AN OVERVIEW OF THE NIGERIAN TAX SYSTEM AND THE NATIONAL TAX GAP

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DEFINITION OF TAX.

According to Black Law's dictionary, tax is a monetary charge imposed by the government on persons, entities and transactions or property to yield public revenue.¹ It encompasses all governmental impositions on the person, property, privileges and includes duties, imposts and excises. Taxes aids in financing public health and education, national defence and security in a country, roadway construction and social service programs. According to J. S. Mill, “Taxes are either direct or indirect. A direct tax is one, which is demanded from the very persons who, it is intended or desired, should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another.”

CANONS OF TAXATION.

A canon of taxation in its simplest form means the characteristic or quality which a good tax system should possess. Canons of taxation refer to the administrative aspects of a tax. They relate to the rate, amount, method of levy and collection of a tax.

According to Adam Smith, there are four canons or maxims of taxation on the administrative side of public finance which are still recognized as classic. To him, a good tax is one which contains:

1. Canon of equality or equity.
2. Canon of certainty.
3. Canon of economy.
4. Canon of convenience.²

To these four canons, economists like Charles Bastable have added a few more which are as under:

5. Canon of elasticity.
6. Canon of productivity.
7. Canon of simplicity.
8. Canon of diversity.
9. Canon of expediency³

¹ Black Laws Dictionary.
² The Wealth of Nations- Adam Smith
³ Public Finance 1892- Charles F. Bastable
EXPLANATION OF THE TYPES OF CANONS OF TAXATION.

**Canon of Equality:** Every fiscal economist, along with Adam Smith, stresses that taxation must ensure justice. The canon of equality or equity implies that the burden of taxation must be distributed equally or equitably in relation to the ability of the tax payers.

Equity or social justice demands that the rich people should bear a heavier burden of tax and the poor a lesser burden. Hence, a tax system should contain progressive tax rates based on the tax-payer’s ability to pay and sacrifice.

**Canon of Certainty:** Taxation must have an element of certainty. According to Adam Smith, “the tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the amount to be paid ought to be clear and plain to the contributor and to every other person.”

The conditions to fulfil for certainty of taxation are:

1. Certainty of effective incidence i.e., who shall bear the tax burden.

2. Certainty of liability as to the tax amount payable in a particular period. This the tax payers as well as the exchequer should unambiguously know.

3. Certainty of revenue i.e., the government should be certain about the estimated collection of revenue from a given tax levied.

**Canon of Economy:** This principle suggests that the cost of collecting a tax should not be exorbitant but be the minimum. Extravagant tax collection machinery is not justified. According to Adam Smith, “Every tax has to be contrived as both to take and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury of the state.” Owing to the complex and ever-changing nature of taxation laws in India for instance, government has to maintain elaborate tax collection machinery with a large staff of highly trained personnel involving high administrative costs and inordinate delay in assessment and collection of tax, which is not exactly in compliance with this canon.

**Canon of Convenience:** According to this canon, tax should be collected in a convenient manner from the tax payers. Adam Smith stresses “Every tax ought to be levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it.” For example, it is convenient to pay a tax when it is deducted at source from the salaried classes at the time of paying salaries.

**Canon of Elasticity:** Taxation should be elastic in nature in the sense that more revenue is automatically fetched when income of the people rises. This means that taxation must have built-in flexibility.

**Canon of Productivity:** This implies that a tax must yield sufficient revenue and not adversely affect production in the economy.

**Canon of Simplicity:** This norm suggests that tax rates and tax systems ought to be simple and comprehensible and not be complex or beyond the understanding of the layman.
Canon of Diversity: Canon of diversity implies that there should be a multiple tax system of diverse nature rather than having a single tax system. In the former case, the tax payer will not be burdened with a high incidence of tax in the aggregate.

Canon of Expediency: This suggests that a tax should be determined on the ground of its economic, social and political expediency.

EQUITY IN TAXATION.

Equity in taxation refers to fairness or justice in the distribution of the tax burden. Since taxation implies a burden or sacrifice on the part of the tax payer, modern economists put great emphasis on justice in taxation and state that taxation should be based on the principle of equity so that direct money burden as well as real burden should be distributed in a just manner. The concept of equity has two notions:

(i) Horizontal equity and (ii) Vertical equity.

Horizontal equity suggests that in the matter of taxation, equal treatment should be meted out to people in equal economic circumstances, which means that they should pay equal amount of taxes. Vertical equity means that unequally placed persons should be treated unequally, thus, economically better placed people should pay more taxes than others. However, any attempt to achieve vertical and horizontal equity simultaneously is not at all an easy task and can lead to ludicrous results.\(^4\)

IMPORTANCE OF TAXATION.

The collection of taxes provides funding to support the infrastructure of government, which allows for the delivery of public services to individual states and the nation as a whole. At the local level, governmental units deliver services to its residents from its collection of local property, income and sales taxes. Much of the revenue derived from these taxes are used for police and fire protection, building schools, maintaining local roads, and protecting citizens against local health emergencies and neighborhood crime. At the state level, the government uses taxes to deliver public services such as maintaining the neighbourhood security bodies, assisting farmers with agricultural issues and managing a uniform court system. Tax collection also gives states the ability to provide social services to economically distressed and mentally disabled citizens and their families. Taxes are essential to the operation and function of the federal government, which provides constitutional functions such as maintaining a standing military. Congressionally mandated programs, which allow for the provision of disaster relief, general health and national human service, education and health programs are accomplished mainly due to federal tax collection.\(^5\)

\(^4\) An article on the canons of taxation and equity of taxation by Smriti Chad.

\(^5\) The importance of tax by Kelvin Fobbs
TAXATION IN NIGERIA.

HISTORY OF TAXATION IN NIGERIA.

History of taxation in Nigeria dates back to even when the name Nigeria was not yet coined. During this time, the tax administrators then were the traditional chiefs tax agents. At this time, tax was imposed on mostly farm produce and other primary goods.

The modern taxing system by the Federal Government of Nigeria under its taxation arm, Federal Board of Inland Revenue (FBIR) can be traced back to the year 1939 when the Companies Income Tax Ordinance was created. In 1978, the Task Force on Tax Administration under the leadership of Alhaji Shehu Musa formed the Federal Inland Revenue Service (FIRS) as the operational arm of Federal Board of Inland Revenue (FBIR).

Prior to colonial administration of the territory now known as Nigeria, an effective tax system was reportedly in operation in indigenous kingdoms and communities. In 1904, a notable tax legislation which harmonized the various traditional taxes was issued, called the Land Revenue Proclamation Law of 1904. This Law had effect in the Northern protectorate of Nigeria until the amalgamation of the Northern and Southern protectorates in 1914 when the Native Revenue Ordinance of 1917 was enacted to cover the areas of the Western Region of Nigeria. Nevertheless, the Eastern region of the country had to wait until 1927 after much debate and hesitation for the first personal income tax law. This sparked off disturbances culminating in the Aba Tax Riot of 1929. An epoch making statute in the field of company law was specifically introduced for the taxation of company profits under the Companies Income Tax Ordinance 1939. In 1940 there was a major tax legislation, which for the first time applied throughout the country having consolidated all previous tax ordinances from 1906 to 1940.

It also provided for the appointment and control of tax collectors by the residents. This was the Direct Taxation Ordinance No. 4 of 1940 and the Income Tax Ordinance No.3 of 1940. The Direct Taxation Ordinance provided for the taxation of Nigerians except those in the township of Lagos. In 1943, a more comprehensive income tax ordinance was passed repealing the 1940 ordinance, with a slightly higher tax rate. By the turn of the year 1946, it had become very clear that hitherto legal arrangements of ruling the country as a unitary state were palpably inadequate. The introduction of the Richards constitution saw the division of the country into three regions. However, true federalism was fully achieved in 1954. The essential feature of federalism is the formal distribution or allocation of tax jurisdictional powers between the federal and state governments. Hamilton expressed it better when he said: "It is ... as necessary that the state government should be able to command the means of supplying their wants, as that the national government should possess the like faculty in respect of the union".

The inevitable question of sharing taxing powers prior to independence was referred to the Raisman Commission. In June 1958, the commission submitted its report which contained among others a decentralization of taxing powers between the federal government and the states. It however, identified

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7 Hamilton, Federalist, No.XXXI, P.149
problems which might result such as double taxation (internally and externally).\textsuperscript{8} Thus the commission recommended the introduction of general principles for taxing individual incomes to be applicable to the whole country. In consequence, the Income Tax Management Act of 1961 was enacted and amended in 1975. Various Nigerian constitutions have attempted to allocate taxing powers between the various tiers of government, an examination of which is beyond the ambit of space and time of this work. However, the present constitutional basis will be examined post factum.\textsuperscript{9}

**TYPES OF TAX REGULATIONS NIGERIA**

These are categorized as follows:

**TRANSACTION TAXES**

**Capital Gains Tax:** This accrues on an actual year basis and it pertains to all gains accruing to a taxpayer from the sale or lease or other transfer of proprietary rights in a chargeable interest which are subject to a capital gains tax of 10%, such chargeable assets may be corporeal or incorporeal and it does not matter that such asset is not situated in Nigeria. Where however the taxpayer is a non-resident company or individual the tax will only be levied on the amount received or brought into Nigeria.

Computation of capital gains tax is done by deducting from the sum received or receivable from the cost of acquisition to the person realizing the chargeable gain plus expenditure incurred on the improvement or expenses incidental to the realization of the asset.

**Value Added Tax (VAT):** This was introduced by the VAT decree No. 2 of 1993, to replace the old sales tax. It is a consumption tax levied at each stage of the consumption chain, and is borne by the final consumer. It requires a taxable person upon registering with the Federal Board of Inland Revenue to charge and collect VAT at a flat rate of 7.5% of all invoiced amounts of taxable goods and services.

VAT paid by a business on purchases is known as input tax, which is recovered from VAT charged on company’s sales, known as output tax. If output exceeds input in any particular month, the excess is remitted to the FIRS but where input exceeds output, the taxpayer is entitled to a refund of the excess from FIRS though in practice this is not always possible.

A Taxpayer however has the option of recovering excess input from excess output of a subsequent period. It should be stated at this point that recoverable input is limited to VAT on goods imported directly for resale and goods that form the stock-in-trade used for the direct production of any new product on which the output VAT is charged.

\textsuperscript{8} See generally Report of the Fiscal Commission, 1958 (cmnd.481).
\textsuperscript{9} O. Akanle, The Power to Tax and Federalism in Nigeria, Centre for Business and Investment Studies, Lagos, 1998.
Education Tax; An education tax of 2% of assessable profits is imposed on all companies incorporated in Nigeria. This tax is viewed as a social obligation placed on all companies in ensuring that they contribute their own quota in developing educational facilities in the country.

Petroleum Profits Tax; Nigerian law by virtue of the Petroleum Profits Tax Act requires all companies engaged in the extraction and transportation of petroleum to pay tax. The taxable income of a petroleum company comprises proceeds from the sale of oil and related substances used by the company in its own refineries plus any other income of the company incidental to and arising from its petroleum operations.

The taxable income of a petroleum company is subject to tax at 85%, but this percentage is lowered to 65.75% during the first 5 years of operation. Where oil companies operate under production sharing contracts they will be liable to tax at a rate of 50%.

There are however some concessions granted petroleum companies known as, Capital Allowance and Petroleum Investment Allowance; the former is deducted in arriving at the taxable income and entails expenditure on equipment, pipelines, and storage facilities, buildings and drilling costs, these are referred to as qualifying assets. The applicable rate of Capital Allowance for any year is of 20% of the cost of the qualifying assets applied on a straight-line basis for the first 4 years and 19% for the 5th year. The latter is regarded as an addition to capital allowance and covers allowance in respect of new investments in assets for petroleum exploration; it is available in the accounting period in which the assets are first used.

It must be stated that the deduction of Capital Allowance is restricted, so that for any accounting period, the tax on the company should not be less than 15% of the tax which would have been assessable had no capital allowances been granted the company.

Nigerian Social Investment Trust Fund (NSITF); This is governed by the NSITF Act, and requires everybody employed in a Nigerian incorporated company to contribute a certain percentage of their salary to the fund. This contribution is based on the assumption that the maximum basic salary in Nigeria is N48,000 per annum; Expatriates are excluded from this requirement where they can show proof of a similar contribution in their home country. The rate of contributions is defined as follows: where the contributor is an employee, 2.5% of his salary subject to a maximum of N1,200 per annum; and where the contributor is an employer, 5% of basic salary subject.

Stamp Duties; The administrations of stamp a duty, which is jointly carried out by the state and Federal authorities, depending on the type and nature of the document. Stamp duties are regarded as transaction taxes, and the rates chargeable would depend on the classification of the document. Some documents attract stamp duties on flat rate basis while others are assessed individually.

Withholding Tax; Nigerian law subjects certain activities and services to Withholding Tax. This basically means that where during transactions in any of the specified activities or services, a payment is due from one person to another, the person making the payment is expected to deduct tax at the applicable rate and remit it to the relevant tax authority. This should be done not later than 30 days after the deduction. This provision can be found in sections 68 to 72 of the Personal Income Tax Decree No. 104 of 1993; Sections 60 to 64 of the Company Income Tax Act (as amended), and Section 51(a) of the Petroleum Profits Tax Act (as amended).
Double Taxation Agreements/Treaties; Nigeria has a number of tax treaties referred to as “Double Taxation” Agreements with a number of countries. This is to ensure that the tax payable in Nigeria on the profits of a Nigerian company being remitted into the country are reduced by the amount of “foreign Tax” paid abroad and vice versa. In the last few years, Nigeria has entered into double taxation agreements with a number of countries.

These agreements are entered into with a view to affording relief from double taxation in relation to taxes imposed on profit taxable in Nigeria and any taxes of similar character imposed by the laws of the country concerned. Some of these countries include the UK, France, The Netherlands, Belgium, Canada and Pakistan.

Personal Income Tax; The legal basis for this tax is found in the provisions of the Personal Income Tax Decree [now Act]. 104 of 1993. Every taxpayer in Nigeria is liable to pay tax on the aggregate amount of his income whether derived from within or outside Nigeria, the salaries, wages, fees, allowances, and other gains or benefits, given or granted to an employee are chargeable to tax. The Employers of labor are deemed to be agents of the tax authority for the purposes of remitting taxes deducted from salaries due to employees. However, the residency of the taxpayer determines the extent of a taxpayer's liability in Nigeria.

A person's place of residence for this purpose is defined as a place available for his domestic use in Nigeria on a relevant day, excluding hotels and rest houses. A person is deemed resident in Nigeria if he resides in Nigeria for 183 days in any 12-month period. Expatriates holding residence permits are however liable to tax in Nigeria even if they reside in the country for less than 183 days in any 12-month period. Once residence can be established, the relevant tax authority of the territory is the Tax Authority of the state in which the taxpayer has his place of residence or principal place of business. The following are however exempted from tax: -

- Medical or Dental expenses incurred by the employee.
- Retirement gratuities and compensation loss of office.
- The cost of passage to or from Nigeria incurred by the employee.
- Interest on loans for developing an owner-occupied residential house.
- Leave allowance, which is computed as 10% of annual basic salary subject to a maximum of N7, 500 per annum.

Companies Income Tax; This tax is payable for each year of assessment of the profits of any company at a rate of 30%. These include profits accruing in, derived from, brought into or received from a trade, business or investment. Also, a company paying dividends to its shareholders is obliged to first pay tax on its profits at the companies' tax rate. Generally, in Nigeria, company dividends or other company distribution whether or not of a capital nature made by a Nigerian is liable to tax at source of 10%. However, dividends paid in the form of bonus share or scrip shares to individual shareholders are not
subject to tax. Also, where a company is a shareholder in another company then such dividends are excluded from the profits of the company for the purposes of computation of the tax.\(^\text{10}\)

**ADMINISTRATION AND ENFORCEMENT OF TAX IN NIGERIA**

A good law is important to a good tax system. A good administration (and enforcement) are sine qua non to the attainment of the overall good of the system. Functional bodies operated by the federal government are; the Federal Board of Inland Revenue, the Body of Appeal Commissioners and the Joint Tax Board. While the states each have a Board of Internal Revenue.

**FEDERAL BOARD OF INLAND REVENUE:** The board is established by Section 1 of the Company Income Tax Act CAP 21 LFN (2004). The members of the board are drawn from the Federal Ministry of Finance, Board of Customs and Excise, the Nigerian National Petroleum Corporation and the Registrar General of the Corporate Affairs Commission. The board holds quarterly meetings to deliberate upon cases referred to it and other policy matters.

A number of directorates have been established to cover the following functions:

1. Tax Assessment, Audit and Investigation
2. Tax collection, computerization and litigation
3. Management, planning and research
4. Petroleum profits tax, Training and Intelligence

**THE TAX APPEAL TRIBUNAL:** The TAT came to replace the Body of Appeal Commissioners (BAC) and Value Added Tax Tribunal, (VATT) and also to handle cases of income tax and value added tax. The Federal Inland Revenue Service (Establishment) Act, 2007 establishes the Tax Appeal Tribunal under section 59 to settle disputes arising from the operations of the Act as well as the administration of the legislations listed in the First Schedule to the Act. The Tribunal has power to adjudicate on disputes and controversies arising from the following legislation:

(a) The Companies Income Tax Act;
(b) Personal Income Tax Act;
(c) Petroleum Profits Tax Act;
(d) Capital Gains Tax Act;

\(^{10}\url{http://www.nigerianlawguru.com/articles/commercial%20law/TAXATION%20AND%20FINANCIAL%20REGULATIONS%20IN%20NIGERIA.pdf}
(e) Stamp Duties Tax Act;
(f) Value Added Tax Act.\(^{11}\)

Both the Tax Authorities and the taxpayers may appeal to the tribunal; on the part of the tax authority for the non-compliance of the taxpayer with the provisions of the tax Laws and on the part of the taxpayer, on the assessment, demand notice or any action made against him by the tax authority with respect to payment of tax.\(^{12}\)

After judgment, the tax authority is required to serve the taxpayer notice of the amount of the tax chargeable as determined by the tribunal and the award or judgment of the tribunal shall be enforced as if it were judgment of the Federal High Court upon registration of a copy of such judgment with the chief Registrar of the court and an appeal from the decision of the tribunal on point of Law goes to the Federal High Court and notwithstanding the pendency of the appeal, tax shall be paid in accordance with the decision of the tribunal within one month of the notification of the amount of the tax payable.\(^{13}\)

**FEDERAL HIGH COURT:** It is established by section 249 of the 1999 constitution of the Federal Republic of Nigeria (as amended). It is constituted by a chief judge of the court and such other number of judges as may be prescribed by an Act of the National Assembly. By virtue of the provisions of section 251 of the constitution of Nigeria (as amended) the Federal High Court is conferred with exclusive civil jurisdiction on matters:

(a) Relating to the revenue of the federal government or any organ thereof or where a person suing or being sued on behalf of the said government is a party;

(b) Connected with or pertaining to taxation of companies and other bodies established or carrying on business in Nigeria and all other persons to federal taxation.\(^{14}\)

The Federal High Court has an appellate jurisdiction by virtue of Paragraph 17 of the fifth schedule to the Federal Inland Revenue Service (Establishment) Act, 2007 which provides that any person dissatisfied with a decision of the tribunal constituted under the schedule may appeal against such decision on a point of Law to the Federal High Court upon giving notice in writing to the secretary to the tribunal within 30 days after the date on which such decision was given.\(^{15}\) Upon receipt of the notice of appeal, the secretary to the TAT shall compile the record of proceedings of the tribunal and transmit them to the Registrar of the Federal High Court along with all the exhibits tendered thereat. When the appeal is

\(^{11}\)Okauru, I.O., (2012) Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria, Safari Books Ltd, Ibadan, P. 137-

\(^{12}\)Paragraphs 11, 13 and 14 of the fifth schedule of Federal Inland Revenue Service (Establishment) Act, 2007

\(^{13}\)Ibid Paragraphs 16 and 17


entered, hearing date will be given and thereafter judgment. Appeal against the judgment of the federal High Court goes to the Court of Appeal and finally to the Supreme Court.\textsuperscript{16}

**JOINT TAX BOARD;** The Joint Tax Board consists of one officer from each state and one nominee of the Federal Public Service. The joint tax board is concerned with the administration of income tax generally under the Income Tax Management Act 1990. In particular, it coordinates the various aspects of taxation as between states as well as promoting uniformity in personnel taxation. It also advises the federal government on request in respect of double taxation arrangements with any other country and in respect of rates of capital allowances as well as on matters connected with the introduction of amendments to the Income Tax Act. It also considers and approves benefits and pension schemes valid for income tax purposes throughout the country.

**STATE BOARD OF INLAND REVENUE;** The administrative organization of the state revenue department is basically the same throughout the country except for slight variations in designations and devolution of responsibility. The head of the revenue department is called Director of Board of Internal Revenue and he is assisted in the execution of his duty by the deputy directors, chief inspector of taxes, principal inspector of taxes, senior inspector of taxes, principal executive officers, senior executive officers and other tax officials of lower ranks. States internal revenue collection is not solely limited to personal income tax, but includes those revenues accruing to and collected by the state internal revenue departments.

**LEGAL FRAMEWORK FOR TAXATION IN NIGERIA.**

S.44 (2) (a) of the 1999 Constitution provides that: “Nothing in subsection (1) of this Section shall be construed as affecting any general law for the imposition or enforcement of any tax. Thus, the compulsory imposition of tax on a citizen is not a derogation from the right of the citizens to his property, but a necessary exercise of governmental powers. These powers to make laws for the imposition of tax are vested by virtue of Section 4(2) of the constitution on the National Assembly. A collective reading of Section 4 of the constitution shows that taxes on income, profits or capital gains and stamp duties are exclusive to the National Assembly. Only the National Assembly can legislate on the imposition, collection and administration of any tax or duty envisaged under item 58, and 59 of the exclusive legislative list”.

Notwithstanding, the National Assembly may by an Act “provide that the collection of any (of the aforementioned) tax or duty or the administration of the law imposing it shall be carried out by the government of a state or other authority of a state. The house of assembly of a state may without prejudice to the powers conferred on the national assembly “make provision for the collection of any tax, fee or rate or for the administration of the law providing for such collection by a local government council” Therefore, any tax emanating from such properly enacted legislations have the force of law.

DEFINITION OF TAX GAP

Tax gap is the difference between total amounts of taxes owed to the government versus the amount they actually receive. Generally, a tax gap is caused by tax payers overstating deductions and understating their income so they can pay fewer taxes but late payment of taxes may also impact on the gap.\textsuperscript{17}

TAX GAP IN NIGERIA.

Nigeria represents the epitome of poor tax compliance. That matters all the more as, with its 195 million people, Nigeria is the continent’s most populous country and has big needs. Even so, it has the lowest tax-to-GDP ratio of any nation in the IMF’s report at just 5.9%. Nigeria’s National Bureau of Statistics (NBS) indicates the country has a taxable workforce of around 77 million, but government figures show just 14 million pay income tax.\textsuperscript{18}

Tax evasion is particularly rampant among the country's wealthiest citizens: Only 214 people in all of Nigeria pay more than 20 million naira ($55,600) in tax. Nigeria doesn’t fare much better with value-added tax (VAT) and corporate tax. A paltry 9% of Nigerian companies pay corporate tax, while only 12% of registered businesses comply with VAT obligations. With some estimates finding as many as 99% of small businesses are unregistered, those percentages are even lower in reality.\textsuperscript{19}

Nigeria has tried to address its tax collection problem by introducing the Voluntary Assets and Income Declaration Scheme (VAIDS), which offered temporary amnesty for those who had missed or evaded previous tax payments. While the scheme produced a small uptick in compliance and the government collected $47 million in back taxes in its last six months of 2017, the informal sector of Nigeria’s economy remains too great and tax enforcement remains too lax to harness the country’s full economic potential.\textsuperscript{20}

CAUSES OF TAX GAP IN NIGERIA

Some causes of tax gap in Nigeria are;

i. Non-compliance: There is a significant level of non-compliance by individuals and corporates who are either operating in the informal sector and out of the tax net or just paying lip service to tax obligations and this has constituted a major part of the tax gap in Nigeria which is usually through tax evasion. This is due to the fact that the risk detection is low and there is little or no penalty for non-compliance.

\textsuperscript{17}http://www.businessdictionary.com/definition/tax-gap.html

\textsuperscript{18}Closing Africa’s Tax Revenue Gap By Jonathan Fiawoo, July 12, 2018

\textsuperscript{19}Ibid.

\textsuperscript{20}Ibid.
Vazquez (2001) defines tax evasion as a thoughtful and eagerly practice of not unveiling comprehensive taxable income in order to reimburse lesser tax. Tax evasion also involves taxpayers intentionally misrepresenting and covering the actual position of earnings in order to shrink tax payment from the tax authorities, the act of evading involves particularly dishonest and unfair tax reporting by declaring of abridged income, profit and gain that earned or exaggerating deductions and expenses made. Tax evasion usually entails taxpayers deliberately misrepresenting or concealing the true state of their affairs to the tax authorities to reduce their tax liability.

ii. The Informal Sector: The governments usually pay more attention to the corporate/formal entities ignoring the informal sector. The Nigeria informal sector is extremely large and diverse and is said to account for approximately 60-65% of the economy. Its scope of activities spans across trading, spare parts transportation, construction, agriculture, livestock, food preparation, credit facilities, refrigerator, mechanical and electrical work, dressmaking, information technology and communication, footwear and traditional healing just to mention a few. The profiles of business in this sphere are typically low-income earners or one-man business with self-employed proprietors operating underneath the regulatory radar who do not pay taxes. Taxing the informal sector in Nigeria is a formidable task. With respect to hindrances in effective taxation of the informal sector, three general difficulties can be identified, namely:

a. Cash Based Economy: The Nigerian informal sector currently conducts business predominantly on cash basis. These enterprises often refuse to accept cheques, thereby enabling them to conceal their turnover and taxable profits. To evade taxes, such businesses manipulate their figures for tax reduction purposes and can obscure all revealing third party information on their transactions. Many believe that the emergence of the cashless policy of the Central Bank of Nigeria will help to check the above.

b. Poor Record Keeping: Most self-employed people are generally tax about maintaining up to date accounts, thus ascertaining the correct level of income generated by the business and giving a meaningful assessment of taxability is rendered impossible. Secondly, most self-employed people and other players in the informal sector are apathetic to appropriate record keeping system.

c. Cumbersome Tax Mechanism: One known barrier preventing many businesses in the informal sector from crossing over to the formal sector where they can assess more needed capital is the complicated tax structure, therefore, without a simplified tax mechanism to cater to these businesses unable to cope, they simply opt to remain in the informal sector.

MEASURING TAX GAP IN THE ECONOMY

Tax gap may be defined from the institutional perspective of tax authorities as “the difference between tax collected and the tax that should be collected” (HMRC 2012, p. 3). This definition is compatible with
the conception embraced by the US fiscal authorities (IRS) as “The difference between the tax that taxpayers should pay and what they actually pay on a timely basis” (US 2005) or otherwise “the difference between the true tax liability in any year and the amount of tax that is paid voluntarily and on time” (Holmgren 2013, p. 1).

The first method; direct method rests on selected control and audit methods within the representative group, which is subsequently generalized for the whole population surveyed (so-called Audit-Based Methods or Taxpayer Surveys). Though, it should be kept in mind that audits should be limited in their scope, but adequately targeted. Nevertheless, they cannot be the most cost-effective form of research into the tax gap, yet they should rely on prospective analyses as part of the audit additionally carried out in the real time (O'Doherty 2014, pp. 297-339).

The second group of methods, termed as indirect methods, do not conduct physical controls on the taxpayer, but rely on tax declarations and other data sources (e.g. tax refunds, money flows, type and number of business transactions completed) which mostly allow for determination of the tax gap in a less precise manner than physical audits. The second group (so-called macro approach) contains such methods as: National income-expenditure discrepancy methods, National income fiscal discrepancy methods, single indicator models (currency-based, electricity use-based, labour force participation, transactions-based) and Multiple Indicators Methods (MIMIC) (Gemmell and Hasseldine 2012, pp. 203-231). At the same time, the components of the tax gap themselves, despite compatibility in their descriptions, may be labelled otherwise, and specify distinctly the type of the tax gap (Plumley 2005; Alm and Borders 2014, pp. 61-67):

a) Underreporting gap (the top and principal factor also connected with overestimating through failure to disclose adequate tax base),

b) Underpayment gap (so-called tax underpayment disclosed in the tax return, though payment does not occur or is deferred in time),

c) Non-filling gap (paucity of the tax return, tax return submitted after deadline).

CONCLUSION.

The former Executive Chairman of Nigeria’s Federal Inland Revenue Service (FIRS), Mr. Babatunde Fowler delivered, on September 6th, 2018 a keynote address at a stakeholders’ meeting on “Tax Administration and National Revenue.” The stakeholders’ meeting was aimed at charting the way forward for the country’s tax administration and offering solutions to the challenges hindering a robust tax regime and how to increase the tax-to-GDP ratio.

Key highlights of the discussion included:

Increased focus on Value Added Tax (VAT) collection: The Executive Chairman reiterated that Nigeria still remains one of the countries with the lowest tax to Gross Domestic Product ratio, despite the fact that the FIRS’ collection from January to August 2018 stands at NGN3.5 trillion which is NGN1trillion above the total collection for the prior year. To address the gaps in the tax compliance culture, he stated that
the FIRS will increase its focus on the collection of non-oil revenue, with specific emphasis on VAT. He further revealed that several businesses are collecting VAT and not remitting to the Government. In addition, he said that VAT certificates for compliant companies will be issued by the FIRS and taxpayers will be expected to display this at their offices at all times.

**Tax refunds**: Fowler addressed the inefficiencies with respect to the grant of tax refunds. He stressed that the Federal Government sets aside a substantial amount of money every month for taxpayers with established refund cases. He advised that henceforth, taxpayers who have established cases of excess taxes paid to the various tax authorities should come forward and apply for the refund.

**Amendment to tax laws**: Fowler acknowledged the fact that most of Nigeria’s tax laws are outdated and do not conform to current realities. He stated that the Government has indicated its willingness for annual tax amendments to be incorporated in the country’s budget report each fiscal year.

**Banks as collection agents**: In response to the recent outcry by taxpayers/consultants on the appointment of Banks as collection agents to recover unpaid taxes and the subsequent reported cases of the Banks (on behalf of FIRS) freezing the accounts of the defaulting taxpayers, Fowler clarified that the exercise was directed at companies with a Tax Identification Number (TIN) that had not remitted any taxes, and companies who did not have a TIN and therefore had not been remitting taxes. He stated that the exercise was necessary considering that these groups have refused to take advantage of the tax amnesty program carried out in 2016 and the just concluded Voluntary Asset and Income Declaration Scheme.

**Reconciliation of the withholding tax (WHT) credit**: The FIRS recently sent a circular to taxpayers, inviting them to reconcile their WHT position for the purpose of uploading on the Automated Tax Credit System within 15 days of receipt. Based on the circular, companies that are unable to complete the reconciliation by the set date will forfeit the right to present any such previous WHT credit notes for tax offset in the future.

The Executive Chairman assured taxpayers at the forum that the taxpayers will not lose their unutilized WHT credits in the event they were unable to complete the reconciliation process within the short period allowed. He encouraged taxpayers to commence the reconciliation process as quickly as possible for ease of administration. In addition, he stated that due to the introduction of Information and Communication Technology (ICT) in the tax compliance process, taxpayers who had suffered deductions to taxes by government agencies will receive their credit within 45 days. Any deviation from this should be reported to the FIRS.

**Guidelines on deregistration of a company**: Companies with the intention of deregistering and ceasing business in Nigeria experience difficulties in closing out the process because there are no clear guidelines issued by the FIRS to guide the liquidation process through de-registration. The Executive Chairman indicated that these issues will be looked into by the FIRS and such difficulties addressed.

**Introduction of an Efficiency Helpdesk**: Fowler explained that the FIRS and its state counterparts are committed towards improving efficiency. He noted that this is especially with regard to the issuance of Tax Clearance Certificate (TCC). He further advised that in the event of any delay or failure to issue TCCs, taxpayers are free to communicate their grievances through the “Efficiency Desk” of the FIRS.
The Efficiency Desk can be reached via email at efficiency@firs.gov.ng or via phone on +234 907 032 6705.

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