Board

The Joint Tax Board (JTB) is the body responsible for the administration of the income tax.[95] According to the Act[96] a board with official name 'Joint Tax Board' shall be established to see to the general administration of the Act[97]. The Board consists of a chairman who is equally the chairman of the FBIRS, and one representative of each state of the federation who is a person experienced in income Tax matters and nominated from time to time by the commissioner charged with the responsibility for the Income Tax matters in the state. The Act allows the nominations to be either by name or office, but must be evidenced in writing and notified in same to the secretary of the Board. The secretary of the JTB is appointed by the Feral Public Service Commission and as specified by the law. He should be someone experienced in income tax matters. The secretary is responsible for summoning the meetings of the Board whenever there is a business or whenever a member of the board requests so. He

[95]Income Tax Provision Act, Cap…L.F.N,2004
[96]Sec. 85 PITA 1993
[97] Personal Income Tax Act (PITA) 1993

takes minutes and maintains records of the Board's proceedings, some legal advisers who are also legal advisers to the FBIR, shall provide legal advice to the joint Tax Board.

More so, the duties and power of the JTB[98]are as follows:

a. Exercise the powers or duties conferred upon it by any express provision of the Act, and any other powers and duties arising under the Act, which may be agreed by the government of each state to be exercised by the Board.
b. Exercise any powers and duties conferred on it by any enactment of the federal government imposing tax on the income profits of companies or which may be agreed by the Federal Ministry of Finance to be exercised by it under such enactment in place of the FBIR.
c. Advice the government of the federation in respect of double taxation arrangements concluded or under consideration with any other country.
d. Advice the government of the federation in respect of rates of capital allowances and other tax matter having any effect throughout the federation.
e. Seeks to promote uniformity both in the application of the Act and in the incidence of tax on individuals throughout Nigeria.

The Federal Government shall provide an office for the Board, the recurrent expenses incurred by that government, including emoluments of the secretary and other officers or employees of the Board shall be shared between the federal and state governments either in proportion to their respective tax revenue or in some manner as these governments may agree upon from time to time.

In addition, the JTB is concerned with coordinating the various aspects of taxation between states as well as promoting uniformity in personal taxation. Uniformity is enhanced

[98]Sec. 85 (9) PITA Act1993

because the Board considers and approves benefits and pensions schemes submitted to it, and are approved. They are valid for income tax purposes throughout the country.

Tax payer Identification Number

The Taxpayer Identification Number[99]is aunique number allocated and issued to identify a person (individual or company) as a duly registered taxpayer in Nigeria. It is to be used by the taxpayer alone. The following necessary details for obtaining and updating TIN should be presented to the tax office nearest to the address of the taxpayer.

Obtaining TIN

For a company, Enterprise, or Business registered with the Corporate Affairs commission (CAC) to obtain TIN, the following conditions must be met.

1. Duly completed application form for TIN
2. Either Certificate of incorporation (for a company) or Business name registration certificate (for an enterprises) showing clearly the registration number in each case.
3. Documents containing the following information
    A. Address of the company, enterprise or business
    B. Principal location of the business
    C. Date of the commencement of the business

For an individual who (or whose business is not registered with CAC the documents to be furnished are as follow[100]

1 Duly completed application for TIN

4 any of the following valid identification numbers

a. international passport
b. national identity card

[99] Sec. 8(1)(q) pt. 1of the FIRS Act2007
See also Sec.86 PITA
[100]Dike. M., Why Tax Identification Number is Essential In: DAILYTRUST Wednesday September 10 2014 p.26

c. staff identity card

d. national drivers licence

The Joint Tax Board and Tax Identification Number (JTB-TIN)

It is important for SMBE to note the following information about the JTB-TIN:

1. The JTB-TIN is designed to subsequently replace the current TIN and is already in use within FIRS and several other states of Nigeria.
2. The JTB-TIN has ten digits it is uniform and general across Nigeria. It is unique for every registered taxpayerin Nigeria and not limited to FIRS tax payers alone.
3. The JTB TIN is presently being issued at the point of registration and also updated by FIRS and the states which have so far adopted it.
4. Every tax payer in Nigeria will ultimately be required to possess and use only the JTB-TIN

3.3.4 Body of Appeal Commissioners

The Body of Appeal Commissioners consists of six persons, none of whom shall be a public officer. Each person or member is appointed by notice in the gazette by the state commissioner from among the persons appearing to him to have had experience and show capacity in management of a substantial trade or business or the exercise of a profession in Nigeria. The State Commissioner shall endeavour to secure that one appeal is a chartered accountant, and each shall hold office for a period of three years. Furthermore, this body is charged with the duty of hearing and determining appeals from any individual who may be aggrieved by an assessment made on him, and who has not been able to agree with the JTB. An award or judgment of the Board is enforceable as if it were a judgment of the Federal High Court of Nigeria.The composition of this board shows that it is grossly insufficient and inadequate to carry on its task effectively. In a country with over 160 million inhabitants

having 36 states,[101] this board has only six members. It shows an inefficient representation following the geopolitical set up of the country.

3.3.5 State Tax Authority

The responsibility of the respective tax authorities in each administrative territory of the federation is the administration of Personal Income Tax. Tax authority in the Personal incomes tax act is the person or body of persons responsible under a law of a territory imposing tax on the income of individuals for the administration of the law. However, in most of the Northern States, the authority responsible for this tax is the Director of Revenue who is the head of the revenue division of the Ministry of Finance. Equivalent designations of this authority are the Boards of Inland Revenue in Eastern States and Commissioners of Inland Revenue in Western States.

The duties of the Director of Revenue in relation to income tax are to assess, collect and account for tax so collected.He is given a lot of powers to aid his assessments. Thus, the State Tax Authority which is indeed the State Board of Internal Revenue Service (SIRS) which is headed by a chairman or director who is a tax expert within the state service, appointed by the Governor, among which are:

a) Three other persons nominated by the commissioner for finance in the state

b) The Directors and Heads of Department within the SIRs, and

c) A Director from the state Ministry ofFinance

Furthermore, there is also supposed to be a secretary, an ex-officio member, to the state Board who shall be appointed by the Board from within the state service. As for the state Revenue Department, they are basically the same throughout the country, but for slight

[101] Sec 8 (1)(q) Pt. 1 of the Firs Act 2007

variations in designation and devolution of responsibilities[102]. Hence, the State Board of Internal Revenue is responsible for.[103]

i) Ensuring the effectiveness and optimum collection of all taxes, and penalties due to the government under the relevant laws

ii) Assessment and collection of tax, and accounting for all amounts so collected to the government in a manner prescribed by the law.

iii) Making recommendations, where appropriate to the JTB on tax policy, tax reforms, tax legislation, tax treaties and exceptions as may be required from time to time.

iv) Generally controlling the management of the SIRs on matters of policy, and

v) Appointment, promotion, transferring and imposition of discipline on employees of the SIRs.

3.3.6 Local Government Revenue Committee

The Act[104] provides that a committee to be known and called the Local Government Revenue Committee is to established, which shall comprise.

a) The supervisor of finance as chairman,

b) Three local government councilors as members and

c) Two other members experienced in revenue matters to be nominated by the chairman of the Local Government on their personal merits

More so, the functions of the revenue committee include the following:

[102]Abdul-Rasaq, M.T., (1993) Nigerian Tax Offences and Penalties, Batay Law Publications Ltd., Ilorin p. 134-135.

[103]Finance Decree No. 3

[104]Sec. 85 (1) (e) ibid ie personal Income Tax Act 2004

i) To assess and collect all taxes, fines and rates under its jurisdiction and shall account for all amounts so collected in a manner to be prescribed by the chairman of the government

ii) The revenue committee shall be autonomous of the local government treasury and shall be responsible for the day to day administration of the department which forms its operational arm.

The Local Government Revenue Committee (LGRC) has the authority to collect and use revenue in their jurisdiction. This power given them has not subjected them accountable to any body and they keep crying they don't have sufficient funds to manage. How can they reconcile their unaccountability and their constant cry for insufficient funds?

CHAPTER FOUR

TAX ASSESSMENT OF SMALL AND MEDIUM BUSINESSES

4.1 Introduction

It is the wish of every government to promote its enterprises to boost national productivity, Gross Domestic Product (GDP), strengthen the self-sufficiency of the country, boost or raise reasonable standard of living, encourage employment and sustain the enterprises to live as long as possible. That is why most governments develop different techniques to evaluate the different categories of taxes for different industries. It is a very strong policy by the Nigerian government to encourage the creation of SMBE and thus to sustain them.Tax assessment use to run from July to June but the Federal Government decided to change the tax year from January to December for the sake of convenience and proper administration. In other to met with SMBE operators and their normal financial year. The tax assessment begins with business men who furnished the tax officials with the necessary information about his business. Until he fails to do this before the tax administrator comes to do the assessment himself.[1]

At the beginning of each year of assessment each taxpayer is required to complete and deliver to the revenue center, an Income Tax Return Form. Return of income and claim for allowances with particulars relating to;

i) His income for the year just ended. Whether taxable or not and whether already subject to tax by deductible at source or not

ii) Claims of deductible expenses in generating the income(s) and

iii) Claims of personal income tax relief and allowances

[1]Art. 26 Federal Inland Revenue Service (Establishment) Act 2007 N0.13

4.2 Assessment Officer

Thus, if the assessment officer or tax agent is dissatisfied with information disclosed on the tax returns forms, he can call on the taxpayers to furnish further returns, or to produce proper documents and books of accounts on the business or trade. The Assessment Officer may also resort to information from local tax collecting agents or officials, and they may occasionally tour their tax areas of responsibility during which they can meet and interview the taxpayers personally and contact with the taxpayers.The tendencies have been that the tax payers in most occasions give wrong figure of the tax they have to pay or they refuse to disclose their real profit so as to avoid paying the exact tax they are supposed to. The tax collectors then feel cheated then descend to the field themselves to do the assessment which has its own hurdles. In most cases, the tax officer does not notify the tax payer to give him the necessary information needed in the form for a proper assessment of his tax. The tax officers usually tell the payers (and tell them) how much they will pay as tax. In most cases the sum asked for as tax is always so exorbitant that it will call for negotiation and fraud.

4.3 Tax Assessment And Collection Procedures Of Small And Medium Business Enterprises (SMBES)

Where a taxable person fails to render returns or render an incomplete or inaccurate return, the board shall assess, to the best of its judgment the amount of tax due on the taxable goods and service purchased or supplied by the taxable persons[2]. Where it appears to the Federal Board of Inland Revenue that a trader's tax return is incomplete or where he refused or neglected to make a return, the board has three reserved powers;

[2]Section 44 VAT Act 2004

i) The board is empowered to issue the best judgment assessment. That is putting everything together to see the best amount of tax the tax payer can possibly pay that will not kill the business and will generate income for the state.

ii) The Board can prosecute any person that is liable to civil penalties, if he or she fails to comply with or provide documents or information.

iii) The board can prosecute under some number of provisions.

Thus, it will be seen from the provisions of the section that assessment play an important role in collecting what is in theory a complete self-assessed tax. However, for the assessment to be valid, certain rules must be followed. First and foremost, an assessment must precisely define;

Firstly, the period of time to which it relates and it is invalid unless it does so. That is to say an assessment may be made in respect of one prescribed accounting period or in respect of two or more such periods.

Secondly, it must be notified to the trader concerned[3], and is unenforceable until this has been done.[4] Service of notice of assessment can be affected by registered post or personal or through an agent such as solicitor or an accountant.Thus, in *Senior Inspector of Taxes v. J.O. Adigun*,[5] it was held that, service of notice of assessment is a condition precedent to recovery under the law. Similarly, in *Berry v. Farrow*[6], it was provided that all notices or forms required or allowed to be served on any persons may be either delivered to such person or left at the usual or last known place of abode of such person. In this case, the plaintiff brought an action and it was contended on his behalf that no valid assessment had been made upon him for the year in question and consequently that no proceedings to recover the

[3]Section 15(2) Op. cit at pg 29
[4]Grunwick Processing Laboratories Ltd v. Customs and Excise Commissioner (1986) STC 441
[5]Suit No. 1/169171 in the High Court of Justice, Ibadan
[6](1914) 1, KB 632

assessed amount could be lawfully taken. The court held that as there was no valid assessment was made upon the defendant in the year in question, the proceedings taken to recover the amount assessed were unlawful.

Thirdly, an assessment must be made for the right reasons, for example, if x is assessed, but the reason for making the assessment is wrong in law; the assessment will fail even though x is due. Thus, the board must make an additional assessment, if they are to validly claim from x. This means, X should try and disclose his profit in order to be fixed with the right tax to be paid without which, X the tax payer is robbing the state of much money.

Fourthly, where an assessment is found to be lower than the amount due, the board is entitled to issue the best of judgment (BOJ) assessment where the period concerned is still in time.[7] when a tax year has passed and the tax payer was not given tax to his level (lower), the tax collectors in the next tax year cannot force him make up because the tax payer is only assessed in the current year and not retrospectively.

As assessment must be made to the best of the Federal Board of Internal Revenue Judgment[8], this means that they "… will fairly consider all materials 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. The Board is given a measure of flexibility in estimating the tax due for prescribed accounting period for which no tax return has been rendered.[9]

4.4 Duties and Obligations of Tax Officers

The tax officers are under the control of the Board. They have a variety of duties covering all aspects of taxation. Their main duties and obligations are enumerated below:

[7]Time Limit does not Apply for offences in VAT Act 2004, Section 15 (2)
[8]Under Section 14 ibid
[9]Section 14 ibid

i) Reviewing and examination of tax returns and other information from tax payers and other sources.

ii) Make and issue assessments, based on the returns on which tax is payable.

iii) If no return is received or the information therein is suspected to be false, they issue estimated assessment known as best of judgment (BOJ) assessments. They also have the power to issue additional assessments when there is the conviction that the original assessment was inadequate in the light of fresh information coming to light as regards the-tax payer's income.

iv) Deal with objections by the tax payers when revised assessment can be issued as considered necessary. If no agreement is reached, the tax-payer can appeal to the Body of Appeal Commissioners.

v) Deal with claims for repayment when tax has been overpaid by the tax payers.

vi) They are also connected with the pay as you earn (PAYE) system by issuing tax deduction cards and excising a general oversight of its administration by employers.

vii) An individual can represent the Board at the hearing of appeals.

In addition, there are officials of the internal revenue who take steps that will result in tax-payers settling their tax liabilities with the revenue service. They are concerned with the service of:

i) Return of income forms

ii) Notice of assessment

iii) Summons and affidavits, and other supply of information.

But they do not handle money or actually collect taxes. Rather their efforts result in tax-payers paying their taxes. More so, Tax Officers are classified or

listed into four categories, depending on their experiences and number of years in services. There are Chief Inspectors of Taxes, Principal Inspectors of Taxes, Senior Inspectors of Taxes and Inspectors of Taxes.[10]

4.5 Returns and Remittance of Small And Medium Business Scale

At the end of each accounting period,[11] every taxable person will be required to make a return of tax to the VAT directorate, or repayable to him for that period.He will pay over to the VAT directorate the difference between his input tax and where the input in any accounting periods comes to be more than the output tax the board will repay the difference.[12]

In the case of imported goods, there is no evidence whether the goods are for private use or for business purposes. It is, therefore. not clear whether the taxable person can make a separate claim for repayment. However, the same interpretation may be given[13], therein the importer can make a separate claim for it to be repaid. And the revenue board has a discretion that is, to allow the claim if they are satisfied that to disallow it would result, in effect in a double charge to tax and where they allow it they must do so only to the extent necessary to avoid the double charge.

4.6 Assessment of Value Added Tax (Vat)

The implementation of value added tax officially commenced on the 1st January 1994. The VAT system in Nigeria is administered by the Federal Inland Revenue Service (FIRS). The VAT directorate within the FIRS is centrally located at the Head Office in Abuja with a network of Zonal and Local VAT Offices throughout the federation. Thus, VAT is assessed via the various provision of the Act as follows:

[10]Oriwodola, J.A.(1993) Personal Taxation in Nigeria, JAA Nig Ltd, Lagos. P.12
[11]Sec. 12 Op cit at pg 31
[12]Sec. 13 (3) ibid, FIRS Information Circular Part II
[13]Sect. 26 (1) British Finance Act, 1972 which imposed VAT in Britain

1. Taxable Goods and Service

VAT is levied on goods and services[14] at a single rate of 5%[15]. A list of goods and services exempted from VAT[16] 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, agricultural and veterinary medicine, farming machinery and farming transportation equipment, all exports, medical services rendered by community banks, people's bank and mortgage institutions, plays and performances conducted by educational institutions as part of learning and all export services.[17] However, VAT is charged on non-exempt imports into Nigeria, all exported goods are zero rated i.e. VAT-able at 0%.

2. VAT-able Person

A vat able person is specified by FIRS[18] as one who trades in VAT-able goods and services for a consideration. Every VAT-able person has an obligation to register for VAT payment. The registration covers all the business activities of the VAT-able person who can be a sole proprietor, a professional, a partnership, a limited liability company, a club, association or charity.[19]

3. VAT Registration

All manufacturers, importers and suppliers are expected to register,[20] for VAT payment within six months of commencement of business or within a month of commencement of VAT in Nigeria, for businesses in existence before then. The prospective

[14]As specified in Schedule 1 & 2 VAT Act 2004
[15] Now increased to 10% by the FGN with effect from Wednesday 23rd May, 2007
[16]Schedule 3 VAT Act 2004
[17]Made at Abuja on the 24th August 1993 by Gen I.B. Babangida former President FRN
[18]Circular No. 9304 (1993)
[19]Sec. 42 VAT Act, 2004
[20]Sec. 8, 10 and 11 ibid

tax-payer is expected to obtain and complete VAT Form 001 and return to the nearest local VAT office.

Consequently, a taxable person will suffer both the VAT (input VAT) when purchasing goods or services for business purposes, and chargers VAT (output VAT) when supplying goods and services to consumers. Unless his business is registered for VAT, he cannot charge VAT and the input he suffers cannot be reclaimed.

4. VAT Return

Returns are to be rendered to the VAT directorate through the local VAT office on or before the fourteenth day of the month following that in which sales were made. Every Vat-able person must keep records of all supplies made and received.The document required for VAT returns are the cheque(s) written for remittance of VAT return Form 002. The form must contain details of supplies made and received during the month being accounted for.

Furthermore, liability of VAT arises when the output VAT exceeds the input vat. The net VAT due is paid to the local VAT officer or, if tax is owned to the Vat-able person, a refund is claimed. To ensure proper recording of VAT collection and to support monthly VAT returns, certain statement should be prepared and made available to tax inspectors during their audit and inspection of VAT compliance.[21] These statements include;

i) Copies of cheques for monthly remittance of VAT,

ii) Copies of VAT return Forms 002

iii) A statement of input VAT,

iv) A statement of output VAT and

v) Copies of source documents, if practicable

[21]Ijewere, E; *Modified Value Added Tax in the Nigerian Accountant* (1993) Vol. 26 No. 2, pp. 4 – 6.

5. VAT Records and accounts

Every VAT-able person is required to keep proper records and books of all transaction sufficient to calculate the correct amount of VAT payable[22]. These include cash book, sale and purchases day books, ledger accounts and balance sheet among others. Specifically for VAT purposes, tax invoices are to be issued for all supplies and VAT accounts are also to be kept. Generally, every taxpayer is required by law to pay the correct amount of tax, to file their tax returns correctly and promptly, and to maintain accounting records in sufficient details to enable them make proper tax returns.

More so, the tax authority is authorized to examine such records or any other relevant records and to make a return where none has been made. Moreover, the tax authority is authorized to examine such records or any other relevant records and to make a return where none has been made. Concerning tax invoices, they are to contain the following where there is a credit balance, a bank draft is prepared and paid over to the local VAT office. Consequently, a debit balance calls for a refund and this will be made by the FIRS after necessary verifications.

5 VAT Inspector

VAT officers and Inspectors are empowered[23] to make periodic visits to a VAT-able person to carryout audit and investigation procedures. Such visits are[24],

i) To ensure compliance with VAT registration and regulation.

ii) To ensure that the full amount of VAT collection is promptly accounted for.

iii) To examine the method of recording transactions and offer suggestions, where necessary.

[22]Sec. 9 VAT Act 2004.
[23]Sec. 35 VAT Act 2004
[24]According to FIRS Circular No. 3 (1993)

iv) To afford the VAT payer the opportunity to ask any question and seek clarifications from the VAT officer and inspectors, and

v) To educate VAT payer on new developments in the system.

VAT are to take place periodically at the instance of zonal coordinators. Such tax drives are to stimulate the collection of VAT from defaulters and enforce prompt remittance of VAT paid.

4.6 Power of Inspector of Vat

A person acting under the authority of FBIR[25] is empowered to enter any premises on any reasonable grounds that as an inspector, 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. There is no warrant required for the inspection and the officer or any other person authorized by the board may take with him such persons as he considers necessary for carrying out his functions under the Act.[26]

More so, whatever new power tax inspectors are given in their battle against evasion the least valid argument is that other public officials have them. For instance, VAT is collected by trader and others on behalf of the government (FBIR) and the Act has granted powers of forcible entry to recover the tax.

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, no other course is left opened. Forcible entry is a last resort, which should not be made lawful without proven need, certainly not to meet administrative convenience or even the circumstances of the rare and extreme case. Thus, the power given under the section to the authorized officer to demand documents and the right to break in to get them is not part of

[25]Sec. 35 VAT Act 2004
[26]Sec. 35 (2) Ibid

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 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 others to force the dilatory uncooperative, evasive or potentially fraudulent taxpayer into the open.

There is simply no evidence of the need to give any tax gatherer the right to break into any premises and forcibly to search for and remove any book and papers believed to be relevant in a case of suspected fraud. If that step is to be taken at all, it is the job of the police whose powers and discipline are well defined against whom if need be, complaints may be made and be properly investigated. This is not an appropriate function for tax inspectors who have neither the experience nor hope, the stomach for this unpleasant task.

Moreover, the more powers of coercion put in the hands of the tax gatherer, the more likelihood of alienation from the public. Powers begets resistance not cooperation and it is cooperation that would make our VAT system more efficient.

4.7 The Right of Appeal

If a VAT-able supplier of goods and services or an importer disagrees with an assessment of the VAT payable, he has a right of appeal to the local VAT office, zonal office and the VAT director at Abuja, in that order. These are administrative review channels as provided under the FBIR information circular.[27] In addition, there is no provision under the Act,[28] for a forum to lodge an appeal for wrong assessment.We can only assume that the

[27]No. 9305 of 5th November, 1993
[28]VAT Act, 2004

Federal High Court may have jurisdiction to entertain such matters. Or, the high court, by way of an application for judicial review. Many of the disputes may relate to the classification of a particular supply, that is, whether is taxable or it is an exempt.

4.8 Offences and Penalties Under Vat

There are various offences with very stiff penalties under the VAT Act.[29] The fraudulent evasion of the tax is a criminal offence subject to a penalty of ₦30,000.00 fine or two times the amount of the tax, whichever is the greater or imprisonment for a term not exceeding three years.

There are similar penalties for false statements or documents where a person's conduct must have involved the commission of one or more of these offences. Then whether or not the particulars of that offence or those offences are known, he shall be guilty of an offence and liable to pay a fine of ₦10, 000.00, if greater, four times the amount of any tax that was, or was intended to be evaded by his conduct, or to imprisonment for a term not exceeding six months or both. This provision is of an unusual nature, but it seems to place the onus of proof on the taxable person that is solely within his knowledge. The safeguard is that the court must be satisfied that he must have committed an offence. The law is even more strict in dealing with officers of the Board. Any officer of the Board who aids or abets the commission of any of the offences under the VAT Act will be liable to a fine of ₦50,000.00 or imprisonment for five years.

Therefore, it would be necessary for the FBIR to prepare a case for criminal prosecution with the consequent requirement to produce evidence of proof beyond all reasonable doubt, or settle a case by way of assessment. This stark choice may be levied by the introduction of civil penalties in respect of conduct involving dishonesty, serious and

[29]Sec. 25 – 37, VAT Act 2004

persistent under declaration of tax. Such cases are to be investigated to the civil standard of proof based on probability and are subject to administrative rather than criminal standard penalties.

Thus, the FBIR has two choices where the criminal standard of proof is met. First, it may prosecute under the 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.

Secondly, the FBIR may compound the proceeding, that is, accept a pecuniary in lieu of prosecution. In this case, a debt arises under the contract made between the Board and the trader, and is collected as a debt due to the government.

4.9 Court Judgments on Vat

These constitute a source of law in the sense that they help in the interpretation of relevant or applicable tax statues, decrees or reenacted laws. This basis of judicial scrutiny is to establish liability and not to create it. No common law or equity exists in taxation. Tax and taxability arise from the wordings of statutes which themselves are a product of the sovereignty of parliament.[30] In many cases, the Nigerian statutes are either based on the United Kingdom Statues of similar name like the Income Tax Management Act or the Company Income Tax Act or similar activities in other commonwealth countries. They happen to command great respect and are of strong persuasive authority and assistance to Nigerian courts, in the interpretation of similar statutory provisions where there is absence of Nigerian case on the point.

In addition, the federal government sometimes ago made increment of VAT to 10%[31].The increase in rate from 5% to 10% was necessary because Nigeria has the lowest

[30]Sec. 2(1) Decree No. 1 (1984), item D pt. II and item 56 pt. I

[31]The Daily Trust (Nigerian) via Thompson Dialog News Edge w.e.f. Wednesday, May, 23rd 2007

rate in the African sub-region[32]. In this connection, taxpayers, consumers and agents of Federal Inland Revenue Services and other VAT collectors are to note that all sales and purchase transactions relating to goods and services, including contracts of supplies will henceforth attract VAT at the rate of 10% and as provided in the VAT Act, all creditable input taxes as defined[33]will continue to qualify for either set off or cash refund as may be applicable. The increase to 10% will also apply to all imports passing through customs ports or land borders in Nigeria, except where such goods have been specifically exempted under the VAT Act. However, the Minister said the 5% rate remained without change since the commencement of VAT in 1993, thereby constituting a source of distortion to trade and discouraging competition within the region.[34]

4.10 Advantages And Disadvantage of Vat[35]

VAT has several advantages which make it widely adopted. They are considered below:

i) Vat is relatively easy to understand, calculate and collect. It has a strong self-enforcement feature.This is because in most existing systems, only VATs that are invoiced are refundable. Thus, every purchaser has a strong incentive to see that a seller records the proper amount of VATs that has been accessed up to that point.

ii) Since VAT is accessed on all consumption goods produced, it cannot be avoided by book write offs, accelerated depreciation, loss carry forward, loose expense, account practices, no matter how much debt they have taxed alike under VAT.

[32]According to Mrs. Nenadi E. Usman, former Minister of Finance of the Federation
[33]Sec. 13 ibid
[34] The daily trust (Nigerian) via Thompson dialog news edge w.e.f Wednesday, may, 23rd 2007
[35]Eitman, D.K., 1973 *Multinational Business Finance* (Addison Wesley Publishing Co.) Reading USA Sandford, C.T., *Economics of Public Finance* (Peragamon Press) 1978, Oxford pp. 144 – 147

So unprofitable firms are forced to improve or go out of business faster, thus reallocating scarce economic resources in a more optimal manner from national economic view point.

iii) VAT can be rebated on exports and levied on imports as a kind of border or excise tax, so that the effect after tax cost of goods which are exported is lower by the amount of VAT than the cost of the same goods sold domestically

iv) Given a broad tax base and a uniform rate, VAT system is more neutral than other purchase taxes, because goods and services are taxed on the same basis with disorganized patterns of consumption and production. If the base is narrow and rates rise on commodities in the base, an income and substitution effect occurs, meaning an effect (a shift) of consumer's choice and the pattern of production than the rising of required revenue. Thus, smaller tax increases over a wider range of products will do better in that line and VAT looks more as a tax with much surer base for future tax increases.

v) The distortions caused by VAT are the same as those caused by indirect taxes it replaced.To require and information to be assessed and collected every time a product changed hands impliedly. No step is credit received for turnover taxes paid previously.That is, the final tax bill included taxes assessed on previously paid taxes because it is not assessed on the basis of the change in ownership. The VAT avoids due to compounding.

vi) VAT encourages a broad tax bases, because firms not subject to the VAT do not typically receive refunds of VATs previously paid by their suppliers, nor do firms subject to VAT refund on purchases made from suppliers who are not

subject to the VAT. However this has caused pressure from industries wishing to be exempted from VAT.

The Disadvantages of VAT are considered below

i) VAT usually increases the tax burden, even allowing for replacement of other indirect taxes. It is nonetheless argued that VAT might not be at fault for the needed, more taxes could have been raised or their rates increased instead of VAT rates.

ii) There are collecting agents that, though unpaid must keep a defined set of accounts and make regular returns, such a burden may be particularly onerous for the small businessman.

iii) VAT has been termed a regressive tax on consumption, which merely replaces or even supplements other regressive taxes on consumption, this is typical because it does not discriminate between "luxuries" and "necessities". Thus, given the assumptions on which VAT calculation is based, an element of progressiveness in the tax package could be suggested. This is mainly due to the list of zero-rated VAT items included, most of which make up the expenditure of lower income earners.

iv. In nearly every country which has introduced VAT, an increase in the rate of inflation has occurred. The inflation is supported because the introduction of VAT has the effect of injecting extra liquidity into the economy due to the high money flows during payment, and because producers gain interest free credit

during the few months before net payment has to be made to the revenue authorities.

v. *Invalid Assessment:* The first of such a problem is the issue of Invalid Assessment. Most business operators want to make much money at the detriment of the state. That is why most of them do not want to expose their real profit in order to avoid being levied the exact tax they are due to pay. This brings great loss to the Federal government, under declaration which is an offence.

vi. *Fraud:* This issue of self-assessment also leads to much fraud shown both on the part of the tax payer and the tax collector. The tax payer may enter into negotiation with the tax collector so that the tax collector under levy his tax obligation. Sometimes too, the tax collector may disregard the profit the tax payer is presenting him in a bid to let the tax-payer enter into fraudulent negotiation with him.

vi. *Tax Avoidance:* This is a process where by an individual plans he or her finances so as to apply all exemptions and deductions provided by tax laws to reduce taxable income. It entails the legal utilization using the tax regime to one's own advantage in order to reduce the amount of tax that is payable by means that is within the law. It is the process where by an individual plans all of her finances so as to apply all exemptions and deductions provided by the tax laws to reduce taxable income. Most tax payers use some form of tax avoidance. For example more retirement plans allow tax payers to defer paying taxes until a much later date which allow their saving to grow at a faster rate.

vii. *Tax Evasion:* This is the willful attempt to defeat or circumvent the tax law in order to illegally reduce one's tax liability. This is highly practiced by the taxpayers of this country. Examples is that some people fails to pay their tax complely or give a wrong figure.

CHAPTER FIVE
SUMMARY, FINDINGS AND RECOMMENDATIONS

5.1 Summary

This work begins with the statement of problem that sees the government struggling to promote Small and Medium Business Enterprises (SMBEs) in the country but despite these measures, the business operators in this sector still cry for not being well promoted and protected as much as the government claims it is doing. To examine the effectiveness of the Nigerian government to encourage and promote SMBE using the tax system.

This then ushers in conceptual clarifications and legal framework of small and medium business enterprises in Nigeria. Here, key concepts are elucidated, clarified and situated to focus the reader on important issues raised in this work. There have been reasonable legal measures put in place to guarantee the tax policy to encourage this sector. Legal instruments playing this role are the Constitution, Acts and Decrees, State Government Edicts and Local Government By-Laws.

Institutional framework for tax administration of Small and Medium Business Enterprises is then examined. Here, attention is paid to the institutions that are concerned with the administration of various categories of taxes needed from the Small and Medium Business Enterprises (SMBEs).These administrators are also ensured that they are trained to meet up with the government tax policies as regards the protection and encouragement of SMBEs.

Tax assessment of small and medium businesses is delved into too. Here the various agencies concerned with the assessment of tax from this sector of the economy is looked into. Here, we see that the agents' asses the various taxes from the business enterprises and when they are not in accordance with the figure, they have the right to appeal for a fresh

assessment. Agencies incharge of this assessment are the Value Added Tax Administration, Federal Board of Inland Revenue, Value Added Tax Technical Committee, Joint Tax Board, Taxpayer Identification Number System, the Body of Appeal Commissioners, State Tax Authority and Local Government Revenue Committee. All these agencies are put in place to foster the plight of the government in seeing SMBE subsist and progress. Also measures are put in place to ensure that the assessment of the tax of enterprises of this sector is meant to promote them.

5.1 Findings

When research of this nature is conducted, some stumbling blocks are usually arrived at and recommendations to such hurdles must be proffered to make the work complete. Some of the findings arrived at in the course of this research are that:

1. There is the problem of over taxation of SMBE. It was discovered that FIRS assessors and collectors, over tax these businesses as well as States and local government tax officials. This result to a wrong information and figures from the tax collectors due to the multiple or under estimation of tax
2. It is also discovered that there are some cases of community levy, youth levy and union or association levy that are also exerted on Small and Medium Business Enterprises (SMBEs) in Nigeria.

3. It was found that some tax agents are not well trained and informed about certain government policies as regard the protection and encouragement of Small and Medium Business Enterprises (SMBEs). For example, they do not consider the size of a particular business in tax collection. Tax collection which is highly based on the profit made by a business establishment is in most cases ignored and not considered by the tax officials who collect excessive amounts of taxes. This turns to discourage the business operators.

5.2 Recommendations

1. Tax assessment and collection should be defined with respect to which government institution should assess and collect certain taxes from Small and Medium Business Enterprises (SMBEs). This will avoid the issue of multiple government agencies collection of taxes from the same business and not based on their ability to pay. Government should also put a policy in place to avoid illegal taxes, such as community levy, boys or youth levy and as well as association or union levy. Taxes should be collected in relation to the sizes and profits of SMBEs considering all other factors that can constrain the progress of such SMBEs as there is a relationship between Small and Medium Business Enterprises (SMBEs) sizes and their ability to pay taxes.
2. in recent time most governor appoints their business associates as sole administrators of local government, to manage their revenue consultancy companies, as no provision of law presently that make the local government chairman/ administrator accountable to any revenue collected by them, this gap must be closed by the law,.
3. Tax collectors should not only be trained about assessment and collection of taxes but also be trained about particular government policy concerning a particular sector they collect taxes from. This is because the government put in place policies and its agents apply a contrary one especially with regard to encouraging small enterprises. More so when such policies are put in place the business operators should be informed so that the tax agents who are so interested in enriching themselves do not cheat and crumble the favoured and protected business establishments. To close this gap treasury single account (TSA) to be adopted by state to avoid siphoning government funds by tax agent. Also tax collected and its process of expenditure should be made public and should be so provided for in the law. This will enable the tax payers to pay tax as they are confident as the taxes they paid are put into proper use. Unelected local government chairman should be bound from constituting revenue council as they are mere appointed administrators by their governors
4. Government should train tax agents to give faire assessment of taxes of Small and Medium Business Enterprises (SMBEs) sector. This will prevent the aspect

of over taxation by these agents. Routine check should also be done to see that the fraudulent activities of these tax agents are checkmated to see that they ensure to respect the government policies towards the protection and promotion of Small and Medium Business Enterprises (SMBEs), equally In a federal system like Nigeria, a VAT of national character as operated could deflate the tax base of state governments which typically depend on other consumption taxes e.g. sale tax, for their revenue. Thus a good revenue sharing formula is suggested. Consequence, the policy formulation here is that the members structure of the committee should include representative of the legal and accounting profession, the Nigeria institute of taxation. The manufacture association of Nigeria, the Nigeria association of small scale industries the chambers of commerce and industry. The rationale is that the above bodies represent at least to an extent, a segment of the taxpayers. Because they would in their respective capacities ensure compliance with the VAT law by their members and issue that is important, considering the rate of tax evasion avoidance in the country.

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