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A Legal Review of the Bounds and Theories of Taxation as a Revenue Pool in Contemporary Nigeria

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ABSTRACT: This paper contextualises a review of literary and legal postulations, including theorems of taxation, the rationale behind its imposition, the conceptual meaning of taxation and revenue, sources of revenue, meaning and conceptualisation of the scope of taxation, an overview of tax administration in Nigeria and forms of taxation in Nigeria. It takes cognisance of the unshakable position of taxation as a panacea for raising the much-needed funds for meeting government's unending obligations to its citizens. This paper takes a cursory look at the different shades of opinions of legal scholars on the theme of taxation and conducts an expose on the review of the types of taxes chargeable under the Nigerian legal system including the recently introduced hydrocarbon taxes as prescribed by the Petroleum Industry Act 2021.

This paper sought to assess and review the limits of opinions and theories of taxation as revenue generation strategic policy in modern day Nigeria and it found that opinions are divided on the effective use of taxes as fund-generating springboard of government and that the various theories of taxation are all at amity regarding the fact that taxes are levied to be paid, not a duty to be avoided or a chore to be loved, it is a mandatory payment, irrespective of the many disincentives for its payment by Nigerian tax payers. It concludes by stating that a government with an efficacious tax policy will have sufficient revenue to meet its obligations and engender tremendous development in its territory and prescribes the need for justiciability of tax payer's rights to ensue accountability on the side of the government, a systemic harmonization and corroboration from tax authorities and government delegates, in order to achieve an effective tax administration to enhance positive tax compliance.

KEYWORDS: Taxation; Review; Theories, Revenue; Economy; Policy; Regime.

1.0 INTRODUCTION

Taxation is not a novel term in Nigeria as many scholars have advanced its contributing benefits towards revenue generation and dissuaded overreliance on oil revenue. A variety of literatures, legal opinions and thoughts have spurred on the topic. There are many existing literatures justifying taxation as a source of revenue, and many more would still exist. Therefore, it is expedient that a review of their views is made in order to contextualise the differing opinions, views and mindsets regarding tax collection, imposition, tax drive, tax compliance or apathy. This paper thus takes a cursory look at these renowned works, opinions and thoughts of learned scholars in order to gain an insight into their views, their comprehension of the concept of taxes and the viability of taxes as a revenue-generation tool.

2.0 A REVIEW OF LEGAL OPINION ON TAXATION

In Akinleye and others[1], the prowess of Tax Identification Number (TIN) to improve revenue generation was evaluated. The study covered three southwestern states in Nigeria (Ekiti, Osun and Ondo) and it was revealed that a full adoption of taxpayer identification number exerts a significant impact on the internally generated revenue of those states. This is because the Tax Identification number, (TIN) accelerates the processing of information of taxpayers, fosters enforcement and awareness thereby, increasing revenue generation.

[1] Akinleye G.T and Olaoye F.O and Ogunmakin A.A, 'Effect of Tax Identification Number on Revenue Generation in Southwestern Nigeria' [2019] (11) (9) *Academic Journal: Journal of Accounting and Taxation*.

Also, by bridging the space between the information of taxpayers and the history of their payments, tax payer identification number increases payers' obedience and compliance level. It was therefore recommended that intermittent checks of all the platforms related to TIN should be carried out so as to detect and prevent abuse and other fraudulent activities; regulatory agencies of the government should enlighten taxpayers on the benefit of the Tax Identification Number (TIN), and that the government of south-western states should develop a means of bringing more people to the tax net through Tax identification number.

In a similar study by Nwuzor and Onah[2], it was restated that a well-run tax system inevitably leads to an accentuation in the amount of revenue realized, whereas a poorly-run or inefficient tax system leads to a diminution in the amount of revenue generated. The scholars, however, in appraising the impact of taxation for revenue generation in Nigeria, identified the presence of certain factors militating against effective tax administration. They include corruption, inadequate tax processing facilities, inadequate skilled personnel and a host of others. The study further proffered a panacea that could extirpate the outlined issues. Both scholars, conclusively re-emphasized that only an effective tax system will lead to a higher tax yield which will inexorably result in a high revenue generation from tax.[3]

Ogbeifun and others[4], buttressed tax imposition in revenue generation. They posited the need for diversification of the economy from absolute reliance on the oil sector to the non-oil sector. To them, in order for government to generate adequate revenue that would be sufficient to guarantee economic growth and development, diversification was pertinent.[5] Also, because of the economic challenges arising from the fall in oil prices and over-dependence on this sector, authors, emphasised the need to shift investment massively to agriculture, tourism and solid mineral sector, among other areas aimed at economic diversification.[6]

For Richards[7], he portrayed the emergence of tax as a major contributor to the revenue profile of the government, a salvage from the volatility that the international oil market caused to government's revenue. Government's search for more revenue from the non-oil sector, brought taxation to the limelight. Thus, he further advanced the position of the National Tax Policy as a medium for considerable improvement in the Nigerian tax system. He outlined the objectives of the policy and emphasized the need to harmonise tax laws in Nigeria to reduce the number of ineffective taxes in the system.[8]

Afolayan[9] in reviewing taxation problem and fiscal federalism, opined taxation as a measure that government relies on whether minimally or substantially to provide the needed revenue for its socio-economic development and to reduce inequalities in the wealth distribution of its society. He emphasized that true fiscal federalism is an important discourse for the purpose of protecting the multitudes of sectional interest. Hence, the centre (the Federal government) should be made less attractive by reducing the percentage of revenue to the Federal government and empowering the states more financially. There should be unconditional transfer of funds to the less developed states in order to encourage equal development and reduce competitions among states and regions in Nigeria.

Adeoye[10] in a similar context, described the whole associated gamut of activities culminating in the gathering of the contribution from individual and corporate bodies to the financing of the governance of the territory, particularly in a government based upon the rule of law and the consent of the governed, as taxation.[11] He went further to state that taxation is devised to provide government with regular, dependable and continuous sources of revenue to simulate the country's economic growth, allow for equitable allocation of resources and eradicate or reduce the poverty or corruption level in the country. However, tax evasion and avoidance are crippling this objective of taxation. He therefore suggested the reformation of tax laws, reorientation of citizens and the residents towards tax necessity and accountability and probity in governance so as to curb tax evasion and tax avoidance.[12]

Rotimi[13], likewise addressing the impact of tax compliance on economic development, identified the paucity in tax compliance. He submitted that effective submission of compliance to tax laws typically means the true reporting of the taxable income, appropriate

[2] Nwuzor D.C and Onah C.A, 'The Implications of Taxation on Revenue Generation in Nigeria' [2022] (3) (3) *LASJURE*.

[3] *Ibid.*

[4] Ogbeifun I E and Others, 'Revenue Generation and Economic Growth of Nigeria.' [2019] (11) (07) *International Journal of Current Research*.

[5] *Ibid.*

[6] *Ibid.*

[7] Richards N.U, 'Overview of the National Tax Policy and its Implication for Tax Administration in Nigeria' [2019] (10) (2) *NAUJIL*.

[8] *Ibid.*

[9] Afolayan M.S, 'The Problem of Taxation and True Federalism in Nigeria' [2013] (5) *Ekiti State University Law Journal*.

[10] Adeoye O.J, 'Tax Evasion and Avoidance - An Aberration to National Development' [2013] (5) *Ekiti State University Law Journal*.

[11] *Ibid.*

[12] *Ibid.*

[13] Rotimi O, 'Impact of Tax Compliance on Standard of Living in Nigeria' [2021] (11) (1) *The Journal of Accounting and Management*.

computation of the tax payable, filling of returns and timely payment of tax liability.[14] Also, he stated that compliance to high tax not only increases government's revenue, but also, helps in the development of the economy. In conclusion, he opined that tax compliance is equivalent to the ration of tax revenue of a government to her Gross Domestic Product (GDP) and the higher the rate, the higher the level of tax compliance.[15]

Consequently, Eja, Idaka and John in their study,[16] espoused inhibiting factors to tax revenue generation in Cross River State of Nigeria. Even though many studies have highlighted these factors, the distinguishing factor in their study, is the inclusion of infrastructural facilities as a factor that hinders tax revenue mobilization.[17] With infrastructural decay, revenue generation capacity is lessened. Tax payers would gallantly evade and avoid tax in large numbers which in turn will reduce the total funds generated by the government and reduce government spending.[18]

Amadi[19] likewise underscored that taxation is not just a means of raising revenues but also a means of providing social services to the people. He reiterated by stating that tax revenue is so sacrosanct and distinguished from other revenue sources, because it is the people's contributions. Citizens therefore partner with their governments to raise revenue by means of taxation in order to provide funds, which will be utilized for the benefit of the entire citizenry.[20]

3.0 CONCEPTUAL CLARIFICATIONS

It is expedient that basic concepts are explained for better comprehension. Thus, this section elucidates on core concepts covered by this discourse.

3.1 MEANING AND SCOPE OF REVENUE

Revenue comprises gross inflows of economic benefits or service potential received and receivable by the reporting entity, which represents an increase in net assets/equity, other than increases relating to contributions from owners.[21] It is also defined as all amounts of money received by a government from external sources, for example, those originating from outside the government's net of refunds, sale of investment, proceeds from issuance of debt, agency or private trust transaction and intra-governmental transfers.[22] Therefore, the income needed by the government to finance its growing expenditure is what is generally called revenue. Revenue, is posited to mean financial earnings of government which include the bulk of its revenue and monies mobilized or generated in the economy.[23] Therefore, revenue generation is government harnessing all sources of revenue available to it nationally and internationally. These are then, efficiently utilized in promoting economic growth through the provision of basic amenities for improved public services.

The fund needed for governance in the public sector to finance government activities is referred to as revenue.[24] These funds can be generated from non-oil sources such as income and other forms of taxes, royalties, fines, fees, rates and aids from the federal government and foreign financial institutions and countries. Public revenue otherwise called government revenue has been held to consist of taxes and revenue from administrative activities which include fines, fees, gifts and grants.[25]

3.2 SOURCES OF REVENUE

Public revenue is concerned with the numerous ways in which government raises revenue. It has therefore been grouped into two types, oil revenue and non-oil revenue.[26] Oil revenue is the main source of revenue accrued to the federation account and it includes revenue from crude oil and gas exports, receipt from petroleum profit tax (now hydrocarbon tax) and royalties and revenue from domestic crude oil sales.[27] Non-oil revenue, on the other hand, are revenue which are not associated with oil.[28] They include custom

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[14] *Ibid.*

[15] *Ibid.*

[16] Eja B.R and Idaka S.E and John O, 'Inhibiting Factors to Tax Revenue Generation in Cross River State, Nigeria' [2018] (17) *Global Journal of Science*.

[17] *Ibid.*

[18] *Ibid.*

[19] Amadi N.B, 'Socio-Legal Approaches to the Enforcement of Tax Compliance in Nigeria' [2020] (11) (1) *NAUJIL*.

[20] *Ibid.*

[21] International Public Sector Accounting Standards Boards, *Handbook of International Public Sector Accounting Pronouncements* (Vol 1, IFAC 2020).

[22] Ogbeifun, n (4).

[23] *Ibid*.

[24] John-Akamelu C.R and Iyidiobi F.C, 'Effect of E-Taxation on Revenue Generation in Anambra State' [2019] (3)(3) *IJTSRD*.

[25] *Ibid*.

[26] Ogbeifun, n (3).

[27] *Ibid*.

[28] *Ibid*.

and excise duties, company tax, capital gain tax, value added tax, VAT, fines and penalties, inheritance and luxury taxes, surplus from public enterprises, levy, grants, gifts and deficit financing.[29]

Government revenue, thus involves the entire fund generated from oil and non-oil sources other than funds raised from issue of debt instrument such as government bonds, stocks, treasury certificates and treasury bills from the capital and money markets.[30] The non-oil source includes income tax receipts, charges, royalties, fees, utilities, miscellaneous revenues among others.[31] The total amount of cash-inflows accruing to government revenue fund from various oil and non-oil sources within a stipulated time frame constitutes her revenue.[32]

In Nigeria, where the federal system of government is in operation, the task of generating revenue and providing infrastructural facilities for the general public lies in the three tiers of government: Federal, state and local governments. They raise revenue through agricultural grants, oil and gas, borrowing, taxation and Federal allocation over the years. All the three tiers of governments depend on their share of the federal allocation as the major source of income. However, with the shortfall of the federal allocation, all tiers of government have imbibed the culture of improving their internally generated revenue (IGR) as an alternative source of meeting and sustaining the various financial problems.[33]

The revenue that accrues to state governments in Nigeria is basically categorized into internally generated revenue and external which is collected from the distributable pool.[34] The three main sources that constitute the revenue profile of state governments include the federal allocation, internally generated revenue (IGR) and other financial arrangements such as excess crude oil, other statutory receipts, grants, internal and external loan, ecological funds, etc.[35] The internally generated revenue comprises revenues from taxes and non-tax sources.[36]

Thus, the rationale for revenue generation in free and mixed markets economy such as Nigeria stems from the government responsibilities, which include but are not restricted to stabilization of the economy, redistribution of income and provision of services in the form of public goods.[37] The essence of revenue generation is thus to advance the welfare of citizens of a country with focus on promoting economic growth and development through the provision of developmental activities.[38] Taxation is thus a major contributor to the revenue pool of government as well as a major driver of its economic development and growth.

3.3 MEANING AND SCOPE OF TAXATION

Taxation may be defined as a compulsory levy imposed on a subject or upon his property by the government having authority over him or the property.[39] Inherent in this definition are four important characteristics. First, is that the levy must be compulsory and not voluntary.[40] Secondly, it is an imposition by the government; thirdly is that it is levied for the purpose of financing government expenditure and; the fourth characteristics is that the government imposing the tax or levy must have or exercise authority over the payer or his property.[41]

Taxation has also been described as a study of how government imposes on and collects taxes from the income and wealth of individuals and corporations to finance its social and regulatory activities.[42] It is the life wire of every nation and the level of development of any nation most times depends on the amount of revenue generated through taxation.[43] Taxation is therefore, one among other means of revenue generation of any government to meet the needs of both the government and citizens.[44] The study of taxation usually covers the entire tax system which is made up of tax policy, law and administration.[45]

Tax is the mandatory levy enforced by the government which includes federal, state and local government, on the assets, goods, services and incomes of taxpayers.[46] It is a method of enforcing necessary levies on all assets, goods, services, and incomes of

[29] *Ibid*.
[30] John-Akamelu, n (24).
[31] *Ibid*.
[32] *Ibid*.
[33] Lanem J.M and Jocelyn U.U and Yua H, 'Casual Relationship between Taxation and Revenue Generation in Contemporary Nigeria: 1997-2018' [2020] (7) (5) *IJIRAS*.
[34] *Ibid*.
[35] Akinleye, n (1).
[36] *Ibid*.
[37] Ogbeifun, n (4).
[38] John-Akamelu, n (24).
[39] Oluwole Akanle, *Nigerian Income Tax Law and practice.* (Centre for Business and Investment Studies Limited 1991).
[40] *Ibid*.
[41] *Ibid*.
[42] C.S. Ola, *Income Tax Law for Corporate and Unincorporated Bodies in Nigeria*. (Heinemann Educational Books Nig ltd 1981).
[43] Omesi I and Nzor N.P, 'Tax Reforms in Nigeria: Case for Value Added Tax (VAT)' [2015] (9) (4) *AFRREV*.
[44] *Ibid*.
[45] *Ibid*.
[46] Akinleye, n (1).

individuals, firms, businesses, companies, corporations, etc. by the government.[47] In fact, it is held as that which citizens give up to have a civilized society as they pay for public services that benefit all and sundry and serve to resuscitate deteriorating economies.[48] It is reiterated that taxes are undoubtedly one of the major sources of revenue of every government in Nigeria. It is also agreed by tax law scholars that one of the major functions of taxations is to generate revenue for government expenditure, with some scholars even saying it is the fundamental function.[49] Payment of taxes is a legal obligation and a necessary duty, imposed by the government on individuals and corporations to fund its operations, run public utilities and perform other social responsibilities. This makes tax to be the primary source of revenue for the government.

Tax revenue does not just make up the major means of revenue for the government, but is in fact the vital part of an effort to build societies, economies and even nations.[50] A good tax system thus comprises the tax law, the tax policy and the tax administration.[51] The Nigerian tax system is a good portfolio comprising of all these which regulate the various types of taxes and their administration by both governments.

In distinguishing revenue from taxation, revenue points at all sources of income for the government including grants, loans, foreign aids and internal and foreign bodies; while taxation is narrowed at the income generated by the government through the exercise of taxing powers on its citizens and subjects.[52] It is therefore noted that taxation does not include foreign aids and loans while revenue includes all of these and more.[53] Thus, taxation is only but one of the ways of generating revenue by any government.[54]

4.0 AN OVERVIEW OF TAX ADMINISTRATION, HISTORY AND COLLECTION IN NIGERIA

Taxation is not a new word in Nigeria or the world at large. In Nigeria, taxation has been in existence even before the coming of the colonial men or the British. As it is known that by accident of historical association, Nigeria is a British colony, thus, the history of taxation in Nigeria, dates back to the era of Sahara trade and the introduction of Islamic religion in Nigeria between 800 AD and 1400 AD.[55]

The rulers in the Northern Nigeria were known as *Safawa*, kings, who grew rich due to gifts and levies paid to them by their subordinates as taxes on cattle and agricultural crops.[56] The Islamic religion later introduced various forms of taxes namely: *Zakat* – a tax levied on Muslims for charitable, religious and educational purposes; *Kurdin Kasa* – an agricultural tax; *Shukka* – another tax paid on all crops not liable to *Zakat*; *Jangalia* – a cattle tax levied on livestock; *Kharant,* etc.[57]

In the south, there was an indigenous system of taxation, although it was not as organised and broad as in the North. the *Obas* and *Ezes* relied on tributes, (*Isakole*)- proceeds from farm harvests, arbitrary levies, special contributions at special festivals or events, fees, present all collected through the head of families as its system of taxation.[58]

When the British came to Nigeria, they were naturally attracted to the organised tax system in Northern Nigeria, hence the first legal backing of taxation was introduced by Lord Lugard as the Land Revenue Proclamation Law of 1904.[59] After the amalgamation of the Northern Provinces with the colony and Protectorates of Nigeria in 1914, the Native Revenue Ordinance of 1917 was enacted to cover the area which later formed the Western Region of Nigeria.[60]

Many other direct Taxation Ordinances were passed such as the Non-Native (Protectorate) Ordinance of 1931 which was replaced by the Non-native (Protectorate) Ordinance, 1939.[61] This Ordinance provided for the taxation of non-natives as the name implies.[62] Thereafter, in 1940, there was the Direct Taxation Ordinance No 4 of 1940 and the Income tax Ordinance No 3 of 1940 which repealed all the previous ordinances. The Direct Taxation Ordinance, DTO later consequently provided for the taxation of Nigerians except those in the township of Lagos.[63]

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[47] *Ibid*.
[48] Ola, n (42).
[49] Akinleye, n (1).
[50] *Ibid*.
[51] Lanem, n (33).
[52] Afolayan, n (9).
[53] *Ibid*.
[54] *Ibid*.
[55] Samuel S.E and Tyokoso G, 'Taxation and Revenue Generation: An Empirical Investigation of Selected States in Nigeria' [2014] (4) *Journal of Poverty, Investment and Development*.
[56] *Ibid*.
[57] *Ibid*.
[58] *Ibid*.
[59] Ayua I.A, *Nigerian Tax Law* (Spectrum Law Publishing 1996)
[60] *Ibid*.
[61] *Ibid*.
[62] *Ibid*.
[63] *Ibid*.

In 1943, a more comprehensive income tax ordinance was passed and repealed the 1940 Ordinance.[64] The 1943 Ordinance imposed higher rates of tax on certain types of income and on general income which accrued in, derived from, were received in or brought into Nigeria and these include profits from trade, business profession or vocation that may have been carried out or exercised in Nigeria.[65]

It is important to note that as part of the colonial era development in Nigerian taxation history, an important innovation introduced in 1956 was the Pay-As-You-Earn, PAYE system of taxation.[66] This is not a separate tax however, but a system whereby income on wages and salaries are collected by dedication at source by directed employers. The directed employers are required to hand over the tax so withheld to the tax authorities.[67] It should also be noted that the Western Region was the first to enact a model income tax law in 1957 which was known as the Western Region Income Tax Law No 16 of 1957.[68] This was in existence for years before the enactment of the Income Tax Management Act 1961.

After independence in 1960, the government enacted three major tax laws, namely: Federal Income Tax Act (FITA), 1961; Income Tax Management Act (ITMA), 1961 and Companies Income Tax Act (CITA) 1961.[69] The Company's Income Tax Act (CITA) 1961 was applied to companies in Nigeria. It was later repealed and replaced with the Company's income Tax Act (CITA) 1979 with amendment in 1993 up to 1999. The value added tax (VAT) was introduced in Nigeria in 1993 by the VAT Act No. 102 of 1993 as a replacement of the sales tax which had been in operation under the Federal government Legislated decree No.7 of 1986, but administered by the states and the Federal capital territory.[70]

It is noted that the organs and or agencies in charge of tax policy implementation in Nigeria are referred to as the administrative organ or agency. It is further noted that tax administration in Nigeria is the responsibility of the various tax authorities as established by relevant tax laws. 'Tax authority' means the Federal Board of Inland Revenue, the State's Board of Internal Revenue and Local Government Revenue Committee together with the Joint Tax Board (JTB) and Joint State Revenue Committee or Local Revenue Committee.[71] All these bodies are aimed at ensuring adherence to tax payment and discouraging tax evasion and tax avoidance.

It is observed that the Nigerian tax system has undergone reforms and will continue because of the nature of its tax structure. This is basically changing the way taxes are collected or managed by the government to reduce the level of taxation of all people by the government, make the tax system more progressive or less progressive and simplify the tax system and make the system more understandable or more accountable.

As part of the drive towards automating tax administration in Nigeria, the Federal Government through the Joint Tax Board commenced the registration of taxpayers across the federation and issuing them with Tax Identification Numbers in conjunction with the various State Boards of Internal Revenue.[72] This project was flagged off in July, 2008, and has gone live in almost all the States of the Federation and the FCT, Abuja.

In 2006, the Nigerian Customs Service introduced an E-trade platform known as the Nigeria Integrated Customs Information System meant to effect Automated Systems for Customs Data (ASYCUDA).[73] This is a computerised customs management system which covers most foreign trade procedures. The NICIS was fully implemented in 2010.[74] It is noted that the rationale for the adoption of E-taxation globally include to increase revenue generation, administrative and fiscal purposes within the various tax authorities at all levels of government.[75] E-taxation has dealt with bureaucracy by tax authorities involved in manual tax administration.[76] It has improved and quickened tax refund procedure with its data processing and recording processes made easier for taxpayers to claim tax refunds where tax is paid in excess of the amount due by taxpayers.[77]

With the adoption of E-taxation, a taxpayer with his tax return can assess himself electronically with the tax authority's electronic tax calculator in the shortest possible time.[78] The electronic database of taxpayers built by tax authorities periodically in the course of E-taxation also helps to easily identify tax evaders and deal with them statutorily.

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[64] *Ibid*.
[65] *Ibid*.
[66] *Ibid*.
[67] *Ibid*.
[68] *Ibid*.
[69] Samuel, n (55).
[70] *Ibid*.
[71] Personal Income Tax Act 2011, Cap P8 LFN 2004.
[72] Umenweke M.N and Ifediora E.S, 'The Law and Practice of Electronic Taxation in Nigeria: The Gains and Challenges' [2016] *NAUJILJ*.
[73] *Ibid*.
[74] *Ibid*.
[75] *Ibid*.
[76] *Ibid*.
[77] *Ibid*.
[78] *Ibid*.

It is important to state that the Nigerian Government at the federal and state levels have taken active steps towards the automation of the Nigerian Tax System. All states across the Federation have commenced E-taxation. This modernisation of the FIRS is for it to remain virile and relevant amidst economic realities. To make E-taxation a reality, the FIRS embarked on several projects which include: Project FACT-Friendly Accurate Complete and Timely; Bank Payment Process Automation and Taxpayers Database Development Project; Integrated Tax Administration System, ITAS, Project; and Record Management and Documentation Tracking.[79]

5.0 FORMS AND TYPES OF TAXATION

Taxes can be classified majorly into two: direct and indirect taxes. In defining the two types, no definition will be more directly channelled than that provided by Mill[80] which is as follows:

'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 others.'

The major distinction between the direct and indirect tax is that in the case of direct taxation, the tax is imposed directly upon, or on the property of the person paying the tax, whereas in indirect taxation, the payer is different form the person who bears the burden of tax. In indirect tax, tax is levied on the ownership or use of goods and or services and the tax is generally collected from the importer, exporter, manufacturer, proprietor, wholesaler etc of the taxable commodity or service, but the burden of the tax is borne by the ultimate consumer or users of the commodity or service in the form of higher prices.[81]

In the category of direct taxation are: income tax, property tax and capital gains tax. Since direct taxes are collected basically on the wealth and income of individuals and companies, they include Personal Income Tax, Company Income Tax, Hydrocarbon Tax and Capital Gain Tax. Indirect tax on the other hand, include tax collected on goods and services payable only when such goods and services are bought e.g. Customs and Excise Duties, Import and Export Duties, and Value Added Tax (VAT).

5.1 PERSONAL INCOME TAX

This is a tax that is imposed on individuals who are either in employment or are running their own small business under a business name or partnership.[82] The tax otherwise called income tax is regulated in Nigeria by the Personal Income Tax Act (PITA) CAP P8 Laws of Federation of Nigeria 2004 (as amended in 2011). It is administered via the Pay-As-you-Earn (PAYE) i.e. taxes from employment and taxes from self-employed persons. It comprises taxation of employees, taxation of sole traders and partnership assessment, taxation of estates, trusts and settlement.[83]

Although collection of personal income tax (PIT) is a federal responsibility, it is generally collected by state governments from those that are resident in their various states, regardless of whether they are federal, state, local government or private.[84] The Federal Inland Revenue Services, however, also collects this tax but only from residents of the Federal Capital Territory as well as what may be described as highly mobile federal workers-staff of ministry of foreign affairs and other Nigerians and foreigners outside the country but earning income in Nigeria (non-residents), expatriate workers resident in Nigeria, police officers, and military officers.[85] Civilians working in police and military formations, however, pay to their respective states of residence.[86]

5.2 COMPANIES INCOME TAX

Companies' income tax in Nigeria is administered by the Federal Inland Revenue Service (FIRS) under the enabling law, the Companies Income Tax Act (as amended 2020).[87] A company is defined as any company or corporation other than a corporation solely established by or under any law in force in Nigeria or elsewhere.[88] When a company is incorporated, the registrar of companies is supposed to notify the FIRS, furnishing the details to include the name, location and address of the new company.[89] This is not a legal requirement, but rather an administrative arrangement that brings all potential corporate taxpayers into the tax net immediately

[79] *Ibid*.
[80] Akanle, n (39).
[81] *Ibid*.
[82] Lanem, n (33).
[83] PITA 2004, s 1.
[84] Lanem, n (33).
[85] PITA 2004, s 2.
[86] *Ibid*.
[87] Companies Income Tax Act (CITA), Cap C21 LFN 2004.
[88] Lanem, n (33).
[89] *Ibid*.

they become legal persons.[90] A file is then opened for the new company. For this purpose, there is a standard questionnaire which is sent to any of the directors to respond to.

It is noted that a company is chargeable to tax in its own name; or in the name of any principal officer, attorney, factor, agent or representative of the company in Nigeria; or in the name of a receiver or liquidator.[91] However, the tax shall be payable at the rate specified in section 29 (1) of the Act upon the profits of any company for each year of assessment.[92]

5.3 HYDROCARBON TAX

The Petroleum Industry Act made some changes with respect to some aspects of taxes payable by operators in the industry. The Petroleum Profit Tax (PPT) is now replaced with Hydrocarbon Tax (HT) and Companies Income Tax (CIT).[93] The Hydrocarbon Tax (HT) are assessable taxes, chargeable on profits of Companies engaged in upstream petroleum operations in the onshore, shallow water and deep waters and it applies to crude oil, field condensates and natural gas liquids derived from associated gas and produced in the field upstream of the measurement points.[94] However, it does not cover associated gas produced which is not upstream of the measurement point and any frontier acreage until it is reclassified to a general onshore.[95]

Aside Companies engaged in upstream petroleum operations, any person or persons or partnership except companies and/or partnership between companies that engages and makes profit from upstream petroleum operations is liable to pay this tax in addition to provided penalties.[96] Also, Companies engaged in upstream petroleum operations either as a Partnership, Joint Ventures or any other arrangement are subject to this tax.[97] These companies will be charged in proportion to the equity interest held respectively by them.

5.4 CAPITAL GAINS TAX

This is regulated in Nigeria by the Capital Gains Tax Act[98] which provides for the taxation of capital gains accruing on disposal assets. It is a tax imposed on capital gain derived from sale or disposal of chargeable assets. A chargeable asset include property whether situated in Nigeria or not, inclusive of options, debts and incorporeal property generally; any currency other than Nigerian currency; and any form of property created by the person disposing of it, or otherwise coming to be owned without being acquired.[99] However, gains exempted from CGT include those arising from disposal of decorations awarded for valour and gallant conduct, life insurance policy, Nigerian government securities, stock and shares etc. Also, if it accrues to some organizations provided the gain is not derived from any disposal of any asset acquired in connection with any trade carried on by the organization, e.g. An ecclesiastical, charitable or educational institution of a public character, statutorily registered friendly society, cooperative society registered under cooperative societies law of any state, trade union registered under the Trade Unions Act, etc.[100]

6.0 AN APPRAISAL OF JURISDICTION IN TAX SYSTEM

A jurisdiction is the taxation authority that imposes the tax.[101] An area, city, municipality, county, country with its own distinct regulations for taxation is a tax jurisdiction.[102] The Joint Tax Board (JTB) is the body responsible for delineating what arm of government is responsible for each form of taxes.

In order to avoid multiple collections of taxes from the same taxpayer, at least in theory, taxes of each tier of government in Nigeria have been clearly defined by the Joint Tax Board (JTB) as follows:[103]

a. Federal Taxes: Companies income tax, custom and excise duties, value added tax, education tax, withholding tax on companies, petroleum profit tax, capital gain tax-Abuja resident and corporate, stamp duties involving a corporate bodies entity, personal income tax in respect of Armed Forces, police, etc. non-resident individuals and companies, staff of Nigeria foreign services and individuals resident in the federal capital territory.

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[90] *Ibid*.
[91] *Ibid*.
[92] CITA 2004, s 8.
[93] Petroleum Industry Act (PIA) 2021, s 260(1) and (5).
[94] *Ibid*, s 260(1) (a).
[95] *Ibid*, s 260 (3).
[96] *Ibid*, s 273 (1).
[97] *Ibid*, s 273 (3).
[98] Cap C1 LFN 2004.
[99] *Ibid*, s 3.
[100] *Ibid*, s 26.
[101] City of Phoenix, 'Tax Jurisdiction' <https://www.phoenix.gov/financesite/Pages/tax_jurisdiction.aspx#:~:text=What%20is%20a%20Tax%20Jurisdiction,by%20a%20tax%20jurisdiction%20code.> accessed 28 August 2023.
[102] *Ibid*.
[103] Samuel, n (55).

b. State Taxes: Personal income tax, road taxes, pool betting and lotteries, business premises registration, development levy, naming of street registration in state capitals, right of occupancy on land owned by state and market taxes on state financed taxes.

c. Local Government Taxes: Shops and kiosks rates, tenement rates, on and off liquor license fee, slaughter slab fees, marriage, birth and death registration fees (rural area) market taxes and levies, motor park levies, domestic annual license fees, bicycle, truck, canoe, wheel barrow, and cart fees, cattle tax payable by cattle farmers only, merriment and road closure levy, radio and television license fees (other than radio and television transmitter), vehicle radio license (local government registration of the vehicle), wrong parking charges, public convenience and refuse disposal, customary burial ground permit fees, signboard and advertisement permit fees

7.0 THEORISING THE VARIOUS CONCEPTUALISATIONS OF TAXATION

Theory is a comprehensive explanation concerning some aspects of how society works. It directs one's thinking on the subject by offering explanation and allowing predictions to be made concerning future contingencies.[104] In view of this, it is important to explore certain theories that regulate tax administration generally in Nigeria.

7.1 THEORIES OF TAXATION

There are many theories that guide taxation and as such, many people see taxation as a product of theories.[105] The following are some of the theories of taxation.

a. SOCIAL POLITICAL THEORY OF TAXATION[106]

The theory states clearly the responsibility of the government to tax payers. Adolph Wegner advocated that social and political objective should be the major factors in selecting taxes. The theory advocates that a tax system should not be designed to serve individuals but to cure the ills of the society as a whole.[107] Taxation cures the ills of the society which has to do with the distribution or redistribution of wealth creation capacities between geographical components of a country needing urgent attention. This is where tax package is granted to firms, who are located in rural areas; such taxes are granted to rural investment allowances, relief or tax credit and also tax holidays. These are the measures that are capable of subsidizing firms located in rural areas for lack of basic amenities such as motorable roads, water, electricity, telephone and internet services, etc. The social need is to stem rural-urban population drift while the political need is to avoid lopsided economic growth. Furthermore, manufacturing and importation of harmful goods such as cigarettes, beer, jewelleries etc. can be curtailed by using the application of discriminator rates of taxation. This is one of the importance of social need in economic growth.[108] Social political theory thus advocates that revenue generated is adequately spent for the well-being of society as a whole and thereby encouraging payment of taxes.

b. ABILITY TO PAY THEORY[109]

Ability to pay theory, developed by Slade Kendrick in 1939, is one of the most common developed principles of equity or justice in taxation. It advocated that individuals should pay taxes to the government in line with their ability to pay.[110] It seems fair and reasonable that taxes should be imposed on an individual, based on his/her taxable ability. This theory pointed out that, taxes paid are understood as a sacrifice by taxpayers, which advance the subjects of what the sacrifice of each taxpayer should be and how it should be measured.[111] The theory has the following principles:

1. Equal sacrifice: The total loss of utility as a consequence of taxation should be equivalent for all taxpayers so that those who have enough money to pay higher taxes are made to pay higher than those who cannot afford (that is, the rich will be taxed more heavily than the poor.
2. Equal proportional sacrifice: The relative loss of utility as a consequence of taxation should be equivalent for all taxpayers such that the payment of taxation should not deny anybody of what he/she would have beforehand sacrificed.
3. Equal marginal sacrifice: The rapid loss of utility (as measured by the derivative of the utility function) as a consequence of taxation should be equivalent for all taxpayers. This therefore will involve the least collective sacrifice (the total sacrifice will be the least).

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[104] Abiola Sanni, *Introduction to Nigerian Legal Method* (2nd edn, Obafemi Awolowo University Press Limited 2006).
[105] Lanem, n (22).
[106] *Ibid*.
[107] *Ibid*.
[108] *Ibid*.
[109] Akinleye, n (1).
[110] *Ibid*.
[111] Nubia I.C and others, 'Effect of E-Taxation on Revenue Generation in Nigeria, A Pre-Post Analysis' [2020] (26) (3) *Academy of Entrepreneurship Journal*.

One major drawback of this theory however is that it pampers the poor at the expense of the rich, encourages laziness and laxity on the part of the jobless and seems to reward misery on the template of perceived justice, as what appears like justice to the poor is injustice to the rich.

c. **BENEFIT RECEIVED THEORY**[112]

The main crux of this theory is aimed at the benefit the tax payers received for parting a portion of their income to the government through taxation. The rationale behind the benefit theory is to ensure that the more revenues are generated through taxation, the more benefit the citizens should receive as a compensation for carrying out their civic responsibilities.[113] Looking at this relationship between the tax payers and the government, it is a contractual relationship that requires that when one party fulfils its own obligations, the other should also reciprocate in the same way. The benefit theory has a lacuna because it is hard for the government to measure exactly the benefit that individual tax payers derived in order to know the amount that each tax payer will be levied in order to match the benefit he/she is receiving. It is impractical to adopt the benefit received theory since the objective of taxation is to ensure the redistribution of income by imposing high tax to the rich than the poor. The application will negate the objective because the poor might end up paying higher tax than the rich since most of the government expenditure is aimed at ameliorating the lives of the plebeians and the impecunious in the society who often times than not, require the social graces for survival.

d. DIFFUSION THEORY OF TAXATION[114]

The diffusion theory of taxation is anchored on the assumption that in a stable or perfect market condition, the tax that is levied will automatically be diffused or absorbed throughout the environment.[115] But in real life situation, the tax levied on the tax payers does not diffuse automatically. Within the community because the tax official still needs to ensure that he adopts effective strategies to inform the tax payers about the tax that have been imposed on them and the need for compliance. Mansfield, an advocate of this theory holds that when tax is levied, it automatically passes to the users of commodity and the burden is shared between the manufactured and the consumers. The diffusion theory has always been criticized because it is not all taxes that diffuses automatically, and as such, the need for effective administration is a panacea to ensure compliance in order to reduce the incidence of tax aversion, evasion and avoidance. The quantum of revenue generated is however a function of how effective the administration is because taxes like: income tax, toil tax and inheritance tax does not absorb rather; the individual or the tax payer bears the burden alone.

e. IBN KHALDUN THEORY [116]

The theory that helps to shape taxation is Ibn Khaldun theory on taxation. This theory was explained in terms of two different effects that is the arithmetic effect and the economic effect which the tax rates have on revenues.[117] The two effects have opposite results on revenue in case the rates are increased or decreased. According to the arithmetic, if tax rates are lowered, tax revenues will be lowered by the amount of the decrease in the rate. The reverse is true for an increase in tax rates. The economic effect however recognized the positive impact that lower tax rate has on work, output and employment and thereby the tax rate base used in providing incentives to increase these activities, whereas raising tax rates here, the opposite economic effect is used by penalizing participation in the taxed activities. At a very high tax rate, negative economic effect, dominates positive arithmetic effect, thereby, the tax revenue declines.[118]

f. LAFFER THEORY OF TAXATION[119]

Laffer theory of taxation propounded by Laffer in 1979 and popularly called the 'Laffer curve', is a hypothetical drawing of the correlation between tax revenue created by the government and all possible rates of taxation.[120] It considers that at extreme tax rates, no revenue would be created. This is due to the fact that, at extreme tax rates, tax payers have no reason to earn an income again. Likewise, a very low tax rate will bring absurd tax revenue and the main reason for tax revenue would be far-fetched. It, therefore, informs that without a reasonable tax rate, the importance of any tax policy or reform to improve the revenue base of the government might be a mirage as tax payers might find it burdensome to pay higher tax rate, especially small businesses.[121]

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[112] Eja, n (16).
[113] *Ibid*.
[114] *Ibid*.
[115] *Ibid*.
[116] Lanem, n (33).
[117] *Ibid*.
[118] *Ibid*.
[119] Akinyele, n (1).
[120] *Ibid*.
[121] *Ibid*.

g. **OPTIMAL TAX REFORM THEORY**[122]

Under this theory, it is required that the best way to raise revenue is through taxing goods or factors with inelastic demand or supply, and that taxation relating to distribution and externalists or market failures should concentrate on identifying the source or origin of the problem. Thus, for distribution, we should look for the sources of inequality (for example, land endowments or earned incomes) and taxation should be concentrated there. Regarding externalities, an attempt should be made to tax or subsidize directly the good or activity that produces the externality.[123]

8.0 CONCLUDING REMARKS

In conclusion, this paper has attempted to assess and review the limits of opinions and theories of taxation as revenue generation strategic policy in modern day Nigeria and it found that opinions are divided on not just the basis for tax imposition, the reasons and rate of taxation on the intended payers, but on the effective use of taxes as fund-generating springboard of government and that the various theories of taxation, even though they vary on the basis, types, benefits, reasons and quantum of taxes to be paid by who, when and how, they are however all at amity and consensus regarding the fact that taxes are levied to be paid, not a duty to be avoided or a chore to be loved, it is a mandatory payment imposed by the government on the governed, supposedly for the benefits of the governed, irrespective of the many disincentives for its payment by Nigerian tax payers. It is restated that a government with an efficacious tax policy will have sufficient revenue to meet its obligations and engender tremendous development In its territory. It is against this backdrop that the need for the justiciability of tax payer's rights to ensure accountability on the side of the government, a systemic harmonization and corroboration/collaboration from tax authorities and government delegates, in order to achieve an effective tax administration to enhance positive tax compliance is hereby strongly advocated.

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[122] Omesi, n (32).
[123] *Ibid*.

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