THE TAX ANTHOLOGY 2021

Journal of the Tax Club

University of Lagos

Volume 5

OCTOBER 2021

PUBLICATION OF:

The Tax Club, University of Lagos, Akoka.

The Anthology is an up-to-date compendium on tax in Nigeria. It intends to explicate on current as well as dated subjects that deal with taxation.

CONTACT

Faculty of Law Building,
Faculty of Law,
The University of Lagos.
www.thetaxclubng.com
unilagtaxclub@gmail.com

IHEANACHO Nelson

OLOYEDE Agbolarin

ACHIMUGU Martin

HAROUN Fawaz

AJIBADE Shalom

OYELEKE Morenikeji

RIAGBAYIRE Benita

ABIODUN Ayotunde

FOREWORD

The Tax Club, University of Lagos is an organization that was set up to promote the advancement of Tax education amongst tertiary students in Nigeria and raise the next generation of Tax enthusiasts and experts. This is done through various Tax education and enlightenment programs, tax training, tax courses, tax research, tax competitions, and tax-focused events generally.

The Tax Anthology is a yearly journal published by the Club and was borne out of the idea to contribute to the growing wealth of knowledge on Taxation in the country. The Club noticed the dearth of research in the nation's tax space and took it upon herself to contribute to this space. To ensure the widest possible spread of quality and approaches in the Journal, the Club ensured that contributions were received on all aspects of the Taxations space ranging from articles to journals, case notes, and analysis. Entries have been received from a diverse field of authors comprising students across various disciplines, graduates, and professionals alike.

My greatest appreciation for this body of work goes to the Chairman of the Federal Inland Revenue Service (FIRS) Mr. Muhammed Mamman Nami and the entire service, the Chairman of the Lagos Internal Revenue Service (LIRS) Mr. Ayodele Hamzat Subair, and the entire service, for their continued support for the Tax Club UNILAG and dedication towards supporting the growth of tax education amongst tertiary students.

Special thanks and appreciation goes to Professor Abiola Sanni, Dr. Olumide Obayemi, Dr. Phillip A. Folarin, and Dr. (Mrs) Ihuoma Ilobinso who took time out of their busy schedules to offer us unprecedented support as our Staff Advisers.

I would be remiss without appreciating the efforts of the executive team this session who worked hard under the most difficult and extraordinary conditions to make this and other efforts of the Club a resounding success. Special mention goes to the Director of Research Oluwatofunmi Isaac Aduloju and the Co-Editors-in-Chief Rachel Oluwatosin Ogidan and Temilola Adetona for selflessly ensuring the completion of this work at the highest editing and academic writing standards was done. Their efforts and that of the entire editorial team is highly appreciated.

Finally, and most importantly, I must appreciate each and every contributor to this work for yielding to the Club's call for articles and contributing to the improvement of Tax research in the country.

Ima-Abasi Emmanuel Ubong-Abasi
President
The Tax Club (2019/2020 Academic Session)
University of Lagos

EDITORS' NOTE

The Tax Anthology is a compilation of articles and essays by The Tax Club, University of Lagos. Over the years, this anthology has become an avenue for critical discussions on evolving and relevant tax issues. As a result, we have published several remarkable pieces relevant to Nigeria and a global audience.

In compiling this volume, we were energised by two ideas. First, the words of Einstein on wisdom not being a product of schooling but a lifelong attempt to acquire it. Led by a decision to discover new sources of wisdom, we reviewed each manuscript and ensured a collection of essays that move the tax discourse forward. Additionally, there was the desire to facilitate productive conversations on burning tax issues and add to the available body of knowledge. Moving the dial of the tax conversation forward is critical and Mann's famous quote on the addition of true knowledge to the society as being indispensable to the addition of human power comes to mind. With the evolving tax challenges which seemingly outpace the law, now more than ever, it is essential to add to the body of existing knowledge.

This volume focuses on the complexity of collecting taxes in a global economy that is increasingly powered by digital businesses. The taxation of the digital economy is not solely a domestic conversation despite the fact that it has significantly shaped fiscal policies and key legislation in Nigeria. It is a discourse that is entertained globally, and in the medium term we can expect changes in the international and domestic tax regimes, including an overhaul of nexus rules and other principles of taxation. This journal includes essays that offer varying perspectives on the subject. We are confident that this edition will serve as a helpful secondary source on the subject with references to all relevant primary sources.

Being the foremost student peer-to-peer reviewed tax journal, our primary aim over the years has been to expose the intricacies of taxation in Nigeria through diverse lenses. This year is no exception and this volume is a remarkable blend of submissions by distinguished academics, tax professionals and students. It is a refreshing mix of expertise and easily comprehendible publications, thus, making it an all-encompassing journal of tax knowledge. We hope our readers share our enthusiasm and find it truly impactful.

Finally, we are thankful to God for the strength and inspiration required in compiling the 5th Edition of the Tax Anthology. This academic year has been one unlike any other. With a global pandemic, a lengthy strike and virtual schooling, the year has thrown up significant challenges. Hence, we are especially grateful to the hardworking editorial team who pulled through in spite. We are thankful for the dedication of Iheanacho Nelson, Eribake Oloruntoba, Oloyede Agbolarin, Achimugu Martin, Abiodun Ayotunde, Haroun Fawaz, Riagbayire Benita, Ajibade Shalom, and Oyeleke Morenikeji. We also wish to thank the executive team of the Tax Club for the 2019/2020 academic session led by Emmanuel Ubong-Abasi. Their continued support made this an exciting process. Most importantly, our profound gratitude goes to our partners and sponsors for their continuous support to the Tax Club, University of Lagos which has facilitated the publishing of this year's journal.

Adetona Temilola & Ogidan Rachel

Co-Editors-in Chief, Tax Anthology, 2020.

Oluwatofunmi Isaac Aduloju

Director of Research, 2020

TABLE OF CONTENT

DIGITALISATION OF NIGERIAN BUSINESSES: TAX CHALLENGES POST COVID-19

*Olumide K Obayemi**

1.0 INTRODUCTION

In Nigeria, the outbreak of the Corona Virus(COVID-19) pandemic[1] has made it very impracticable for Multi-National Corporations (MNCs) engaged in digital, online and internet platform transactions to comply with periodic tax filing obligations under the Companies Income Tax Act (CITA),[2] Petroleum Profits Tax Act (PPTA),[3] and Value Added Tax Act (VAT Act).[4] Further, COVID-19 poses significant negative impact on digital businesses generally, as contractual terms have had to be renegotiated because social distancing and self-isolation gravely affect taxpayers' meeting tax compliance deadlines in Nigeria where the tax filling system is not fully digitalized.[5] Also, on January 20, 2020, the Finance Act 2019 (FA)[6] came into force in Nigeria, with the introduction of statutory measures subjecting digital MNCs to tax.[7] Thus, Sections 9(2) and 13(2) of the CITA were amended via Sections 2 and 4 of the FA[8] by which MNCs with "Significant Economic Presence" (SEP) in Nigeria—even if without physical

* Department of Commercial & Industrial Law, University of Lagos, Akoka, Yaba, Lagos. (E-mail: obayemilaw@yahoo.com; Mobile: 08185718484).

[1] Corona Virus, a previously identified/undetected strain of respiratory and pulmonary disease, in human history, was discovered in 2019 in the Wuhan Province, China. It has since spread all over the world.

[2] *Companies Income Tax Act* (CITA), Cap. C21, Laws of the Federation of Nigeria (LFN), 2004.

[3] *Petroleum Profits Tax Act* (PPTA) Cap. P13, LFN, 2004.

[4] *Value Added Tax Act* (VAT Act), Cap. V1, LFN, 2004.

[5] Olufunmilayo Olaniyi & Joshua Akhator, "Nigeria: COVID-19: Personal Income Tax Compliance Challenges," *Andersen Tax Newsletter* 10 April 2020(Andersen); PricewaterhouseCoopers (PwC) Nigeria, "FIRS Grants Tax Concessions in Response to COVID-19" *PWC Newsletter* March 2020. (PwC).

[6] Finance Act 2019, No. 6, Vol. 107, Government Notice No. 11, 14th January, 2020. Lagos, Nigeria. (FA).

[7] Azeez Alatoye, "Digital Economy Taxation in Nigeria: Toward Specific Legislation Provisions," (May 2020) 3 *CITN Newsletter Lockdown Series*, at 1-2.

[8] *Supra Note* 6

Permanent Establishment (PE)—would be subject to Companies Income Tax (CIT).[9] Therefore, this Paper critiques and reviews the challenges arising from attempts to tax digital economies in Nigeria within the context of COVID-19 challenges.

2.0 FROM PERMANENT ESTABLISHMENT TO SIGNIFICANT ECONOMIC PRESENCE

Hitherto, taxation of MNCs in Nigeria was principally predicated on Permanent Establishment (PE)/Fixed Base in Nigeria under Section 13(2)(a) of CITA[10] and the Model Double Tax Treaties,[11] and Nigeria is only entitled to tax the income attributable to that PE.[12] In *Addax Petroleum* v. *FIRS*,[13] the court defined PE as:

> To establish a fixed base [Permanent Establishment] within the meaning of the statutory provisions, any significant territorial connection to Nigeria will suffice if the Nigerian location is a place of regular resort for the foreign company, for business purposes.[14]

In *Offshore International SA* v. *FBIR*,[15] a wholly-owned Nigerian subsidiary carried out drilling operations for a Panamanian principal, identified physical presence therein, thus:

> If the plaintiffs enter into agreement to take up oil drilling contracts in respect of oil wells to be drilled in Nigeria, and they undertake to do it by or through a person who is their son as it were, and they guarantee to supply the wherewithal required by that person for the execution of the said oil drilling operations in Nigeria, and the said operations are in fact being executed, it will be vain for them (the plaintiffs) to say that they have no trade or business in Nigeria.[16]

---

[9] *Supra note* 2
[10] See also, Paragraph 4.1 Federal Inland Revenue Service Circular (2014).
[11] Article 5 of the Double Tax Relief (Between Federal Republic of Nigeria and the Government of the Kingdom of Belgium) Order [S.I. 15 of 1992] (Nigerian/Belgium DTT).
[12] Joseph Ajibola Arogundade, *Nigerian Income Tax & Its International Dimension: An In-Depth Analysis of Incomes from Local and Cross-Border Transactions in Nigeria*, (Spectrum Books Limited, Ibadan 2005), at p. 32.
[13] (2013) 1 NRLR 33.
[14] *Ibid*, at 36.
[15] FRC/L/36/75; (1976) 1 NTC 385; quoted in and culled from Arogundade, Supr*a note* 12 at 51-52
[16] Ibid.

Also, in *Zapata North Sea Inc.* v. *FBIR*,[17] it was held that an American company was using its Nigerian agent—OSS as an "active" cover for its drilling operations in Nigeria. Further, *F.L. Smith Co. Ltd* v. *FBIR*,[18] involved the scope of Article 3 (1) of the Nigeria/UK Colonial Double Taxation Agreement as it applied to the company. It provided:

> The industrial or commercial profits of a UK enterprise shall not be subject to a Colonial tax unless the enterprise is engaged in trade or business in the country through a permanent establishment therein. If it so engaged, tax may be imposed on those profits by the Colony but only so much of them as is attributed to that permanent establishment.

In *Shell International Petroleum Maatchappij B.V.* v *FBIR*,[19] the Appeal Court held that Shell Maatchappij had a fixed base in Nigeria:

> The situation depicted by the facts and circumstances given above by Mr. Kroven conform to my notion of what having a fixed base connotes within the contexts of the CITA and whereas here the appellant has used the said facilities since 1958 when the relationship with SPDC started. It would be hard to suggest that the appellant does not have a fixed base at SDPC. It is a finding of facts and this court will not interfere.

However, the voluminous development of the digital economy in Nigeria has shown that the traditional rules which exclude the income of MNCs without Nigerian PE, will not be adequate to deal with large revenue derived from Nigeria via online, internet and other digital means. Most digital/online businesses, such as Facebook, Netflix, Yahoo, Google, Amazon, etc. derive several trillions of Naira from Nigeria,[20] while escaping Nigerian taxes. This has led to the promulgation that a Company has Nigerian "Significant Economic Presence" (SEP) under Section 4 of the FA:

> If it transmits, emits, receives signals, sounds, messages, images, or data of any kind by cable, radio, electromagnetic system or any other electronic or wireless apparatus in Nigeria in respect of any activity including electronic commerce, application store, high frequency, trading, electronic data, storage, online adverts, participative network platform, online payment, and

[17](1975) APP/COMM/220 in Arogundade, *Supra note* 12 at 52
[18](1976) APP/COMM/228, in Arogundade, *Supra note* 14 at 52-54
[19] (2004) 3 NWLR (Pt 859) 46, at 63 paras F-H.
[20]Alatoye, *supra note* 7 at 1-2.

> so on, to the extent that the Company has Significant Economic Presence in Nigeria or profits can be attributed to such activity.[21]
>
> If the trade or business comprises the furnishing of technical management, consultancy or professional services outside of Nigeria to a person resident in Nigeria to the extent that the company has Significant Economic Presence in Nigeria.[22]

Further to the proviso to Section 13(4) of CITA, the Nigerian Finance Minister issued the Companies Income Tax (Significant Economic Presence) Order, 2020 (SEP Order)[23] on 10 February 2020 which defined SEP to mean where an MNC derives at least N25million, or its equivalent, in yearly revenue from streaming, transmission, provision of intermediation, goods and services, use of Nigerian domain name, etc.[24] or from furnishing of technical management, consultancy or professional services outside of Nigeria to a person resident in Nigeria.[25]

Also, Section 52 of the FA amended Section 2 of the Stamp Duty Act[26] by providing that instrument subject to stamp duty in Nigeria shall include both written and electronic documents.[27]

3.0 GLOBAL SOLUTION BY OECD/G-20

Generally, digitalization is transforming the global economy and reshaping global value chains, and in an attempt to address the challenges that digitalization poses on international tax norms, the Organization for Economic Cooperation and Development (OECD), through Action 1 of its Base Erosion and Profit Shifting (BEPS) Project, and the European Union provide policy suggestions that seek to align the place of taxation with that of 'value creation'. The OECD has also very

[21] CITA, *supra note* 2, Section 13(2)(c).
[22] *Supra note* 2, Section 13(2)(e).
[23] No. 21, Government Notice No. 21, Vol. 10m 10th February, 2020, Lagos, Nigeria.
[24] *Ibid* at Para. 1.
[25] *Ibid* at Para. 2.
[26] *Stamp Duties Act*, Cap.S8, LFN, 2004.
[27] See also, Section 84(1) of the Evidence Act, 2011 providing the platform for admissibility of a statement contained in a document, which has been produced by a Computer or other electronic format.

recently introduced the concept of 'new taxing right' that attempts to allocate more taxing rights on an MNC's profits to the 'market' jurisdictions, defined as the countries where customers or users are located. These policy discussions have revealed a well-known problem: the role of the current international tax principles in the perpetuation of the imbalances in the international allocation of taxing rights among states. In the digital era, these imbalances are departing from the traditional division of states into residence and source jurisdictions which have been determined by capital flows and investments requiring physical presence either through a permanent establishment or a dependent agent. There are new imbalances provoked by the digital economy with a focus on developing countries and the need to introduce the concept of inter-nation equity in the current tax policy discourse. For developing countries, Covid-19 presents a real and serious risk that their views and interests could be marginalised in global negotiations over digital taxation. So far, the global discussions at the OECD have proceeded with a focus on the secretariat's "unified proposal" under Pillar One, and on a global minimum tax solution under Pillar Two, all taking place in the shade of high-profile transatlantic disagreement between Europe and the United States.[28]

4.0 GENERAL DISCUSSION

Clearly, SEP Rule would not curb profit shifting, revenue loss and tax leakages since there is a low level of technological development in Nigeria with physical filing still operative. A salient question is how would Nigerian tax administrators resolve the conflict between the SEP rule the Model DTTs which prescribes PE physical presence? A solution would be that Nigeria commences operating different tax standards regarding digital platforms located in countries that have DTTs with Nigeria and others without DTTs. Since SEP only applies to corporations, an issue is whether

[28] Rasmus Corlin Christensen, "The impact of Covid-19 on global digital tax negotiations". Available at: https://www.ictd.ac/blog/impact-coronavirus-global-digital-tax-negotiations-oecd/. (Accessed 1 April, 2020)

the 183 days physical presence rule[29] which governs the taxation of natural persons, be extended to all the employees of Non-Resident digital corporations in Nigeria. With the huge inflows and outflows of Nigerian digital business, it remains to be seen whether the introduction of SEP will result in the expected corresponding increase in tax revenue within Nigerian jurisdiction.

A solution is whether Nigeria considers the entire recommendations of the OECD/G-20's Task Force on Digital Economy (TFDE) to wit: the introduction of PE thresholds based on SEP, new withholding tax on certain types of digital transactions and introduction of an "equalisation levy." Arguably, with endemic corruption and tax evasion in Nigeria, Nigerian tax authorities may extend SEP rule and so apply Nigerian taxes to the income of Financial Institutions located in Tax Havens such as Belize, Cayman Islands etc such use digital platforms to receive illicit Nigeria-sourced funds. Of importance is the Nigeria-UAE DTT, where UAE has passed internal guidelines that suggest that a Nigerian company would have a Service PE if it furnishes services, including consultancy services, through employees or other personnel who are offshore without being physically present in UAE—the Source State, leading to double taxation.

5.0 CONCLUSION

The effect of COVID-19 on the developing countries and the imposition of tax on the digital economy within the context of the OECD/G-20's Negotiations on enacting appropriate global standards would include new dynamics of participation, new revenue needs, and new policy dilemmas—involving developing countries.[30]There is the need to fully digitalize the tax filling system in Nigeria and completely jettison the mundane practice of manual tax fillings at the office

[29]*Personal Income Tax Act*, Cap. P8, LFN, 2004, Section 10.
[30] Christensen, s*upra* note31.

of the tax authority.[31] Hopefully, the interplay between COVID-19 and SEP will be revealed by the close of 2020.The absence of a universally accepted standard for taxing digital platforms means that the challenges posed by COVID-19 and the disparate treatment against developing countries (usually constituting the Source States)—including Nigeria—would continue to linger.

[31]Andersen, s*upra* note5.

TAXATION: NIGERIA'S ELIXIR TO THE BLESSINGS OF THE AFRICAN CONTINENTAL FREE TRADE AREA TREATY

Iheanacho Nelson[*]

ABSTRACT

The African Continental Free Trade Area (AfCFTA) Agreement comes bearing gifts and promises for an economically vibrant Africa, but it remains a nightmare, especially to low exporting nations and those heavily reliant on taxation as a source of revenue. State parties to trade agreements are expected to sacrifice short-term economic goals for long-term progress, and failing to maximize the potentials of the agreement will likely cripple local businesses and stagnate Government revenue generation. The quest for Nigeria's secret ingredient to benefit from the AfCFTA is to utilize taxation and its components to achieve the goals which abound. The core argument here is that the strengthening of local businesses enables them compete with foreign goods which will be imported, in terms of quality and favourable prices, and their vibrancy increases Nigeria's export chances, thus giving Nigeria access to the projected market and increasing the taxable income of these businesses.

1.0 INTRODUCTION

Intra-trade agreements are credited with lot of economic benefits, however, the stringent trade barriers in form of high border regulations and tariffs, imposed by countries, have prevented the African continent from reaping the fruits which abound in intra-African trade. Several countries

[*] Iheanacho Nelson is a 500L undergraduate of the Faculty of Law, University of Lagos.
O8130706485; iheanachonelson@yahoo.com.

on the continent have embraced protectionist measures[1] in scrutinizing foreign trade activities, hence implementing policies directed at local content development,[2] with no regard for facilitating regional trade aspirations and aiding fellow countries in economic development.

In the midst of the self-concentrated developmental measures embraced by states, Africa chose to tread the path of uniformity of development in the adoption of a single market policy. The purport of this step is to liberalize intra-African trade, grant a wider market access to local businesses and reduce African dependency on Western commodities which largely destabilizes currencies, thus tilting the exchange rate against countries in the region.[3] The highlight of this Treaty is the actualization of tariff-free trading activities across the continent. This is in recognition of the high rate of tariffs imposed in several parts of the continent,[4] and how this, discourages the local companies from engaging in exporting commodities. Hence, African Governments who are parties to the treaty have the obligation of ensuring the implementation of the treaty in line with the principle of *pacta sunt servanda* which dictates the observance of international obligations entered into by States.[5] This raises the question of implementation.

---

[1] A.J. Yeats, A. Amjadi, A. Reincke, F. Ng, "Did Domestic Policies Marginalize Africa in International Trade?" (1997) available at https://www.researchgate.net/publication/293528060_Did_domestic_policies_marginalize_Africa_in_international_trade/citation/download (accessed 12 October 2021); T. Rees "As The World Moves Towards Protectionism, Africa Could be on The Brink of a Free Trade Boom" (2019), available at https://www.telegraph.co.uk/business/2019/04/21/world-moves-towards-protectionism-africa-could-brink-free-trade/ (accessed 12 October 2021).

[2] C. Patrick, A. Ross and H. Stephens "*Designing Policies to Spur Economic Growth: How Regional Scientists Can Contribute to Future Policy Development and Evaluation*" (2016) Working Papers 16-04, Department of Economics, West Virginia University.

[3] P. Coke-Hamilton "We Must Help Developing Countries Escape Commodity Dependence" available at https://www.weforum.org/agenda/2019/05/why-commodity-dependence-is-bad-news-for-all-of-us/ (accessed 12 October 2021).

[4] S. Hansen "Which Countries have the Highest Tariffs?" available at https://investopedia.com/ask/answers/040115/which-countries-have-highest-tariffs.sp (accessed 12 October 2021).

[5] A. Aust "Pact Sunt Servanda" available at https://opil.oupaw.com/view/10.1093/lw:epil/9780199231690/law-978019923169-e1449 (accessed 12 October 2021).

The challenges of implementing the AfCFTA have the potential of blurring the fact that the agreement is indeed a goldmine worth tapping into for every country desirous of economic prosperity. The challenges of implementation vary in terms of the country in focus. However, in this essay, the impact on Nigeria is of primary importance. The first of such challenges is the likelihood of importations crippling local businesses, noting that Nigerian businesses are not well built to compete with foreign businesses, which will emerge as a result of the free trade area treaty.[6] The other issue which appears to be the most critical to the economy and of relevance to this essay, is the effect that free tariff obligations under the treaty will have on the Nigerian economy, in light of the fact that Nigeria strives hard to finance its budget from tax revenue due to the instability of global oil prices and the shift to renewables.[7] These problems existed even as Nigeria hesitantly signed the agreement in July 2019 and submitted its instrument of ratification in December 2020.[8]

The unappreciable revelation is the resolute nature of taxation in bringing the treaty to fruition in the Nigerian context despite being the first victim of the trade explosion. The underlining philosophy in this work is using the incentive components of taxation as bait to implement the trade agreement by strengthening the capacity of current local businesses to compete in other markets and in turn generate taxes. Hence, taxation is an elixir,[9] as it turns Nigeria's perceived bleak potentials in the AfCFTA into a goldmine, enabling the country to reap from the bountiful

[6] C. Ekechukwu "Should Buhari sign the African Continental Free Trade deal?" available at https://punchng.com/should-buhari-sign-the-african-continental-free-trade-deal/ (accessed 12 October 2021).
[7] O. F. Ayadi "Oil Price Fluctuations and the Nigerian Economy" available at https://www.reserchgte.net/publiction/4778688_Oil_price_fluctuations_and_the_Nigerin_economy (accessed 12 October 2021).
[8] Ousmane Amadou, "The African Continental Free Trade Agreement: Why Should the Republic of Benin Ratify the Agreement? Three Possible Explanations" (2020) IV *International Journal of Research and Innovation in Social Science* (IJRISS), 510.
[9] This word means a substance which cures all ills or capable of changing base metals into gold.

harvest. Thus, the use of the current incentives in the Nigerian tax laws can spur existing enterprises to increase productivity and encourage aspiring entrepreneurs.

The task in the second part will be to examine the AfCFTA in a bid to identify core obligations imposed on parties, while the third part interrogates the impact of AfCFTA on the revenues gotten from taxes in Nigeria, attempting to clarify that the immediate effect will not be felt as the market which supplies Nigeria's majorly imported commodities are not African, thus giving Nigeria the time to capitalize on the blessings of the Treaty. Part four of the article posits that the components of taxation can enable the strengthening of Nigerian businesses to compete regionally and internationally, hence supplying foreign income to such companies which is in turn taxable for Nigeria. The fifth part concludes with the call for a strong resolve and political will in achieving the goals set by the Treaty.

2.0 THE AFRICAN CONTINENTAL FREE TRADE AREA AGREEMENT

The *African Continental Free Trade Area Treaty*,[10] a product of a 2012 deliberation by African leaders, signed on the 21st of March, 2018 in Kigali, Rwanda,[11] ushered Africa into a new dawn of economic prosperity as it creates a free trade area and the world's largest single market in history, since the creation of the World Trade Organization.[12] The aim is to make Africa a single market of 1.2 billion people and a cumulative GDP of over $3.4 trillion and this is likely to increase intra-African trade by 52 per cent in 2022.[13] However, Nigeria, the largest economy in Africa signed the agreement on 7 July 2019 at the 12th extraordinary session of the African Union Heads of State

---

[10] Hereinafter referred to as "the Treaty" or "AfCFTA".
[11] J. Cazares "The African Continental Free Trade Area: Benefits, Costs and Implications" available at https://infermineo.com/africa-continental-free-trade-area (accessed 12 October 2021).
[12] Ivan Mugisha and Hellen Githaiga "Africa's Leaders Ink Largest Free Market Treaty" available at https://www.trademarkea.com/news/africa-leaders-ink-largest-free-market-treaty/ (accessed 12 October 2021).
[13] *Ibid*.

and Governments meeting in Niamey, Niger[14] and ratified in December 2020.[15] This came after series of comments allaying the fears of stakeholders on the effects of the Treaty on the Nigerian economy. These fears however remain unaddressed by the Government which has proceeded to append its signature.

The Agreement and its Protocols are worded in a manner suggesting that State Parties treat foreign goods in the same way; goods of a national origin will be treated.[16] *Article 3(a)* of the Treaty highlights its objectives to be the creation of a single market for goods and services facilitated by the movement of persons in order to deepen the economic integration of the African continent and this is to be achieved by liberalization through successive negotiations as stated in *Article 3 (b)*. This objective is further reflected in *Articles 4, 5, 6 of the Protocol on Trade in Goods* which advocate for special and flexible treatment of products from other State parties. The combined reading of these provisions requires the Nigerian Government to take policy measures in ensuring that foreign goods are not treated with a protectionist business climate but a receptive one, as Nigeria is a part of the single market created under the Treaty.

The liberalization of trade in Africa has always been back-pedalled due to high tariffs in African countries. The Treaty resolves this by advocating for the progressive elimination of tariffs by State parties through various negotiation stages.[17] *Article 7* is instructive to this effect and exempts the elimination of certain tariffs provided under international agreements, especially agreements under the aegis of the World Trade Organization.

[14] O. Abasiekong "Nigeria Finally Signs AFCFTA Agreement" available at https://www.proshareng.com/news/Trade%20Investment/Nigeria-Finally-Signs-AFCFTA-Agreement/46017 (accessed 12 October 2021).
[15] *Supra* n.8.
[16] Article 5(d) of AfCFTA; Articles 4 and 5 of the Protocol to the AfCFTA Treaty on Trade in Goods.
[17] Article 2 of the AfCFTA.

Despite the removal of these tariffs, the obvious decay in infrastructure in African countries remains a barrier to the actualization of a single market dream. The Treaty recognizes this fact and in *Article 12*, obliges States to remove non-tariff barriers to the effectiveness of the free trade area. The AfCFTA further states in *Article 15* that State Parties are to take appropriate measures including arrangements regarding trade facilitation. The purport of both provisions is that Governments have to address the other barriers to the Treaty's objectives, the most adverse being infrastructural deficits in terms of poor electricity and discouraging port facilities. However, the steps to be taken require a large revenue base, as Nigeria's infrastructural gap can only be closed upon the investment of $100 billion.[18] Noting that the implementation of this agreement will likely lead to the reduction in tariffs and specifically, tax revenue, and the fall in global oil prices, the question is where will the resources be generated from? The question will indeed be addressed subsequently.

3.0 IMPACT OF THE TREATY ON NIGERIAN TAX REVENUE

As earlier established, the interrelation of taxation and the Treaty is in two phases, the first being; its presumed adverse impact on the revenue generated from taxation and the second reveals how taxation administration can aid the actualization of potentials inherent in the Treaty. This part examines the former while the later section will deal ineptly with the latter.

Taxation in Nigeria is gradually becoming the main stay of the economy, following the instability in global oil prices.[19] In the year 2018, the FIRS recorded a total tax revenue collection of about ₦5.32 trillion. The oil component of the ₦5.32 trillion was ₦2.467 trillion (46.38 per cent), while

[18] ICRC "Filling Nigeria's Infrastructure Gap" available at https://www.icrc.gov.ng/filling-nigerias-infrastructure-gap (accessed 12 October 2021).
[19] BBC Reality Check Team "Nigeria: Why is it struggling to meet its tax targets?" available at https://www.bbc.com/news/world-africa-49566927 (accessed 12 October 2021).

the non-oil component was ₦2.852 trillion (53.62 per cent). In 2020, out of the ₦4.9 trillion generated, the oil component was ₦1.5 trillion and non-oil component of ₦3.4 trillion.[20] The hidden revelation was the large sum which the Value Added Tax (VAT) adds to the non-oil component of the taxes collected, as this form of tax generated ₦1.1 trillion to the Nigerian economy, the highest in history. This is projected to increase as the Government has raised the VAT rate to 7.5 per cent.[21] The large revenue from taxes is as a result of doing things rightly by easing the payment of taxes through the incorporation of technology into the collection process, a move which has reflected as Nigeria improved in the ease of paying taxes, moving from 171st to 157th place on the ease of tax payment arm of the World Bank 2018 Ease of Doing Business Report.[22]

The tax implications of signing the Treaty should be more taxes and greater tax-to-GDP ratio as having access to a larger market of around 1.2 billion people will potentially trigger industrialization and manufacturing across the continent and, in turn, create vast employment opportunities on a continent, home to the world's fastest-growing labor force, resulting in more taxes collected.[23] The position is similarly stated by Landry Signé, a Brookings Institution fellow, noting that:

> The unique continental market access combined with the increasing focus on industrialization as a catalyst for growth and priority of the government to shift away

[20] FIRS 'Tax Statistics/Report: 2020 Statistics' available at https://www.firs.gov.ng/tax-statistics-report/ (accessed 12 October 2021).
[21] Udo Udoma and Bello-Osagie "Nigeria's New VAT Regime" available at https://www.mondaq.com/nigeria/sales-taxes-vat-gst/1023654/nigeria39s-new-vat-regime (accessed 12 October 2021).
[22] Dong Business "Doing Business in Nigeria" available at http://www.doingbusiness.org/content/dam/doingBusiness/country/n/nigeria/NGA.pdf (accessed 12 October 2021).
[23] Y. Kazeem "Africa's Largest Economy is Finally Backing the Continent's Plans for a Single Free Trade Market" available at https://qz.com/africa/1657861/nigeria-to-sign-africa-free-trade-agreement-afcfta/ (accessed 12 October 2021).

> from over-reliance on volatile primary commodity exports will contribute to boosting Nigeria's manufacturing sector and exports…Nigeria will also have to increase its global competitiveness and create ease in doing business.[24]

However, the tax generation potentials shown are blurred by the provision in the Treaty dealing with gradual tariff elimination, the core philosophy of the Treaty. Hence, Nigeria is not only short-changed with respect to the emerging market, but also prevented from benefitting from the tariff drive associated with the existing market.[25] Looking at the high import rate by Nigeria and the possibility of flooding the Nigerian market, fear is that Nigeria will no longer reap bountifully from the trade harvest in form of tax collection. This writer disagrees with this position and argues that, because Africa is not Nigeria's major market, the revenue from tariffs is still levied on countries not parties to the Treaty, hence no decrease. In 2017, Nigeria imported goods to the toll of $34.2 billion, consisting of refined petroleum, ships and cargo ships, wheat, raw sugar and majorly, automobile from countries such as China, the United States, Belgium, Luxemburg, the Netherlands and South Korea.[26]

The above contention remains relevant as the commodities heavily imported are technologically related. It is an agreed fact that Africa's technological growth has been stunted and what we currently have are just projections and 'potentials.'[27] From Jumia's listing on the New York Stock

[24] *Ibid*.
[25] D. Meyer "The Largest Free Trade Deal in Nearly a Quarter-Century Seeks to Make Africa a Single Market" available at http://fortune.com/2019/05/25/africa-free-trade-agreement/ (accessed 12 October 2021).
[26] The Observatory of Economic Complexity "Country Profile: Nigeria" available at https://oec.world/en/profile/country/nga (accessed 12 October 2021).
[27] This word appears to be reflective of Africa's performance in every sector as promises are shown with no hope of full or partial perfection.

Exchange[28] to the continuous ingenious inventions of Kenya's Safricom,[29] the African technological scene is booming with over 400 tech hubs existing due to foreign training and investments.[30] Similarly, Nigeria happens to be the 3rd most technologically advanced country in Africa,[31] making the possibilities of it being a tech dumping ground through the agreement and in fact, a beneficiary. Thus, Nigeria's import base has not been and is likely not to be based on the single market anytime soon, despite the prediction of a vital $10 billion decrease in imports from outside Africa.[32] The only concern is that the new market will be untapped thus stagnating revenue generation of Nigeria. However, there is also a prediction of the rise in import from non-African countries and alternatively, this author's argument that the tax administration will facilitate the implementation of the Treaty and in turn generate tax revenue through the creation and expansion of businesses, as will be subsequently seen, stands as a plus for the Nigerian economy.

4.0 CAPITALIZING ON THE BENEFITS OF TAXATION

The realization that Nigeria's revenue strides through taxation will not be halted by the Treaty indeed warrants the necessity and provides the resources to implement the AfCFTA. Being Africa's largest and most productive economy, Nigeria stands to get the largest slice of the cake upon due maximization of the potentials highlighted previously. The flexibility of fiscal policies

[28] A. Leke and T. Sibanda "The Rapid Growth of Digital Business in Africa" available at https://hbr.org/2019/04/the-rapid-growth-of-digital-business-in-africa (accessed 12 October 2021).
[29] Chams Access "The Future of Technology in Africa" (2018) available at https://chamsaccess.com/the-future-of-tevhnology-in-africa (accessed 12 October 2021).
[30] International Financial Corporation "Africa's Tech Talent finds its Place in the Global Economy" available at https://www.ifc.og./wps/wcm/connect/news_ext_content/ifc_external_corporate_site/news+and+events/news/perspectives-i1c3 (accessed 12 October 2021).
[31] Answers Africa "Top 10 Most Technologically Advanced Countries in Africa" available at https://answersafrica.c0m/top-10-most-technologically-advanced-countries-in-africa.html (accessed 12 October 2021).
[32] T. Chukwunyem "AfDB: CFTA will boost intra-African trade by $35bn yearly" available at http://www.newtelegraphng.com/2018/03/afdb-cftall-boost-intra-african-trade-by-35bn-yearly/ (accessed 12 October 2021).

in Nigeria and its currently thriving tax administration measures separates the country from the path of uncertainty of the implementation of AfCFTA towed by other countries. Nigeria's approach to the obligations imposed by the agreement should be to lose taxes to gain more taxes by encouraging local businesses through tax incentives and engaging in infrastructural enhancement measures.

4.1 Encouraging Local Businesses through Tax Incentives

An impressive phenomenon of the African Continental Free Trade Area Treaty is that it does not discourage State Parties from levying taxes on its local businesses. *Article 10(1) of the Protocol to the Treaty on Trade in Goods* provides that State parties may regulate export duties or charges having equivalent effect on goods originating from their territory. *Article 10(2)* further states that the imposition of such export duties must not be discriminatory based on destination and *Article 10(3)* allows State parties not to impose duties and taxes on this upon notification to the Secretariat within ninety (90) days of its introduction. The purport of these provisions is the non-applicability of the liberalization clauses to export. A State Party, upon facilitating trade by local businesses can levy taxes, gotten by such businesses engaging in exportation. Section 9 of the *Companies Income Tax Act*[33] provides for the charge of taxes upon profits of companies accruing in, derived from, brought into, or received in Nigeria from trade activities. The interpretation given by the Court per Hooper J. in *Tufic Karan* v. *Commissioner of Income Tax*[34] to the words 'brought in' is that taxes can be charged on the net profits from transactions carried outside Nigeria by a Nigerian company, but that the use of 'received in' imports a territorial limitation, that is, these profits must be actually imported into Nigeria. Placing this provision side by side with the AfCFTA provisions on export

[33] Companies Income Tax Act (CITA), 2011 Cap. C21, Laws of the Federation of Nigeria, 2004, s. 9.
[34] Tufic Karan v Commissioner of Income Tax (1948) 12 WACA 331.

duties leads to the conclusion that the Treaty does not stop Nigeria from maximizing its revenue from taxes on exporting companies.

The implementation of this Treaty requires that the Nigerian Government reviews the current macroeconomic policies, ranging from the facilitation of access to credit facilities, attraction of foreign businesses, to the grant of tax incentives.[35] However, our focus is centered on the latter. The argument by this author is that the grant of incentives to local businesses will stimulate growth and productivity due to the high profit margin which they will enjoy due to low tax burdens.[36] The availability of funds for these companies enables re-injection into the business and acts as an incentive to employ more and pay higher income, which in turn is taxable on a progressive level under the *Personal Income Tax Act.*[37]

Fortunately, Nigeria needs not bother itself with creating more incentives as a plethora of incentives exists under the Nigerian law.[38] The *Companies Income Tax Act* outlines streams of incentives which are indeed beneficial to local businesses. The first in the series of incentives is the grant of exemption of taxes on interests, payable in cases of foreign loans granted to Nigerian companies in the agricultural[39] and manufacturing[40] sectors for the purchase of plants and equipment. This incentive takes consideration of the need for liquidity in business operations and the ease in accessing this from foreign investors. The Government encourages the grant of credit

[35] UNECA "Experts Review Guidelines for National AfCFTA Implementation Plans" available at https://www.uneca.org/stories/experts-review-guidelines-national-afcfta-implementation-plans (accessed 12 October 2021).
[36] G. Maffini, J. Xing, M.p. Devereux, "The Investment Incentives: Evidence from UK Corporation Tax Returns" (2019) 11 *American Economic Journal*, pp. 361-389.
[37] Personal Income Tax Act (PITA), 2011, Cap. P8, Laws of the Federation of Nigeria, 2004.
[38] *Supra*, n.33.
[39] S. 11(7) of CITA grants an exemption on interest on loans granted by bank on agricultural trade, fabrication of any local plant and machinery.
[40] S. 11(10) of CITA grants an exemption on taxes on interest in loan gotten for manufacturing goods for export.

facilities, but noting the private nature of the banking sector, the strict enforcement of this may be preposterous, hence the incentivizing of foreign loans.

Another incentive existent which is likely to spur the creation and expansion of local businesses is the grant of 15 per cent tax credits under Section 41 of CITA to replace obsolete plants and machineries. This is laudable, noting the cost of maintenance and replacement of equipment on businesses. Also, Section 23 of CITA empowers the President to grant further incentives to companies and this has been utilized in the making of Executive Order 007 which grants a 100 per cent tax credit to companies that engage in infrastructural projects.

Importantly, the tax law seemingly encourages industrialization and exportation by granting a 100 per cent export processing zone allowance to a company that has incurred expenditure in its qualifying building and plant equipment in an approved manufacturing activity.[41] The provision further grants 100 per cent tax exemption to companies which are export oriented, established within and outside the export free zone for three years. Such companies have greater profit margin and in the time which the incentive lasts, the company can expand and take a large cut of the projected market in the implementation of the Treaty. The encouragement of local businesses by several incentives granted has a ripple effect on other small-scale entrepreneurs and those not in the business scene. More businesses breed industrialization which in turn provides more goods for local consumption and export.

4.2 Infrastructural Enhancement Measures

A major barrier which discourages intra-African trade is the deficiency of poor infrastructure existent in all African nations. Nigeria's infrastructural gap is only rectifiable in the next six years

[41] See CITA, 2007, Cap. C21, LFN, 2004.

through an investment of $100 billion.[42] To reap the benefits which the AfCFTA offers, the Government is to embark on infrastructural projects which would facilitate business operations for local participants and aid the entry of foreign goods, in terms of revamping the port infrastructure, an element discouraging import/export operations.[43]

Asides using the revenue gotten from taxation to embark on such projects, the Government has to use tax incentive measures to spur investment in infrastructural revamping. The Executive Order 007 on Road Infrastructure and Refurbishment Investment Tax Credit is a scheme by the Government to grant 100 per cent tax credit to private sector participants to construct and refurbish eligible roads across the country. Hence, taxation acts as a direct and indirect tool to spur infrastructural enhancement.

5.0 CONCLUSION

The realization that no nation is an island of economic progress brings the conclusion that intra-trade activities are necessary. However, the components of such agreements make the obligations stringent on Governments, presenting alternatives of either sacrificing short-term economic goals or long-term benefits which outweigh the latter. Nigeria chose a path by signing the AfCFTA, the implementation of this agreement however raised concerns of Nigeria's options in generating revenue, noting the stagnation of current revenue streams. The option proposed in this paper is the utilization of tax components in actualizing the goals in the Treaty as these components, especially tax incentives encourage businesses to grow and provide funding for infrastructural enhancement. The notion that the AfCFTA will lead to the stagnation of revenue is valid, however, the facts that

[42] *Supra* n.18.

[43] LCCI "Nigeria: Reforming the Maritime Ports" available at https://www.lagoschamber.com/download/nigeria-reforming-the-maritime-ports/ (accessed 12 October 2021).

Nigeria's market extends beyond Africa and that emerging markets will take time to catch up, allow Nigeria to continue the maximization of revenue from tariffs and Value Added Tax. However, the revenue from the single market will not be captured. Notably, the Treaty allows for a 5-year implementation period, after which the country can rescind if the benefits do not suit its economic peculiarities.[44] The Treaty also allows for amendments[45] and reviews[46] by State parties. Exiting the agreement is however not advisable and the negative effects should not be downplayed. The recognition of those effects has prompted the African Export and Import Bank to grant a $1 billion adjustment facility to support parties to the agreement to properly implement it, noting that despite the danger, the movement is unstoppable.[47] The Nigerian Government similarly agrees that only the right policies and measures of implementation will transform this impending nightmare to tremendous opportunities.[48] This author submits that the Government's eagle eyes need not be activated as the key to reaping the benefits of the AfCFTA is in tax law and administration.

[44] Article 27 of the AfCFTA.
[45] Article 29 of the AfCFTA.
[46] Article 28 of the AfCFTA.
[47] AFREXIMBANK "Afreximbank Announces $1 billion Adjustment Facility, Other AfCFTA Support Measures as African Leaders Meet" available at https://www.afreximbank.com/afreximbank-announces-1-billion-adjustment-facility-other-afcfta-support-measures-as-african-leaders-meet/ (accessed 12 October 2021).
[48] C. Agabi "Concern as FG Raises Fears Over AfCFTA" available at https://www.dailytrust.com.ng/concern-as-fg-raises-fears-over-afcfta.html (accessed 12 October 2021).

TAXATION OF THE DIGITAL ECONOMY: RESPONSES BY THE INTERNATIONAL COMMUNITY

Rachel Ogidan & Oluwatofunmi Isaac Aduloju

1.0 INTRODUCTION

The taxation of the digital economy has joined the league of global issues like climate change, inequality, and shifting demographics all of which require international cooperation and coordination.[1] Nonetheless, numerous states have adopted unilateral approaches targeted at imposing tax obligations on digital companies generating revenue within their jurisdictions. Nigeria, for instance, enacted the Finance Act 2019 as well as the Significant Economic Presence Order 2020[2]. Like India and other jurisdictions that have adopted ingenious unilateral approaches, the questions of enforcement are clogs in the wheel of such laws.

The evident lacuna in the global and domestic tax regimes has resulted in increasing mechanisms of tax avoidance which the Organisation for Economic Co-operation and Development (OECD) estimates costs approximately $100-240 billion annually or from 4-10% of global corporate income tax revenues[3]. These challenges transcend nations irrespective of their political, social, or economic strata. Nonetheless, developing countries, due to their heavy reliance on corporate income taxes are disproportionately affected by such figures. Therefore, there has been a universal clamour for practical solutions to the taxation of the digital economy. The necessity of a universal

[1] K. Brown, "5 Global Issues to Watch in 2020", The United Nations Foundation, available at https://unfoundation.org/blog/post/5-global-issues-to-watch-in-2020/ (accessed 12 October 2021).
[2] Companies Income Tax (Significant Economic Presence) Order, S.I. No. 9 of 2020.
[3] *Supra* n. 172.

consensus has become more expedient to prevent a fiscal state of nature characterised by multiple ineffective unilateral approaches and retaliatory policies.

The universality of the issue and the inadequacy of unilateral approaches adopted by nations highlight the importance of a universal consensus. Ergo, the primary solution lies in the establishment of a global platform to aggregate views and adopt appropriate rules of profit allocation and taxing rights. In achieving the aforementioned, many authors have clamoured for the establishment of a global internet agency or tax authority[4]. While there are merits to such demands, the practicality of same sets the global tax community back by at least a decade, and the OECD in its capacity as the informal global tax authority[5] has made remarkable strides. Significant multilateral cooperation has been achieved through the OECD/G20 Inclusive Framework on the BEPS platform with a membership of 139 countries[6], accounting for approximately 90% of the global GDP[7].

From a global perspective, this paper undertakes a critical evaluation of the challenges of the digital economy as well as efforts by the OECD in responding to the evolving challenges. This limited scope is predicated upon the primacy of the OECD[8] in developing a framework for addressing digital concerns and the status of its "work" as the foundation upon which other international frameworks have been built.

---

[4] L. Mas, C. Óliver, and R. F. Junquera-Varela"*Tax Theory Applied to the Digital Economy: A Proposal for a Digital Data Tax and a Global Internet Tax Agency*" Washington, DC: World Bank. doi:10.1596/978 1-4648-1654-3. License: Creative Commons Attribution CCBY 3.0 IGO

[5] A. Cockfield "The Rise of The OECD As Informal 'World Tax Organization' Through National Responses To E-Commerce Tax Challenges" (2006)8 *Yale Journal of Law and Technology*.

[6] "Members of the OECD/G20 Inclusive Framework on BEPS" available at https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf (accessed 12 October 2021).

[7] OECD/G20 Base Erosion and Profit Shifting Project, "Addressing the tax challenges arising from the digitalisation of the economy" available at https://www.oecd.org/tax/beps/brochure-addressing-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf (accessed 12 October 2021).

[8] *Supra* n. 5.

2.0 CHALLENGES OF THE DIGITAL ECONOMY

It is critical to recognize that the very nature of entities in the digital economy poses a significant challenge to the traditional tax system. According to the OECD report (OECD 2013)[9], three characteristics of value creation in the digital economy challenge the traditional tax system and contribute to a dramatic increase in Base Erosion and Profit Shifting. It includes:

i. The ability to scale without mass
ii. The heavy reliance on intangible assets
iii. The role of data and user participation

With these, global digital business entities can easily and legally shift revenues between jurisdictions by offshoring intangible assets and using transfer-pricing techniques to lower their overall tax burden. This can, and often does, result in a significant misalignment between revenues booked and taxes paid on the one hand, and actual economic activity in the country on the other. In terms of numbers, digital businesses in the European Union are estimated to pay an effective tax rate of only 9.5%, compared to 23.22% for traditional businesses.[10] While this may appear to be a *"sketchy win"* for digital businesses, it raises a tax equity issue between traditional and digital businesses, and accounts for a significant revenue loss, particularly in developing countries.

Another important factor within the digital economy that has resulted in a few challenges is the existence and some worth proliferation of multinational companies and business entities, which by nature are focused on carrying out business across different geographical boundaries. Such

[9] OECD (2014), *Addressing the Tax Challenges of the Digital Economy*, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/9789264218789-en (accessed 15 October 2021)
[10] European Commission, Keynote Speech by Commissioner Moscovici at the 'Masters of Digital' event, Brussels, available at http://europa.eu/rapid/press-release_SPEECH-18-981en.htm (accessed 20 May 2021).

cross-border transactions are a direct offshoot of globalization and could be as simple as purchasing widgets from China via the internet or as complex as multi-tier joint venture investment structures in another country with intricate service and distribution agreements.[11]

Cross-border trade is the norm in today's digital economy. Thanks to technological advancements, businesses can now source and operate from anywhere in the world, giving them greater access to global markets. With the click of a button, consumers can order goods or services from anywhere in the world, causing the e-commerce industry to grow exponentially. For example, in 2019, cross-border payments totalled $130 trillion, generating $224 billion in payments revenue (up 4% from the previous year).[12] Regrettably, even as global economies become more interdependent and cultures and populations become more integrated, taxation remains a jurisdictional issue. Because of the unique and disruptive nature of the digital economy, dealing with the tax implications of cross-border transactions has become a much more complex challenge, as traditional double tax treaties, transfer pricing regulations, and traditional profit allocation rules have been tested by the peculiarities of the digital economy. The allocation of taxing rights, double taxation, and tax administration are the most significant challenges

2.1 The Allocation of Taxing Right

The digital economy has sparked global debates in a wide range of legal and regulatory areas, including international taxation. The central question is whether international income tax rules

[11] "What Are Cross Border Transactions?" available at https://beckerinternationallaw.com/what-are-cross-border-transactions/ (accessed 14 October 2021).
[12] McKinsey & Company Global Banking Practice, "The 2020 McKinsey Global Payments Report", available online at https://www.mckinsey.com/~/media/mckinsey/industries/financial%20services/our%20insights/accelerating%20winds%20of%20change%20in%20global%20payments/2020-mckinsey-global-payments-report-vf.pdf (accessed 15 October, 2021)

developed in a "brick-and-mortar" economic environment more than a century ago are still applicable in today's global economy.[13] The fundamental elements of the global tax system that determined where taxes should be paid[14] ("nexus rules”) and what portion of profits should be taxed[15] ("profit allocation rules") served their purpose admirably, providing certainty and contributing to the elimination of double taxation, thereby stimulating global trade. The traditional global taxation system, is, however, currently facing severe challenges from the three significant horsemen of the digital economy: the ability to scale without mass, reliance on intangible assets, and the role of data and user participation.[16]

The emergence of new, often intangible value drivers has transformed entire industries, spawning new business models while undermining the need for physical proximity to target markets. This calls into question the effectiveness of existing profit allocation and nexus rules in distributing taxing rights on income generated by cross-border activities in a way that is acceptable to all countries, large and small, developed and developing.

2.2 Double Taxation

Traditionally, a Double Taxation Treaty, an Avoidance of Double Taxation Agreement (ADTA), or a Double Taxation Agreement (DTA) has been used to resolve the problem of double taxation. However, due to the expansive and disruptive nature of the digital economy, double taxation has taken on a new dimension. Because governments and tax authorities are scrambling to keep up

---

[13] OECD BEPS, “Action 1” available at https://www.oecd.org/tax/beps/beps-actions/action1/(accessed 14 October 2021).

[14] Deloitte US “Foreign Companies and State Income Tax Nexus” available at https://www2.deloitte.com/us/en/pages/tax/articles/foreign-companies-and-state-inome-tax-nexus.html (accessed 14 October 2021).

[15]A. Yonah, S. Reuven, K. Clausing, and M. Durst, “Allocating business profits for tax purposes: A proposal to adopt a formulary profit split” (2008) 9 *Fla. Tax Rev,* 497.

[16]OECD, “Tax and digitalisation” available at www.oecd.org/going-digital/topics/tax (accessed 14 October 2021).

with the global economy's increasing digitization and public outcry for the taxation of the digital economy, there is an aggressive push for effective taxation, despite the high risk of double taxation, especially since the digital economy raises issues of taxing rights allocation and determining or establishing permanent establishment.

Companies in the digital economy are typically large multinational corporations that conduct a wide range of economic activities in multiple tax jurisdictions. As a result, without a multilateral agreement, individual country policies are likely to intersect or contradict one another, resulting in double taxation.[17] In fact, corporations may be required to pay tax in more than one jurisdiction on the same piece of income. This highlights the critical need for a multilateral approach to digital economy taxation.

2.3 Tax Administration

Tax administration revolves around the implementation and enforcement of tax legislation and regulations. It entails identifying and registering taxpayers, processing tax returns and third-party data, examining the completeness and accuracy of tax returns, assessing tax obligations, collecting (enforced) taxes, and providing services to taxpayers.[18]

The first step in the tax administration process is tax registration. It allows the Tax authority to create a taxpayer database that can be used to identify and locate taxpayers, track their taxable activity, audit tax compliance, enforce collection and other tax measures, and forecast tax revenues.[19] Overall, tax registration aids in determining a preliminary scope of taxpayers who

[17] OECD "Programme of Work to Develop a Consensus Solution to the Tax Challenges Arising from the Digitalisation of the Economy,"https://www.oecd.org/tax/beps/programme-of-work-to-develop-a-consensus-solution-to-the-tax-challenges-arising-from-the-digitalisation-of-the-economy.pdf. (accessed 14 October 2021).

[18]Ifueko Omoigui Okauru, *Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria* (African Books Collective: Oxford, 2012).

voluntarily comply with their formal tax obligations and may be subject to taxation. Traditional foreign corporations have a physical presence, or permanent establishment, in the tax jurisdiction, which helps with the enforcement of tax obligations and the imposition of penalties in the event of tax violations. On the other hand, foreign digital businesses can operate without being residents or having a permanent establishment in a tax jurisdiction. This is a significant challenge for tax administrators.[20]

Tax collection follows successful registration. Tax collection is by far the most difficult aspect of tax administration, especially for digital transactions involving non-residents, which pose a higher risk of tax evasion due to the difficulty of reaching residents in other countries using traditional local tax enforcement mechanisms.[21] As used in this section, tax collection refers to any mechanism that ensures payment of the tax liability during the voluntary period of compliance. Tax collection can take the form of direct tax paid by the taxpayer or tax withholding and subsequent payment by a tax agent, who is typically the payor (customer, buyer, employer, financial institution, or intermediary). Direct tax payment may not be the best option for foreign digital companies because they do not have a physical presence in their market jurisdictions. As a result, without voluntary tax compliance, tax recovery options are limited once income is paid out abroad, and tax enforcement mechanisms are ineffective.

It is common knowledge that no taxpayer wants to pay taxes and that every recalcitrant taxpayer fears effective tax enforcement, which could lead to the loss of assets (property seizure, funds freezing, judicial foreclosure) and freedom (imprisonment). When penalties are imposed following

---

[21] N. Bayraktar, T. M. Le, and B. Moreno-Dodson, "Tax Capacity and Tax Effort: Extended Cross-Country Analysis from 1994 to 2009" available at https://ideas.repec.org/p/ekd/002672/3858.html (accessed 14 October 2021).

a successful enforcement campaign, they are effectively implemented in the country where assets are located and taxpayers have their tax residence and are physically present. In contrast to the bureaucratic procedures for information exchange and the administrative burden to be faced, tax enforcement success rates for resident taxpayers are much higher because they can be identified and located more easily, and information on their assets and execution procedures (bank account freeze, tax litigation, property seizure, lien on assets, judicial foreclosure) is readily available.[22] Any enforcement action involving companies in the digital economy necessitates the participation of other countries in which the noncompliant taxpayer is a tax resident or where its assets are located. This is a significant administrative challenge.

Unfortunately, several countries are currently losing the battle against traditional tax administration challenges, and the digital economy complexity does not help. Tax administrators are now faced with a new set of administrative challenges as the digital economy grows.

3.0 OVERVIEW OF RESPONSES BY THE INTERNATIONAL COMMUNITY

Concomitant with the proliferation of tax avoidance and evasion by multinational entities has been increasing efforts by the OECD at proffering pragmatic solutions. Over the last 2 decades, the OECD has been at the fore of negotiating new global taxing rules stretching from prioritising the issue of tax avoidance and evasion in 1996[23] to the introduction of a global minimum tax in October 2021.[24]

---

[22] Arturo Jacobs, David Crawford, Terry Murdoch, et al, "Detailed guidelines for improved tax administration in Latin America and the Caribbean" (2013) *Organizational Structure and Management, USAID* 43.
[23] *Supra* n. 8.
[24] "International Community Strikes a Ground-Breaking Tax Deal for the Digital Age", available at https://www.oecd.org/tax/international-community-strikes-a-ground-breaking-tax-deal-for-the-digital-age.htm (accessed 12 October 2021)

The OECD seeks to develop an accepted regime suitable for evolving business models, and as such has proffered solutions to a myriad of issues revolving around tax avoidance and evasion, as well as other evolving issues such as tax challenges arising from the digitalisation of the economy. An evaluation of activities and key milestones by the OECD is an appropriate exercise in appreciating the challenges and progress made by the international community.

While the challenges associated with digitalisation is an evolving and recent conversation within the international community, tax avoidance and evasion are inextricably linked with many of the identified challenges. Hence, responses by the international community date back to 1996 when tax avoidance and evasion was made a priority at the international font by the G7. In May of the same year, concerned states called upon the OECD to formulate measures to counter the distorting effects of harmful tax competition on investment and financing decisions.[25] In response to this request, the OECD Report- Harmful Tax Competition: An Emerging Global Issue[26] was introduced in April 1998.

Despite its increased and modified global mandate, the OECD was originally established as the Organisation for European Economic Cooperation (OECC). Hence, most of the 38 OECD members are from Europe,[27] consequently, between 2001 and 2007, the OECD and the European Union joined hands in developing international standards on tax transparency and secured commitments to a global level playing field. The 2008 global financial crisis, otherwise known as

[25] Organisation for Economic Co-operation and Development "Harmful tax competition: An Emerging Global Issue" available at https://www.oecd.org/tax/harmful/1904176.pdf (accessed 12 October 2021)
[26] *Ibid.*
[27] Most of the 37 OECD members are from Europe. They are Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and the United Kingdom. There are five countries from the Americas: Canada, Chile, Colombia, Mexico, and the United States. The four Pacific members are Australia, Japan, Korea, and New Zealand. The two member countries from the Middle East are Israel and Turkey.https://www.oecd.org/about/members-and-partners/

the great recession is famous for the overhaul of corporate governance rules but also transformed the perception of tax havens from financial exotic sideshows to potentially damaging institutes to world economies. To prevent a recurrence, the G20 pledged to end offshore tax evasion by initiating what has been described as a tax haven crackdown.[28] This resulted in the restructuring of the Global Forum on Transparency and Exchange of Information for Tax Purposes in 2009,[29] albeit established in 2000. Like the G7, the G20 identified tax avoidance as a priority in 2013.

Noteworthy progress was made in 2015 when the landmark Base Erosion and Profit Shifting (BEPS) 15 Actions plan[30] was adopted. The 15 actions were introduced to equip governments with rules and instruments to address tax avoidance which ensure that profits are taxable where economic activities generating profits occur and value is created.[31] Action 1 focuses on addressing the tax challenges associated with digitalisation, and has thus far, delivered several important outputs covering both direct and indirect tax issues.[32] In May 2015, members of the OECD/G20 sought to establish a framework with the participation of interested non-members, with a special focus on developing economies on an equal footing. This resulted in the establishment of the OECD/G20 Inclusive Framework (IF) on BEPS in June 2016, which currently has139 members.[33]

The Inclusive Framework has been especially relevant in addressing the tax challenges associated with digitalisation. Between 2017 and 2019, the Framework engaged in numerous active

---

[28] N. Johannesen and G. Zucman, "The End of Bank Secrecy? An Evaluation of the G20 Tax Haven Crackdown" (2014) 6*American Economic Journal: Economic Policy*, 65–91, available online at https://gabriel-zucman.eu/files/JohannesenZucman2014

[29] "*Global Forum on Transparency and Exchanges of Information for Tax Purpose-History*", available online at https://www.oecd.org/tax/transparency/who-we-are/history/ (accessed 15 October 2021)

[30] OECD (2013), Action Plan on Base Erosion and Profit Shifting, OECD Publishing. http://dx.doi.org/10.1787/9789264202719-en (accessed 12 October 2021)

[31]*BEPS ACTIONS*, available online at https://www.oecd.org/tax/beps/beps-actions/, (accessed 12 October 2021).

[32] "Action 1 Tax Challenges Arising from Digitalisation", available online at https://www.oecd.org/tax/beps/beps-actions/action1/ (accessed 15 October, 2021)

[33] Members of the OECD/G20 Inclusive Framework on BEPS, available at https://www.oecd.org/tax/beps/inclusive-framework-on-beps-composition.pdf (accessed 12 October 2021).

discussions on practical ways to address the evolving challenges associated with digitalisation and produced a two-pillar policy note in January 2019[34] and the blueprints for a two-pillar solution in October 2020.[35] The policy note addressed the broader challenges of the digitalised economy and allocation of taxing rights under one pillar, while the second pillar addressed the remaining BEPS issues.[36]

In July 2021, 132 of the 140 members of the Inclusive Framework joined a landmark two-pillar approach[37] geared towards reforming the international taxation rules. The statement seeks to reallocate taxing rights and establish minimum tax to address tax avoidance by multinational companies. Pillar 1 focuses on the fairer distribution of profits and taxing rights which are challenges faced by nations who have adopted unilateral approaches. Pillar 2, on the other hand, seeks to nip tax avoidance practices by introducing a global minimum tax rate. The statement was updated and finalised on the 8th of October 2021 and clarified the ambiguity created at inception. The Statement introduced in July did not have a definite rate for the minimum tax rate but merely stipulated that "*at least 15%*" would be imposed. The ambiguity served as a deterrent to nations like Ireland whose low levels of taxation has been a cornerstone of its economic policy. With the clarification of ambiguities therein, 136 of the 140 countries of the Inclusive Framework have joined the agreement which seeks to impose a definite minimum tax rate of 15% on companies.

[34] OECD/G20 Base Erosion and Profit Shifting Project"Addressing the Tax Challenges of the Digitalisation of the Economy – Policy Note" available at https://www.oecd.org/tax/beps/policy-note-beps-inclusive-framework-addressing-tax-challenges-digitalisation.pdf (accessed 12 October 2021).
[35] OECD "Tax Challenges Arising from Digitalisation – Report on Pillar Two Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project" available athttps://doi.org/10.1787/abb4c3d1-en. (accessed 12 October 2021).
[36] *Ibid.*
[37] "Statement on a Two-Pillar Solution to Address the Tax Challenges Arising From the Digitalisation of the Economy" available at https://www.oecd.org/tax/beps/statement-on-a-two-pillar-solution-to-address-the-tax-challenges-arising-from-the-digitalisation-of-the-economy-july-2021.pdf (accessed 12 October 2021).

The development of model legislation and detailed guidance for the implementation of the agreement is expected in 2022, with implementation beginning in 2023.

The agreement signals a commitment by the overwhelming majority of the Inclusive Framework representing more than 90% of the global GDP to tackle tax challenges surrounding the expansion of the digital economy. Interestingly, Nigeria is one of the four countries that have refused to sign the Statement.[38] The Minister of Finance, Budget, and National Planning, Mrs Zainab Ahmed in addressing this asserts that the agreement may adversely affect developing nations who may experience negative or reduced revenue collection from its implementation.[39]

6.0 CONCLUSION

Flowing from an understanding of the nature of the digital economy, its prospects, and peculiarities, it is undeniably important to effectively tax the digital economy. This has necessitated a variety of international efforts from different countries, as well as the OECD.

As a result of the absence of a multilateral approach, many states have adopted unilateral measures to impose tax obligations on digital businesses that generate revenue within their borders. Commendably, the international tax community led by the OECD/ G-20 Inclusive Framework on BEPS has made significant progress, particularly in light of the statement updated and finalized on the 8th of October 2021, which clarified ambiguity created at inception. The two-pillar solution has been trumpeted as establishing a new tax regime capable of addressing evolving business models. Nonetheless, as reflected over the years, the problem with such solutions is a question of

[38] Other countries who have refused to sign are Pakistan, Kenya, and Sri-Lanka.
[39] N.Francis "FG: Why Nigeria Has Not Endorsed OECD's Proposal on Digital Economy" available at https://www.thisdaylive.com/index.php/2021/09/21/fg-why-nigeria-has-not-endorsed-oecds-proposal-on-digital-economy/(accessed 12 October 2021).

implementation, which were addressed has the potential to increase global tax revenue up to £150billion annually and may indicate the end of tax havens. While the clarification of ambiguities has led to 136 of the 140 countries of the Inclusive Framework joining, representing more than 90% of global GDP, it is critical that the remaining four countries, including Nigeria, join as well. This will almost certainly necessitate top-level stakeholder engagement and some compromise on the part of either the OECD or the concerned countries. In the interest of achieving a fair and equitable global tax system, it is also critical to critically examine the various concerns of the nations that have refused to sign this agreement and to allay their fears where necessary.

The next two years are delicate times for the international tax community and may produce exciting revisions to the tax model that may permanently alter the fiscal and economic course. Likewise, it is expected that critical amendments would occur within the Nigerian tax administration.

A REVIEW OF CONTEMPORARY APPEAL PROCEDURE UNDER THE VALUE ADDED TAX (VAT) REGIME IN NIGERIA

Olumide K Obayemi & Odunayo O. Bamodu***

ABSTRACT

This Paper reviews the theoretical policy and statutory rules behind the tax appeal system, under the Value Added Tax (VAT) regime, specifically, as it relates to the issuance of VAT Notices of Assessment by the Federal Inland Revenue Service (FIRS), filing of Objections, and the initiation of the VAT Appeal Process by the taxpayers within the statutory framework instituted within the last decade. Drawing from Nigerian statutes and case law, the Paper identifies the perennial issues that make the VAT appeal system less competitive than those of similar jurisdictions. Finally, recommendations for improvement are suggested.

1.0 INTRODUCTION

This Paper examines the various steps in the Nigerian tax appeal procedure/system relating to the *Value Added Tax* ("VAT") (as directly or indirectly amended on January 13, 2020, by the *Finance Act 2019*).[1]In Nigeria, dispute settlement[2] under the present tax appeal system, i.e., the Tax Appeal Tribunal (TAT) up to the Superior Court, is saturated with unnecessary appeals on similar and

* Department of Commercial & Industrial Law, University of Lagos, Akoka, Yaba, Lagos. (E-mail: obayemilaw@yahoo.com; Mobile: 08185718484).

** Deputy Registrar with the Nigerian Industrial Court, Ikoyi, Lagos. (E-mail: ayo_bamo@hotmail.com; Mobile: 08058298921)

[1] No. 6, Vol. 107, Government Notice No. 11, 14th January, 2020. Lagos, Nigeria. (Finance Act 2019).

[2] Ayoleke Owolabi, *Oando v FIRS: Implications for Tax Policy, Law and Administration in Nigeria*, Being an LLM Thesis submitted to the University of Lagos School of Post-Graduate Studies LLM Programme for the 2012/2013 Session, at 1. (Owolabi).

identical issues of law and facts,[3] threat to TAT's legitimacy,[4] perceived lack of fairness, loss of revenue to the government from incessant delays, and additional administrative costs. The Paper traces the history of VAT in Nigeria, focuses on VAT appeals as a specialized tax jurisprudence, and reviews notable judicial pronouncements on the principal *Value Added Tax Act* (VAT Act 2004),[5] to show topical issues arising from VAT appeal procedure, to-wit:

(a) the practice that existed under the defunct VAT Tribunal which was created by the *abrogated* Second (2nd) Schedule to the original Value Added Tax Decree of 1992 (1993 VAT Decree),[6]i.e., the procedure operative from 1993 up till 2010;

(b) the effect of the Court of Appeal's decisions in *StabiliniVisioni v FBIR,*[7]and *Cadbury (Nig.) Plc v. FBIR,*[8] on tax appeals regarding VAT;

(c) the contemporary practice under the TAT; and

(d) the necessary recommendations for the enhancement of tax appeals while borrowing from existing tax appeal practices at various similar common law jurisdictions.

The research is carried out within the context of the recently promulgated tax statutes to wit:

(a) VAT Act 2004;

(b) Value Added Tax (Amendment) Act No 12 of 2007;[9]

(c) Federal Inland Revenue (Establishment) Act No. 13 of 2007 ("FIRSEA");[10]

---

[3] Olumide K. Obayemi,"The Tax Appeal Tribunal As an Instrument of Promoting Nigerian National Tax Policy: Revisiting NAOC vs FIRS and Shell vs FIRS,"*Thisday Lawyer*, Tuesday, February 25th, 2015 at 13 (Obayemi I).
[4] See, e.g., *TSKJ v FIRS* (2014) 13 TLRN 1 and *NNPC v TAT* (2014) *13 TLRN 39*.
[5] The Value Added Tax Act, Cap V-1, Laws of Federation (LFN) 2004. (2004 VAT Act).
[6] Value Added Tax Decree No. 102 of 1993 (1993 VAT Decree).
[7] (2009) 13 NWLR (PT 1157) 200 (*Stabilini*).
[8] (2010) 2 NWLR (Pt 1179) 561. (*Cadbury*).
[9] Value Added Tax (Amendment) Act No 12 of 2007 (VAT Amendment Act 2007).
[10] Federal Inland Revenue (Establishment) Act No. 13 of 2007 (FIRSEA).

(d) Tax Appeal Tribunals (Establishment) Order of November 25th, 2009 (TAT Order);[11]

(e) Tax Appeal Tribunal (TAT) Procedure Rules, 2010 (2010 TAT Rules),[12] *and*

(f) Finance Act 2019.

Part 1 is the Introduction. Part 2 provides expose into the Nigerian tax appeal jurisprudence and the VAT regime. Part 3 deals with the core subjects of Audits, Notices of Assessment, Objection and appeal procedure in detail. Part 4 reviews the extant TAT procedure. Part 5 contains the recommendations and conclusion.

2.0 INTRODUCTION TO THE NIGERIAN TAX APPEAL JURISPRUDENCE UNDER THE VALUE ADDED TAX REGIME IN NIGERIA

To replace the old 1986 Sales Tax Act,[13] the VAT regime was introduced into Nigeria in 1993 by the Federal Military Government,[14] and since then, the original 1993 VAT Decree, had been amended more than seven times, including the substantive 2004 VAT Act, the VAT Amendment Act 2007[15] and the Finance Act 2019. Some amendments introduced significant changes, but are yet to be reflected in the body of existing literature.[16] In Nigeria, tax appeal is an important

---

[11] Tax Appeal Tribunals (Establishment) Order of November 25th, 2009 (TAT Order).

[12] Tax Appeal Tribunal (TAT) Procedure Rules (2010). (TAT Rules 2010).

[13] Decree No.7 of 1986.

[14] See, Federal Inland Revenue Service Information Circular No. 9304 of 20th August, 1993; James Kayode Naiyeju, *Value-Added Tax: The Facts of a Positive Tax in Nigeria* (1996), at 35; Chibuike Uche & Onuora Ugwoke, "The Law and Practice of Value Added Tax in Nigeria," (200) *Bulletin of International Law* 265; Federal Ministry of Finance, *Progress Report of the Modified Value Added Tax (MVAT) Committee, Vol. 1* (Abuja, Nigeria, 1992), Appendix 1; Chartered Institute of Taxation of Nigeria, *Tax Guide* (The Chartered Institute of Taxation of Nigeria: Lagos, 2002) 540; B. Buari and M.T. Abdulrazaq, *Introduction to Value Added Tax in Nigeria* (Maples & Temples Ltd: Ilorin, Nigeria, 1994); *Report of the Study Group on Indirect Taxation in Nigeria*(1993) 17; E. Ijewere, "Towards Efficient VAT Operation in Nigeria" Being a lecture organized by the MVAT Committee at Obafemi Awolowo University Ile-Ife, 20 May 1993) at 5-6.

[15] Abiola Sanni, "Current Law and Practice of Value Added Tax in Nigeria,"(2012) 5(2) *British Journal of Arts and Social Sciences* 186. (Sanni I).

[16] *Ibid.* at 186; See, also, Olumide K. Obayemi, "Tax Appeal Tribunals' Jurisdiction viz-a-viz The Federal High Court: *ThisDay Newspaper (Nigeria)*, May 13, 2014, ("Obayemi II"); Agbonika Josephine Aladi Achor, "Tax Dispute Resolution in Nigeria: A Storm in a Tea Cup," (2014) 29 *Journal of Law, Policy and Globalization* 147 ("Agbonika")

component of the fiscal system as stated by the Nigerian Tax Policy[17] (encapsulated in the Appeal Process), which offers a step by step objection and appeal process giving the complainant an opportunity to explore other dispute resolution mechanisms before gaining access to the regular court system.[18] Thus, the formal take-off of the current TAT appeal procedure in Nigeria occurred on 4 February 2010,[19] with proceedings guided by the 2010 TAT Rules.

The goal of the present Nigerian appeal system is aimed at meeting the expectation of all tax stakeholders that the 2007 establishment of the TAT would reduce the incidence of tax evasion, ensure fairness and transparency of the tax system, minimize the delays and bottlenecks in adjudication of tax matters traditional court system, improve the tax payers' confidence in the Nigerian tax system, provide opportunity for expertise in tax dispute resolution, provide avenue for effective involvement of parties, focus on facts rather than legal technicalities and promote early and speedy determination of matters without compromising the principle of fairness and equity.[20]

2.1 The Defunct Body of Appeal Commissioners (Pre-1993 Era)

The present TAT appeal system, by the enactment of the TAT Order of December 2009, replaced both of the former Body of Appeal Commissioners (BAC) and VAT Tribunal.[21] Prior to 1993 introduction of the 1993 VAT Decree, tax appeals were commenced solely before the BAC,[22] and

[17] Federal Ministry of Finance, *Nigerian National Tax Policy*, April 2012. Available at: http://www.firs.gov.ngFTaxManagementFTaxLegislationsFNATIONALTAXPOLICY.pdf. (2012 NTP).

[18] "Executive Brief of the Nigerian Tax Appeal Tribunal." Available at: http://tat.gov.ng/node/6. Accessed9 February 2015 (TAT Executive Brief).

[19] *Ibid.*

[20] *Ibid.*

[21] *Ibid*.

[22] Section 72 of Companies Income Tax Act Cap C21 LFN (2004) (CITA).

so, the tax appeal system in Nigeria is not new.[23] The legal framework for the defunct BAC was very simple;[24] the defunct Section 72 of CITA (now abrogated) used to provide that:

> Any company which, being aggrieved by an assessment made upon it, has failed to agree with the Board in the manner provided in subsection (5) of section 69 of this Act, may appeal against the assessment to the Appeal Commissioners.

Tax appeals were commenced under this procedure until 1993 when VAT Tribunal commenced.

2.2 The Valued Added Tax (VAT) Tribunal (1993-2010)

In 1993, the VAT Tribunal was introduced to handle tax appeals on VAT, since there were several anomalies associated with the old BAC appeal system, such as:

a. The BAC was an integral part of the Federal Board of Inland Revenue (FBIR),[25] and appeals before BAC were held in camera.[26]

b. Only taxpayers could appeal to the BAC while the appeal must relate to the "assessment" and, throughout the duration of the BAC, no taxpayer challenged its jurisdiction.[27]

c. A taxpayer who was dissatisfied with the decision of the BAC had a right to "appeal" to the High Court,[28] and the payment of tax was not due until the appeal

---

[23] Abiola Sanni, *CITN Position on the Conflicting Decisions on the Federal High Counts on the Constitutionality or Otherwise of the Tax Appeal Tribunal*, Being a Paper prepared by the Indirect Tax Faculty of CITN, 23rd April 2014, at Page 2 (Sanni CITN).

[24] Under Section 60 of the Personal Income Tax Act Cap P8 LFN (2004) (PITA), a taxable person who is aggrieved by an assessment as to income tax made against him, and after having failed to reach an agreement with the Relevant Tax Authority (RTA) as provided by Section 57(3) of 1993 PITA, may, within 30 days of receipt of a Notice of Refusal to Amend ("NORA") from the RTA, and pursuant to Section 61 of PITA, file an appeal with the BAC.

[25] Now replaced by the Federal Inland Revenue ("FIRS").

[26] *supra* note 23 at 2.

[27] *Ibid*.

[28] *Compare* with Section 17 of the 5th Schedule of the FIRSEA (supra note10).

was determined by the Court although the Court may order the taxpayer to deposit a portion of the disputed tax in some circumstances.[29]

Commencing from 1993, the appeal procedure before the VAT Tribunal were slightly different from the appeal procedure existing before the BAC—appeals involving VAT issues. However, problems started with the establishment of the VAT Tribunal under 1993 VAT Decree, because:

a. The 1993 VAT Decree equated the VAT Tribunal with a Federal High Court ("FHC") and made appeals from the VAT Tribunal to lie directly to the Court of Appeal.[30]

b. In addition, most of the problems emanated from the fact that the legal framework under the 1993 VAT Decree could not be questioned during the military rule due to the superiority of Decrees and Edicts[31] over the unsuspended part of the Constitution.[32]

The above substantive and procedural issues led to legal challenges against the VAT Tribunal.

2.3 The End of the VAT Tribunal System

With the return to democratic rule, the Court of Appeal (Lagos Division) in *StabiliniVisinoni Limited v FBIR*,**[33]** declared the VAT Tribunal to be unconstitutional. The VAT Tribunal, that was set up under Paragraphs 20 and 24(1) of the 2nd Schedule to the 1993 VAT Decree, suffered premature extinction post the coming into force of the Constitution of the Federal Republic of Nigeria of 1999 (CFRN). In *StabiliniVisioni*, the Court of Appeal held that the VAT Tribunal was

29 *Compare* with Section 16 of the 5th Schedule of the FIRSEA, *ibid*.
30 Sanni CITN, *supra* note 23 at 2.
31 The Constitution (Suspension and Modification) Decree No. 1 of 1984
32 Sanni CITN, (n 23) at 2; See, *also*, Jirinwayo Jude Odinkonigbo & Nduka Ikeyi (2015) "Is the power of a state to impose sales tax in Nigeria fettered by the imposition of value added tax by the federal government?" (2015) 41(4)*Commonwealth Law Bulletin*577-596. ("Odinkonigbo & Ikeyi").
33 *Stabilini* (*supra* note 7).

not an administrative Tribunal since appeals from it did not lie to the FHC,[34] but directly to the Court of Appeal—by this, usurping the FHC's constitutional jurisdiction. Further, the Court of Appeal also held that Paragraph 20 of the 2nd Schedule to the 1993 VAT Decree that had set up the VAT Tribunal was inconsistent with Section 251 of the CFRN which had solely/exclusively conferred jurisdiction over the federal revenue on the FHC, making the VAT Tribunal an *ultra vires* Court. Similarly, in *Cadbury (Nig.) Plc v. FBIR*,[35] the FBIR had directed Cadbury to render VAT returns based on Cadbury's payments to its Parent Company (Schweppes) in Britain. Upon Cadbury's refusal, FBIR instituted tax recovery proceedings before the VAT Tribunal. With FBIR's success, at the VAT Tribunal, Cadbury appealed to the Court of Appeal, which sustained Cadbury's objection—that the VAT Tribunal had no jurisdiction to entertain VAT issues since such tax issues touched exclusive jurisdiction on federal revenue, conferred solely upon the FHC.

2.4 The Emergence of the Tax Appeal Tribunal (TAT) System

The *Stabilini* and *Cadbury* decisions indicated that all was not well with the VAT Tribunal, and thus, earlier, while establishing the TAT system in 2007, attempts were made to correct the "mistakes" which led to the invalidation of VAT Tribunal.[36] For instance, paragraph 17 of the Fifth Schedule to the FIRSEA provided that: "*any person dissatisfied with a decision of the Tribunal constituted under this Schedule may appeal against such a decision on a point of law to the Federal High Court ...*"

Yet, as noted by Abiola Sanni, notwithstanding the FIRSEA, the jurisdiction of the TAT had been challenged in several cases before it.[37] In those cases,[38]

---

[34] The Court of Appeal also held that the VAT Tribunal was not merely engaged in advisory role, but, that it engaged in deciding factual disputes between the parties.
[35] *Cadbury* (*supra* note 8).
[36] Sanni CITN, *supra* note 23 at 3.
[37] *Ibid.* at 3.
[38] *FIRS v General Telecom Plc* (2012) 7 T.L.R.N 108; and *Esso Exploration v FIRS* (2012) 8 T.L.R.N 45.

> ...taxpayers had raised preliminary objections that the TAT had no jurisdiction to hear and determine their cases on the basis that section 59 of the FIRSEA was inconsistent with the provisions of Section 251(a)&(b) of the 1999 Constitution. Yet, the TAT held in those cases that it had jurisdiction to determine them and that its jurisdiction was not inconsistent with that of the Federal High Court principally on the basis that it was not a court. Basically, the position of TAT was that there is no inconsistency between section 59 of the FIRS Act and section 251(a) and (b) of the 1999 Constitution, the TAT not being part of the judiciary but an administrative tribunal established by the Minister of Finance.[39]

The above now brings us to a study of the Nigerian laws on the issuance of notices of assessment, filing of objections and commencing tax appeals.

3.0 TAX AUDITS, ISSUANCE OF NOTICES OF ASSESSMENT, OBJECTION, AND DISPUTE RESOLUTION

3.1 Tax Audits

Generally, tax audits are the predicates for tax assessments. In a theoretical table outlining the Tax Appeal process in Nigeria, approaching the Federal/State High Court is the Fourth (4th) leg of the tax dispute resolution process.[40]With VAT, most disputes with the FIRS are resolved either at the audit or the objection stage. Although a taxpayer *may* directly file an appeal with the Federal/State High Court, it is important to understand the audit and objection stage, in order to understand the Nigerian Tax Appeals process. The process of tax audit (or "tax review") continuing to the issuance of assessment notices usually takes place along the following stages:

3.1.1 A Taxpayer files his or her tax returns under Section 15 of the 2004 VAT Act

Under Section 15 of the 2004 VAT Act, a taxable person is obligated to file VAT Returns within 30 days after the month in which the transaction took place.[41] After the taxpayer has filed his tax

---

[39] *supra* note 23 at 3. Sanni CITN, *supra note 23.*

[40] (a) Tax Audits, (b) Issuance of Notices of Assessment, (c) the Filing of Objections by the Taxpayers, and (d) Tax Appeals by the Taxpayers.

[41] *Allan Gray Investment Management Limited v FIRS* (2020) 48 TLRN 44.

return, the FIRS may issue an assessment without an audit or review, and this initial assessment does not indicate that the FIRS is satisfied with the return. The initial assessment does start the limitation period running. In general, absent of a misrepresentation, recklessness, or fraud, FIRS cannot reassess an individual taxpayer more than six (6) years after the date of the initial assessment.[42]

3.1.2 For reasons best known to FIRS, the FIRS selects the taxpayer's return for a review or audit

For reasons best known to the FIRS, it may select the taxpayer's return for a review or audit. For instance, unusually high input tax will likely lead to a review or audit, with FIRS auditor asking to see the taxpayer's books and records, invoices and receipts, and questions about areas of concern. The auditor's powers of discovery at this stage are quite broad. Under Section 11 of the VAT Act on "Records and Accounts", the taxpayer is to keep necessary records:

> A person who is registered under section 8 of this Act (in this Act referred to as "a registered person") shall keep such records and books of all transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due under this Act.

The taxpayer, throughout the review/audit, has the opportunity to rebut any suspicions or concerns the auditor might have. Generally, the auditor issues a ***Proposal Letter,*** which sets out the auditor's proposed assessment. The letter generally gives the taxpayer 30 days to make submissions against the proposed assessment. After reviewing the taxpayer's final submissions, if any, the auditor prepares an ***Audit Report*** that provides the factual and legal basis for the proposed assessment. The auditor's team leader reviews and approves the Audit Report.

[42] PITA (*supra* note 24) Section 54(5) and 55(1).

3.1.3 A notice of assessment is issued to the taxpayer that usually summarises the adjustments made by the assessment

The Notice of Assessment replaces the initial assessment originally issued to the taxpayer, and it fixes the taxpayer's liability for tax under the VAT Act unless the taxpayer successfully disputes it by filing an objection or, if that step is unsuccessful, by filing an appeal to the TAT.

3.2 Issuance of Notices of Assessment by FIRS

Section 18 of the 2004 VAT Act on "Effect of Failure to Render Returns" provides for the Best of Judgment ("Rule") regarding taxpayers' failure to file VAT returns

> Section 18: Where a taxable person fails to render returns or renders an incomplete or inaccurate returns, the Service shall assess, to the best of its judgment, the amount of tax due on the taxable goods and services purchased or supplied by the taxable person.

Also, Section 19 of the 2004 VAT Act on "Effect of Non-Remittance of Tax" provides for components of an assessment where the taxpayer fails to VAT funds collected from customers:

> (1) If a taxable person does not remit the tax within the time specified in section 16 of this Act, a sum equal to five per centum per annum (plus interest at the commercial rate) of the amount of tax remittable shall be added to the tax and the provisions of this Act relating to collection and recovery of unremitted tax, penalty and interest shall apply.
> (2) The Service should notify the taxable person or his agent of the tax due together with the penalty and interest and if payment is not made within thirty days of such notification, the Board may proceed to enforce payment as provided in section 16 of this Act.

The combined effect of the above provisions is to give the FIRS the power to issue notice of Assessment (including Additional Assessments) after conducting audits. Assessment of Tax is an assessment of tax as determined or ascertained in each respective tax law. An assessment may arise under the VAT Act. According to Lanre Akinsola, under Nigerian tax laws, there are corresponding obligations imposed on the FIRS as on the taxpayer. It is obligatory for FIRS to assess every taxable person who is chargeable with income tax.[43]Prior to 2007, personal service of an assessment was essential in establishing a tax payer's liability, via either physical service or by registered post. This was the holding in *Fashogbon v Layade.*[44] However, according to Akinsola, Section 9 of the 2011 PITA Amendments has amended Sections 41 and 44 of PITA, to now state that "…*a taxable person shall, with or without notice or demand, therefore file a return*…" Also, service can now be via *electronic mail.*[45] The law is now that even if the 30 days allowed to file an objection against a tax assessment had passed, *a Court of law will always have the right to question the validity of a tax assessment that has become final and conclusive if it is discovered that the assessment was made without jurisdiction. This is notwithstanding the fact that the taxpayer may have failed to object within the prescribed statutory time*.[46] If the RTA procedurally fails to afford the taxpayer with his right to object, the assessment will be invalid and can be challenged before the court.[47]It is apposite to mention the decision of Hon Edozie, JCA in *Commissioner of Finance v. Ukpong,*[48] which discussed the issue of "Additional Assessment" by stating that the FIRS may raise new assessments against the taxpayer, where:

a. The FIRS discovers that the taxpayer is liable to income that has not been assessed or that was assessed at a less amount than that which ought to have been charged;

   or

[43] Lanre Akinsola, *Personal Income Tax: Principles & Cases in Nigeria*, (ASCO Publishers, Lagos, Nigeria, 2014), at 83. ("Akinsola").
[44] (1999) 11 NWLR (Pt. 628) 543; See, also, Akinsola *ibid*. at 83-86.
[45] *Ibid.* per Akinsola, at 86.
[46] *Ibid.* at 86-91; See, also, *FBIR v. Joseph Rezcallah* (2010) 2 TLRN 59.
[47] *Ibid.* per Akinsola, at 91-94; See, also, *Okupe v FBIR*, (2010) 2 TLRN 128.
[48] (2000) 4 NWLR (Pt. 653) 386.

b. The FIRS is of the opinion that the taxpayer is liable to income that has not been assessed or that was assessed at a less amount than that which ought to have been charged[49]

In *S.E. Ola v. FBIR*,[50] it was held that the implication of an additional assessment is to charge the taxpayer to an amount or additional amount as ought to have been charged in the first place.[51]

3.3 Objection

Since January 2020, Section 29 of the 2019 Finance Act now amends Section 58 of PITA to allow Objection to Notices of Assessment to be filed by the taxpayer while using *electronic mail*. This should apply to Objections under the 2004 VAT Act, as well. Nigerian tax laws allow any person who feels aggrieved to request a formal change to an official decision regarding tax assessment made by the FIRS. If the FIRS' audit procedurally fails to afford the taxpayer with his right to object, the assessment will be invalid and can be challenged before the court.[52] A taxpayer who feels that the FIRS has misapplied the law, came to an incorrect factual finding, abused its powers, was biased, considered evidence which FIRS should not have considered or failed to consider evidence that FIRS should have considered in making an assessment, may object against such an assessment. Generally, an objection to a tax assessment involves an interplay of the rules of administrative law and taxation laws. A taxpayer *may* file an objection, even though, in Nigeria, he may appeal directly to the TAT.[53]However, the taxpayer begins the process by completing a notice of objection in writing and sending it by mail or delivering it to FIRS in an Office or Taxation Centre close to the place where the facts substantially occurred. Thus, to dispute the

---

49 Akinsola (*supra* note 43) at 94-98.
50 (2011) 5 TLRN 136.
51 Akinsola (*supra*note43) at 98-103.
52 *Ibid.* at 91-94; See, also, *Okupe v FBIR*, (2010) 2 TLRN 128.
53 *Oando v FIRS* (2011) 4 TLRN 113 *(Oando I).*

assessment, the taxpayer must lodge a notice of objection in writing stating precisely the grounds of the objection within the prescribed time limit, sign it and return it to FIRS. There is no special form for objections and the most tax statutes in Nigeria do *not* prescribe a form, and so it is not necessary to use it. In the Canadian case of *Lester v. The Queen*,[54] a letter was held to constitute a valid notice of objection. However, to avoid confusion and to ensure that the objection is not misdirected somehow, it is advisable to use a prescribed form, where such exists. The objection must be filed on the day that is 30 days after the day of mailing of the notice of assessment. The FIRS will thereafter send a letter to the taxpayer (with a copy to the taxpayer's representative) acknowledging receipt of the notice of objection. The director of the tax centre in charge of appeals then assigns the objection to an appeals officer for review. The appeals officer will review the objection, the taxpayer's submissions, the tax return in question and the auditor's report and working papers. The appeals officer will also review the provisions of the relevant tax statute, case law and FIRS' own publications on the law.[55] Most times, the appeals officer usually asks the taxpayer for further submissions or additional documentation or information. Thereafter, the appeals officer will usually send a proposal letter outlining FIRS' position, and then the taxpayer will make final submissions. The appeals officer then prepares an appeals report setting out the officer's conclusions on the facts and law and the disposition of the objection. The officer can reverse, vary or confirm the reassessment under objection. The appeals officer's team leader reviews and approves the report. At this stage, FIRS issues either a new notice of reassessment to vary or reverse the assessment under objection or a notice of confirmation confirming that the assessment under objection was correct as far as FIRS is concerned. If the taxpayer wishes to

[54] 2004 TCC 179.

[55] For example, there are numerous FIRS' Circulars on various subjects that are meant to guide the taxpayers and tax authorities on certain areas of tax laws.

dispute the new reassessment or the reassessment that was confirmed, the taxpayer can file an appeal with the TAT. The FIRS must always comply with administrative law principles that are applicable in Nigeria, as was noted in *Okupe v FBIR*,[56] where the court invalidated additional assessments issued by the FBIR on the grounds that the Notices of Assessments did not give the taxpayer his right to object within 30 days and also because the Notices showed that "*...even if he was (sic) to make any such objection it had certainly been refused by the [FBIR]*".[57] It is unconstitutional to finalize a tax assessment where the taxpayer is denied the statutory right to Object.[58] A Notice of Additional/Amended Assessment issued by the FIRS must not be unambiguous, and it cannot "double" as both a notice of additional assessment and a Notice of Refusal to mend (NORA), as such would preclude a taxpayer from exploring the robust procedures for review laid down under the appeal procedure.[59] Such would also deprive the taxpayer of his statutory right to object to the assessment and thus decide the rights and obligations of the taxpayer without affording him the opportunity to make any representation in violation of his fundamental right to fair hearing guaranteed by section 36 of the Constitution.[60]

3.4 Appeals Before the TAT

Paragraph 17 of the Fifth Schedule to the FIRSEA allows an appeal for the aggrieved party, and this by way of a seeking a judicial review. When a dispute arises, the taxpayer usually seeks

---

[56] (2010) 2 TLRN 128, at 148.

[57] Akinsola, (*supra*note43) at 36-39.

[58] *Ponticelli Upstream v Federal Inland Revenue Service* (unreported judgement in Appeal No: TAT/LZ/CIT/029/2017).

[59] *Ibid.*

[60] *Ukpong v Commissioner* 4 ALL NTC 349 at 360, where the court pronounced that: "the constitution … guarantees a right to fair hearing in the determination of one's rights and liabilities. The determination of tax payable by any taxpayer is subject to this protection too. That is why there are provisions in the law for objections, appeal and revisions ... the breach of a right to fair hearing renders any proceeding null and void, no matter how competently or brilliantly handled".

judicial review through suits seeking either (a) an Order of *Certiorari* or (b) an Order of *Prohibition*.[61] According to Akinsola:

> Judicial Review is a court's power to review the actions of other branches or levels of government, especially the court's powers to invalidate legislative and executive (administrative) actions as being unconstitutional.[62]

Akinsola also stated that:

> The purpose of judicial review is to ensure that inferior courts and public authorities do their job and that they do it properly. The court, in exercising their judicial review powers, may grant certain remedies to aggrieved persons who invoked the judicial review powers of the court.[63]

Akinsola further defined *Certiorari* and *Prohibition* thus:

> Certiorari is the process by which superior courts review the decisions of inferior Tribunals or statutory bodies.[64]
>
> ***
>
> Prohibition is an order of the court, which restrains a judicial or a person with authority required to act judicially from embarking upon a course of action which may adversely affect the legal rights of another person.[65]

The above are the legal theories underpinning the appeal system. At this juncture, it is apposite to ask: *What is Tax Appeal?* It is a process whereby a taxpayer who is dissatisfied with an assessment applies to the TAT to consider and change the decision of the FIRS on certain grounds. After the TAT has decided the case, either a taxpayer or FIRS may appeal to the FHC and further to the Court of Appeal and finally to the Supreme Court. Although the originating appeal (appeal to the

61 Akinsola (*supra* note 43) at 35-39.
62 *Ibid.* at 35.
63 *Ibid.*
64 *Ibid.*
65 *Ibid.* at 36.

TAT) ought to be at the instance of the taxpayer the FIRSEA and TAT Rules contain anomalous provisions to the effect that the FIRS may appeal to TAT.[66]

4.0 LEGAL FRAMEWORK FOR APPEAL-SECTION 59 FIRSEA AND 2010 TAT RULES

Section 59 of FIRSEA governs the jurisdiction of the TAT, and it provides:

> 59(1)- A Tax Appeal Tribunal is established as provided for in the Fifth Schedule to this Act.
> (2) The Tribunal shall power to settle dispute arising from the operation of this Act and under the First Schedule.

To proceed before the TAT, a taxpayer (individual or corporate) that is aggrieved by an assessment or a demand notice from FIRS may file an *objection* to the assessment with FIRS.[67] The FIRS will either amend or refuse to amend the assessment. Where FIRS refuses to amend the assessment, the RTA will then issue a Notice of Refusal to Amend ("NORA"). Upon receiving the NORA, and within 30 days,[68]the taxpayer may file an appeal with the TAT.[69] Both the tax authority and the taxpayer are allowed by the *5th schedule of the FIRSEA*, to appeal to the TAT if they are aggrieved by the action or decision of either party. *Section 13(l) of the 5th schedule of FIRSEA* allows a person who is aggrieved by an action, assessment or demand notice made on him by the tax authority to appeal against that decision or action or assessment and by *Section 13(2)of the 5th schedule of FIRSEA*, the appeal must be done within 30 days of receipt of such action or assessment or demand notice necessitating the appeal. Where the taxpayer fails to comply within the period allowed and has not given sufficient cause for the delay, the assessment or demand notice or action by the tax authority would become final and conclusive and so the tax authority may go after

[66] FIRSEA (*supra* note 10) at Section 14 of the 5th Schedule.
[67] *Ibid.*
[68] *Ibid.* at Section l3(2) of the 5th Schedule and TAT Procedure Rules (n 12) at Order III, Rule 2.
[69] *Ibid.* at Section 59, and at Section 11 of the 5th Schedule and TAT Order (n 11) at Paragraph 5.

him/her to recover the outstanding tax liabilities and may charge interest and impose penalties.[70] Similarly, by virtue of *Section 14 of the 5th Schedule*, the tax authority if aggrieved by the non-compliance of a taxpayer may appeal to the jurisdiction of the TAT where the taxpayer is resident for the prosecution of the defaulting taxpayer. The Tribunal can only give its decision/judgment after the hearing of all the evidence and adoption of the written addresses of the parties, if any. Where the negotiation or out of tribunal settlement option is adopted, it dispenses with leading evidence, except in so far as to state that the terms of settlement were freely entered into, cross-examination, re-examination, written addresses, etc. This decision/judgment may be unanimous or taken by a majority of the Commissioners and it shall be recorded as such. Where there is a tie, the Chairman would have a casting vote. The decision/judgment of the Tribunal may be to confirm, reduce, increase or annul the assessment in contention or make any such other order[s] as it deems fit. Every decision/judgment or ruling shall be recorded in a document which, except in instances of decision by consent judgment, shall contain a statement of the reasons of the decision and it shall be signed by the chairman. The Chairman is the only person empowered by statute to sign judgments. Every interested party may apply to the Secretary of the Zonal Tribunal for a certified true copy of the judgment or ruling within thirty [30] days of the date of the judgment/decision. The judgment of the TAT Tribunal shall be enforced as if it were a judgment of the Federal High Court upon registration of a copy of the judgment or award with the Chief Registrar of the Federal High court by the party seeking to enforce the award or judgment. However, where the tax authority or any person is dissatisfied with a decision/judgment of the Tribunal, an appeal against such decision/judgment on point of law lies to the Federal High court upon giving notice in writing to the Secretary to the Zonal Tribunal within thirty [30] days after the date on which the

---

[70] *Ibid.* at Section 13[3] of the 5th Schedule.

decision/judgment was delivered. The Secretary shall upon receipt of the Notice of Appeal cause the notice to be given to the Chief Registrar of the Federal High Court along with the exhibits tendered at the hearing before the Tribunal. Where a party is dissatisfied with the decision/judgment of the Federal High Court, he/she may appeal to the Court of Appeal and may even go up to the apex court - the Supreme Court of Nigeria.

5.0 RECOMMENDATIONS AND CONCLUSION

In concluding, this Paper makes recommendations towards bringing the Nigerian tax appeal procedure at par with similar jurisdictions at common law: First, it proposes a system that identifies the nature and characteristics of different kinds of tax appeals from the simple and informal appeals to the most complex and formal appeals that require formal hearings by legal minds, thereby separating them for ease of efficient adjudication. Second, it proposes the introduction of the sanction and cost regime to instil discipline and rule of law in the tax system, and, *ipso facto*, speedy resolution of all appeals. Third, it recommends for more transparency in the selection of the panel of judges and other aspects of administration of tax laws and statutes in Nigeria. Fourth, it advocates a new system for tax and duty appeals under a unified two-tier Tax Tribunal composing both the First-tier Tribunal and the Upper Tribunal of the UK model. It argues that such tribunals must be independent of FIRS and must be administered by the Federal Ministry of Justice, rather than the Ministry of Finance. In essence, to further abrogate the defunct VAT Tribunal and the BAC, which, hitherto, dealt with indirect and direct tax appeals, respectively, the TAT must be strengthened via constitutional amendments *viz-a-viz* the appellate role of the Federal High Court as the court to hear appeals against TAT's decisions.

TAX IN EMERGING NIGERIA: BRIDGING THE GAP BETWEEN FISCAL POLICIES AND ECONOMIC REALITIES

Nelson Iheanacho, Abisola Fayinka, Joseph Ayinde, Fawaz Haroun, Abdulrasaq Ariwoola & Oluwatofunmi Isaac Aduloju

1.0 INTRODUCTION

The global economy was thrown into disarray as a result of the COVID-19 pandemic, and at some point, there was a consensus among top economists that the pandemic would plunge the world into a global recession.[1] The Nigerian economy was not insulated from the economic crisis, and as a result of the pandemic, an economy already on a slippery slope has fallen even further and the effect thereof was that Nigerian citizens were facing harsh economic struggles. One might wonder, how has Nigerian fiscal policy attempted to mitigate the harsh economic realities faced by Nigerians? The answer to this question would form the backdrop for an examination, as this article seeks to undergo, of how the gap between fiscal policies and economic realities can be bridged, and the role that taxation can play in effecting this.

One primary role of government is to provide basic amenities that would facilitate economic growth and development, and one of the means of generating revenue to facilitate this is taxation. Taxation can be defined as *"a universal contrivance whereby the government imposes upon its citizens a compulsory financial levy or contribution for the benefit of a society as a whole"*.[2]

[1] Financial Times, "Global Recession Already Here, Say Top Economists" (*Financial Times*, 15 March 2020) available athttps://www.ft.com/content/be732afe-6526-11ea-a6cd-df28cc3c6a68(accessed 14 March 2021).
[2] Richard Toby, *Theory and Practice of Income Tax* (Sweet and Maxwell, 1978).

Taxation undoubtedly has a key impact on the Gross Domestic Product (GDP) and, generally, the Nigerian economy. Studies have revealed a very positive and significant relationship between the components of tax revenue and the growth of the Nigerian economy.[3]For instance, a test carried out on the impact of non-oil tax revenue on economic growth in Nigeria, showed that it has a positive impact.[4] Furthermore, research on the impact of Value Added Tax (VAT) on revenue generation in Nigeria revealed that VAT had a significant effect on revenue generation in Nigeria.[5] Lastly, an examination of the impact of Petroleum Profit Tax (PPT) on economic growth revealed there was a nexus between the tax and GDP growth of Nigeria.[6]

This article discusses the economic realities of Nigeria, the role of proper fiscal policies, and analyses how Nigeria can utilize fiscal policies to address its economic realities. Finally, a comparative analysis of fiscal policies adopted by developed countries to boost their economic growth during the pandemic will be made.

2.0 NIGERIA'S ECONOMIC REALITIES DURING THE PANDEMIC

The Nigerian economy was already struggling before the pandemic, as economic growth was unstable, and merely facilitated by a few sectors. For instance, within three years, three out of 19 major sectors contributed 91 percent to Nigeria's economic growth, and the contribution of the other sectors was insignificant to economic growth.[7]

---

[3] Regina G Okafor, "Tax Revenue Generation and Nigerian Economic Development" (2012) *4(19) EJBM 49- 57.*

[4]James A Akwe, "Impact of Non-oil Tax Revenue on Economic Growth: The Nigerian Perspective" (2014) *3(5) IJFA 303- 309.*

[5]Adekunle A Onaolapo, Remi J Aworemi and Oladayo A Ajala, "Assessment of Value Added Tax and its Effects on Revenue Generation in Nigeria" (2013) *4(1) IJBSS 220.*

[6]Gabriel N. Ogbonna and Appah Ebimobowei, "Impact of Tax Reforms and Economic Growth of Nigeria: A Time Series Analysis" (2012) *4 (1) CRJS 62*.

[7] Proshare, "Four Priorities for the Nigerian Economy in 2021 And Beyond" (*Four Priorities for the Nigerian Economy in 2021 and beyond,* 2021) available

This already fragile economy was further exposed by the pandemic, as the Nigerian economy slipped into a recession in the third quarter of 2020 following a GDP contraction of -3.62%.[8] The loss in real output from COVID-19 and other disruptions in 2020 was estimated at N5.8 trillion; in nominal terms (not accounting for the effects of inflation), this loss was estimated at N11.6 trillion.[9] Other problems such as job and income losses became very significant.

In 2020, the price of oil dropped from $60 per barrel to as low as $30 per barrel in March. This affected the 2020 budget, which was planned with the oil price at $57 per barrel.[10] The fall in oil price rendered the budget impractical, and a new one had to be drafted. The Nigerian stock market was also affected by the COVID-19 pandemic, as investors lost over NGN2.3 trillion (US$5.9bn) barely three weeks after the first case of COVID-19 was confirmed and announced in Nigeria on 28 January 2020.[11] In June 2020, total public debt stood at NGN31 trillion.[12]

The closure of land borders, VAT increase, and structural challenges in 2020, unfortunately, led to increased prices of goods and services.[13] Additionally, Nigeria's annual inflation rate climbed for a 17th straight month to 16.47 percent in January 2021.[14]

---

athttps://www.proshareng.com/news/Reviews%20&%20Outlooks/Four-Priorities-for-the-Nigerian-Economy-in-2021-and-Beyond/55539(accessed 14 March 2021).

[8] Proshare, "Nigeria 2021 Outlook: COVID – 19 Recession and the Long Road to Economic Recovery" (*Proshare*, 15 December 2020)available at https://www.proshareng.com/news/Reviews%20&%20Outlooks/Nigeria-2021-Outlook--COVID-19-Recession-and-the-Long-Road-to-Economic-Recovery/54762(accessed 14 March 2021).

[9] *Ibid*.

[10] Peterson K Ozili, "COVID-19 Pandemic and Economic Crisis: The Nigerian Experience and Structural Causes" (*SSRN*, 2 April 2020) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3567419 (accessed 14 March 2021).

[11] *Ibid*.

[12] *Supra* n 8.

[13] *Ibid*.

[14] Trading Economics, "Nigeria Inflation" (*Trading Economics*, 2021) available at https://tradingeconomics.com/nigeria/inflation-cpi(accessed 14 March 2021).

3.0 THE ROLE OF CALCULATED FISCAL POLICIES IN FORGING ECONOMIC REALITIES AND NIGERIA'S EXPERIENCE

Well formulated and implemented fiscal policies can have a positive effect on the economy of any country, thereby facilitating better economic realities. Fiscal policy refers to a government's adjustment of spending and taxes to achieve certain macroeconomic objectives. Economic growth, price stability, the balance of payments equilibrium, and exchange rate stability are the most important macroeconomic objectives that governments primarily focus on.[15] What then is the role of fiscal policies vis-a-vis economic growth? This question will be subsequently answered.

It has been opined that fiscal policy is central to the health of any economy, as the government's power to tax and to spend affects the disposable income of the citizens, corporations, as well as the global business climate.[16] The theory of British economist John Maynard Keyes has been said to form the bedrock fiscal policy, and it states that the government can influence macroeconomic productivity by increasing or decreasing tax levels and public spending. This influence then curbs inflation, increases employment, and maintains a healthy value of money.[17]

Additionally, fiscal policy is undoubtedly one of the most important tools used by governments to achieve macroeconomic stability of the economy of most developing countries.[18] While no consensus on the impact of fiscal policy on economic activity has been reached, researchers

[15] Olivier Blanchard "The Crisis: Basic Mechanisms, and Appropriate Policies" (*IMF*, April 2009) available at https://www.imf.org/external/pubs/ft/wp/2009/wp0980.pdf(accessed 14 March 2021).

[16] Tasnia Symoom, "The Impact of Fiscal Policy on Economic Growth: Empirical Evidence from Four South Asian Countries" *Graduate Degree Thesis, Eastern Illinois University2018*.

[17] Sylvia Uchenna Agu and others, "Fiscal Policy and Economic Growth in Nigeria: Emphasis on Various Components of Public Expenditure" *Sage Open Journals, October-December2015* available at https://journals.sagepub.com/doi/pdf/10.1177/2158244015610171(accessed 15 March 2021).

[18] Hillary Chinemerem, "Impact of Fiscal Policy on Economic Growth in Nigeria" (Research Gate, 24 March 2020) available at https://www.researchgate.net/publication/340127683_impact_of_fiscal_policy_on_economic_growth_in_nigeria(accessed 15 March 2021).

generally agree on the importance of interdependencies between fiscal and economic developments.[19] This consensus further buttresses the point that fiscal policies can play a vital role in economic growth. Unfortunately, over the years, Nigeria has failed to maximize the gains that can be derived through proper fiscal policies.

The lack of proper and well-executed policies by the government has not aided economic growth, and this will be analysed briefly. The contribution of fiscal policies in the facilitation of economic growth in Nigeria was examined using the Solow Growth Model estimated with the use of the OLS method, and the conclusion was that fiscal policies have not been effective in the promotion of sustainable economic growth in Nigeria. It was further advised that the federal government make specific policies to achieve sustainable productivity in all sectors of the economy.[20] The impact of fiscal policy on the economic growth of Nigeria was assessed utilizing the Augmented Dickey-Fuller (ADF) test of stationarity and granger causality test. The result revealed that taxation has an insignificant negative influence on economic growth although its granger causes economic growth.[21]

4.0 FISCAL POLICIES DEPLOYED THROUGH THE FINANCE ACT 2020 TO ADDRESS ECONOMIC REALITIES

As the economic consequences of the spread of the pandemic started setting in on the Nigerian authorities, the government sprung to action in the formulation of a recovery plan to cushion the negative effects of the pandemic on individuals, businesses, government expenditure, and revenue

[19] Anja Baum and Gerrit Koester, "The Impact of Fiscal Policy on Economic Activity over the Business Cycle – Evidence from a Threshold VAR Analysis" (*Research Gate*, January 2011) available at https://www.researchgate.net/publication/228738781_The_impact_of_fiscal_policy_on_economic_activity_over_the_business_cycle_-_evidence_from_a_threshold_VAR_analysis(accessed 15 March 2021).
[20] Olawunmi Omitogun and T.A Ayinla, "Fiscal Policy and Nigeria Economic Growth" (2008) *5 (2) JRND 19-29.*
[21] *Supra* n 18.

collection.[22] This push birthed the Finance Act 2020, which sought to modify some amendments introduced by the Finance Act 2019 and streamline it to suit the government's fiscal plans and current economic realities.

The Finance Act 2020 was, therefore, a response to the unprecedented economic downturn brought by the COVID-19 pandemic and a catalyst to enable the move by Nigeria's Tax Authorities to increase the adoption of technology, raise non-oil tax revenue, extend timelines for the filing of returns and waive penalties, amongst several other administrative measures implemented.[23]It is also a significant landmark in the government's commitment to supporting economic recovery within the country, relieve taxpayers of tax burdens, ensure fiscal responsibility and institutionalize the Ease of Doing Business (EODB) in Nigeria.[24]

The Act amended fourteen (14) principal tax and tax-related legislation.[25] Significant changes introduced were aimed at spurring economic recovery post-pandemic in the country, boosting government's revenue, preventing base erosion, and introducing the adoption of technology in administrative measures that would help ease difficulties often experienced in certain sectors of the economy, such as tax administration, among others. Notable innovations of the Act include the exemption of minimum wage earners from tax, the tax concessions granted to the aviation industry,

[22]KPMG, "Finance Act, 2020 Impact Analysis" (*KPMG,* February 2021) available at https://home.kpmg/content/dam/kpmg/ng/pdf/tax/kpmg-finance-act-2020-impact-analysis.pdf(accessed 16 March 2021).
[23]Banwo&Ighodalo, "Finance Act 2020: Highlights of Latest Developments in Nigeria's Tax Regime" (Grey Matter Tax Digest, 26 January 2021) available at https://banwo-ighodalo.com/assets/grey-matter/a1f597e8a27b39e4705d0bd2c6155e7b.pdf (accessed 16 March 2021).
[24]*Supra* n 20.
[25]*Supra* n 18.

reduction in tax burdens on the vulnerable parts of the economy such as the airline, tourism, and hospitality sectors who have been hit the hardest.[26]

The Finance Act 2020, therefore, aligns Nigeria's policies with global practice in reducing the negative impact of the pandemic. Also, it would aid economic resurgence at a time when inflation has worsened the already depleted economic conditions in the country. With more disposable income and cash, citizens and businesses would be able to afford their needs and run their operations with ease. The changes will also help bridge the gap between tax authorities and taxpayers in the collection and administration of taxes in the country. With more business-friendly policies, a working relationship would be fostered between tax authorities and taxpayers, therefore preventing problems such as aggressive taxation and improving the ease of doing business in the country.

5.0 COMPARATIVE ANALYSIS OF FISCAL POLICIES ADOPTED IN COUNTRIES ACROSS THE WORLD

To prevent a total economic meltdown, tax authorities across the globe have implemented numerous policies, which include but are not limited to mitigating cash flow difficulties, minimizing compliance burdens, and introducing tax incentives to assist businesses and citizens, with some countries deferring or waiving taxes.[27]

[26] *Supra* n 20.

[27] Yasushi Suzuki, "How Can Tax Agencies Tackle the Impact of COVID-19?"(*Asian Development Blog*, 26 May 2020) available at https://blogs.adb.org/blog/how-can-tax-agencies-tackle-impact-covid-19(accessed 16 March 2021).

In the United Kingdom (UK), the government has infused fiscal stimulus into the economy to support businesses, encourage investments, and gear economic recovery.[28] The government has however relied heavily on borrowing to fund its increasing expenditure. Upon an economic recovery, there were numerous tax increases to service its piling debts.[29] Similar policies have been implemented in countries like Malaysia, Australia, Cambodia, and Japan, where the government has remained committed to the continued implementation of tax incentives to support businesses and help citizens recover from the adverse effect of the pandemic.[30] Specific measures to boost cash flow to businesses have been observed in countries like Australia, Cambodia, Japan, and Indonesia, where taxes have been deferred, waived, or reduced. Tax refunds, especially for VAT, have also been adopted in Australia and Indonesia, and in New Zealand, tax loss provisions were enhanced to ease the financial burden of businesses and citizens.[31]

In Botswana, the government sought to improve domestic revenue mobilisation through modernization of the tax collection systems to make them more efficient, raising some tax rates, and exploring new sources of tax revenue.[32] However, in some countries like Kenya, policies being reintroduced have posed significant challenges for business owners and citizens. The government, in its Tax Laws (Amendment) (No.2) Act 2020, reinstated corporate taxes and Pay-As-You-Earn rates back to 30 percent, a move which might inflict some form of economic hardship on those

[28] IMF, "Policy Responses to COVID-19" (*IMF,* 10 March 2021) available at https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19#U(accessed 16 March 2021).
[29]*Ibid.*
[30] OECD, "Tax and Fiscal Policy in Response to the Coronavirus Crisis: Strengthening Confidence and Resilience" (*OECD*, 19 May 2020) available at http://www.oecd.org/ctp/tax-policy/tax-and-fiscal-policyin-response-to-the-coronavirus-crisis-strengthening-confidence-and-resilience.htm(accessed 17 March 2021).
[31]*Ibid*.
[32] KPMG, "Botswana Tax and Budget Summary 2021/2022" (*KPMG*, 1 February 2021) available at https://assets.kpmg/content/dam/kpmg/bw/pdf/Botswana%20Tax%20and%20Budget%20Summary%202021-2022.pdf(accessed 17 March 2021).

directly affected.[33] Nonetheless, certain tax incentives continue to apply, majorly to the benefits of the locals.[34]

6.0 RECOMMENDATIONS

The majority of the problems associated with taxation in Nigeria have been in areas of formulation of policies, implementation, and administration of taxes. The Finance Acts of 2019 and 2020 have addressed some of these issues, but there is still a lot that needs to be done. The disruption in economic activities caused by the pandemic presents an opportunity for the Nigerian authorities to restructure existing taxes and streamline them to the current economic realities of the country.[35]

Considering the fact that the country is gradually recovering from the economic turndown, it is suggested that policies should be aimed at driving economic recovery and growth in the country rather than settling debts.[36] Tax authorities should refrain from the aggressive methods with which they have employed in administering taxes in the past to work hand in hand with taxpayers in the administration and collection of taxes. There are several initiatives the tax authorities could implement to improve the effectiveness of tax collection, including the use of accelerated digitization.[37] With the widening influence of the digital economy, the digitalisation of tax administration will not only aid transparency and efficiency but would also generate more revenue for the government while blocking out leakages.[38]

---

[33] KPMG, "The Tax Laws (Amendment) (No.2) Act,2020 KPMG Analysis" (*KPMG,* January 2021) available at https://home.kpmg/content/dam/kpmg/ke/pdf/tax/KPMG%20Analysis%20of%20the%20Tax%20Laws%20Amendment%20(No.%202)%20Act%202020%202.pdf(accessed 17 March 2021).
[34] *Ibid.*
[35] OECD, "OECD Secretary-General Tax Report to G20 Finance Ministers and Central Bank Governors – February 2021, OECD, Paris"(*OECD,* February 2021) available at www.oecd.org/tax/oecd-secretary-general-tax-report-g20-finance-ministers-february-2021.pdf(accessed 17 March 2021).
[36] *Supra* n 28.
[37] Sanjeev Gupta and others eds, *Digital Revolutions in Public Finance* (International Monetary Fund, 2017).
[38] *Ibid.*

Also, the government should be more strategic with their actions and planning through a careful prioritization of what is critical for taxpayers and other parts of government while cutting out what could be deferred. With the rate at which the national debt is increasing, much of the budgetary allocation should be to vital investment areas such as infrastructure and reskilling. Taxation, although necessary for debt servicing, could hamper economic recovery and inflict more economic hardship on the country if there is an increase in the current rates.[39] Thus, the government should introduce more tax incentives that would support struggling but viable businesses and individuals while generating revenue from businesses in sectors that have recorded immense growth since the start of the pandemic.

Further, the brunt of the pandemic was felt in Nigeria because of the negative impact global lockdowns had on the price of crude oil. It also exposed the economic vulnerability as a mono-economic country and the need for the country to diversify into other sectors to drive sustainable economic growth. In using taxation to fill this revenue gap, the government could look to land, property, energy, and carbon taxes as alternative revenue generation means.[40] Developing countries, Nigeria inclusive, have not taken advantage of taxes on land and property. Land and property taxes account for 0.5 percent of GDP across sub-Saharan African countries, which is low compared to around 2 percent in Organization for Economic Co-operation and Development (OECD) countries.[41] An OECD report revealed that energy taxation is low in developing and emerging economies and could generate revenue equivalent to around 1 percent of their GDPs if effectively taxed.[42] This shows that there are lots of untapped potentials in alternative subjects of

[39]Rabah Arezki and Grégoire Rota-Graziosi, "Tax Policy for the Post-Covid Era"(*VoxEU*,3 February 2021) available at https://voxeu.org/content/tax-policy-post-covid-era(accessed 17 March 2021).
[40]*KPMG* [n 33]
[41]Riël Franzsen and William McCluskeyeds, *Property Tax in Africa* (Cambridge MA: Lincoln Institute of Land Policy2017).
[42]*Supra* n 33.

taxation which could serve as a viable substitute to an increase in income and consumption taxes as the country climbs the recovery ladder.

7.0 CONCLUSION

As previously stated, the economic reality in Nigeria is overwhelmingly unfavourable, and this issue, although exaggerated by the COVID-19 pandemic, has been an underlying problem in Nigeria. Fiscal policies, on the other hand, can be used to alleviate the harsh realities faced, and this is possible because certain countries have responded with well-thought-out fiscal policies in light of their respective countries' economic circumstances.

Although the federal government has struggled with utilizing fiscal policies appropriately, the Finance Act 2020 appears to be an improvement. However, better policies can be implemented, and it is hoped that the Nigerian government can take important cues from the suggestions made in this article, to create an environment where Nigerians do not merely survive but thrive.

TOWARDS THE DIGITISATION OF THE NIGERIAN TAX ADMINISTRATION: CHALLENGES AND PROSPECTS

Alonge Gloria, Venus Chigoziri & Ayinde Joseph

1.0 INTRODUCTION

An effective taxation regime is hinged on the tripartite pillars of tax law, tax policy, and tax administration. While tax laws and policies are fundamental, they tend to be bare words, likened to a bone without flesh if not appropriately implemented; this highlights the crucial role of tax administration. Tax administration is essential in ensuring the effective and efficient administration and implementation of tax policies and laws. In ensuring ease of operations, tax administration systems continually change to reflect societies' peculiarities and current realities. According to the Organisation for Economic Co-operation and Development (OECD), the availability of new technologies provides new opportunities for tax administration to ensure the effectiveness of the administration process and reduce administrative burdens.[1] Also, the OECD recognises the increasing move towards e-administration globally. On average, e-filing rates for personal income tax and corporate income tax are now above 70% and 85%, respectively, with the use of digital contact channels constantly increasing and traditional channels decreasing.[2]

This paper analyses the potential positive impact of digitalised tax administration if adequately implemented and investigates Nigeria's current tax administration structure. This essay also recognises the challenges posed by adopting the digitalisation of tax administration but proposes

[1] OECD 'Tax Administration Series' September 23, 2019.
[2] Ibid.

viable solutions to ensure that maximum efficiencies are obtained from the tax system by embracing digitalisation.

2.0 PROSPECTS: THE NEED FOR DIGITISATION OF TAX ADMINISTRATION IN NIGERIA

Nigeria will benefit from digital tax administration because it will address challenges in two key respects: the traditional tax system and the global digital economy.

Tax administration in Nigeria is beset by issues of manual computation, which leads to tax filing complexity, inaccuracies, revenue generation loss, and poor tax compliance.[3] When records are manually compiled over a long period, retrieval is unreliable because these records are easily prone to manipulation and disasters. Taxpayers are also required to visit tax offices to file returns, which proves inefficient.[4] These issues in the tax system are on full display, as social distancing is imposed to limit the spread of COVID-19. On the other hand, according to the Nigerian Investment Promotion Commission, in 2017, the Nigerian digital economy will generate $88 billion and create three million jobs by December 2021.[5] However, given that foreign digital transactions require little or no physical presence of the transacting parties, Nigeria faces challenges taxing the enormous income generated by the digital economy.[6] The Internally Generated Revenue (IGR) in Nigeria does not reflect the expected value of the country's digital economy as, according to a National Bureau of Statistics (NBS) report, the aggregate IGR for the 36 states and FCT in the first

[3] "Key Considerations for Improving Electronic Tax Administration in Nigeria - KPMG Nigeria",Available at:(KPMGJuly 4, 2020) https://home.kpmg/ng/en/home/media/press-releases/2020/07/key-considerations-for-improving-electronic-tax-administration-in-nigeria.html(accessed 5 August 2021).
[4] Ibid.
[5] Ibid.
[6] Ajala MOO and Adegbie FF, "Effects of Information Technology on Effective Tax Assessment in Nigeria" (2020) 12 Journal of Accounting and Taxation 126.

half of 2019 was only N694 billion, compared to N597 billion in the same period the previous year.[7]

A digitalized tax administration will largely resolve these tax issues. Korea is a shining example.[8] It launched its Home Tax Service (HTS) in 1999, making more than 90% of Korean taxpayers file and report their taxes online.[9] Taxpayers and tax officials do not have to visit a tax office and enter taxpayer information manually, respectively. The HTS improved efficiency, tax-filing return rate, tax revenue and tax compliance.

On the other hand, the effective rate of the HTS for Korea's digital economy is impressive. For example, in 2015, filing electronic tax returns was 91.0% for global income tax and 98.9% for withholding tax.[10] Thus, Korea's digital tax administration system has solved the problems that Nigeria is currently experiencing.

3.0 CURRENT EFFORTS TOWARDS THE DIGITALISATION OF TAX ADMINISTRATION IN NIGERIA

Currently, the three tiers of government are charged with tax administration in Nigeria, with each tier having its tax authority. These tax authorities include the Federal Inland Revenue Services (FIRS) at the federal level[11] and the State Board of Internal Revenue (SBIR) at the various States.

---

[7] "Urgent Need to Bolster States' IGR", (Proshare *January 10, 2020*) Available at:https://www.proshareng.com/news/State%20and%20Local%20Govts%20/Urgent-Need-to-Bolster-States--IGR/48740(accessed 5 August 2021).
[8] Awasthi R et al., "The Benefits of Electronic Tax Administration in Developing Economies: A Korean Case Study and Discussion of Key Challenges", (2019) Available at:https://www.semanticscholar.org/paper/The-Benefits-of-Electronic-Tax-Administration-in-%3A-Awasthi-Lee/1f24934e4968cc4c0e4a42c26915a7b1b5ffa4ea(accessed 5 August 2021).
[9] *Ibid*.
[10] *Ibid*.
[11] *Federal Inland Revenue Service (Establishment) Act 2007.*

Also, local governments administer rates and levies through various councils. It is imperative to note that these tax authorities have incorporated digitalisation into tax administration processes in response to the global shift towards digitalisation. For example, the FIRS in 2013 embarked on a project tagged Integrated Tax Administration System (ITAS). This project aimed to simplify a once onerous manual tax administration process, thereby ensuring tax compliance through technology.[12]

In 2017, the FIRS also introduced six electronic services ranging from e-registration to the provision of e-Tax Clearance Certificates.[13]In addition, state tax authorities have also made efforts towards the digitalization of the tax administration system. For instance, the Lagos State Inland Revenue Services (LIRS) in 2019 launched its Enterprise Tax Administration System (eTax), a digital solution to tax administration, enabling online registration and payment of taxes.[14]

The most recent effort towards digitalizing the tax administration system has culminated in the *Finance Act of 2020*, which provides critical amendments to primary tax legislations in Nigeria. For example, *Section 18 of the Act* provides an amendment of *Section 68 of the Companies Income Tax Act*, which formerly provided for the service of assessment notice through the post by providing that such service can be done through other means such as *"courier service, email or any other electronic means…."*. However, the most exciting development provided for by the

[12] PricewaterhouseCoopers Limited, "FIRS has Introduced Electronic Filing of Tax Returns and Online Payment of Taxes", (PwC, February 2015) Available at: https://pwcnigeria.typepad.com/tax_matters_nigeria/2015/02/firs-has-introduced-electronic-filing-of-tax-returns-and-online-payment-of-taxes.html(accessed 5 August 2021).

[13] Deloitte,"FIRS Introduces Six Electronic Tax Services", (Taxathand, June 13, 2017) Available at: https://www.taxathand.com/article/6982/Nigeria/2017/FIRS-introduces-six-electronic-tax-sevices (accessed 5 August 2021).

[14] W Obayomi, "LIRS Launches eTax", (KPMG, 27 September 2019) Available at: https://home.kpmg/ng/en/home/insights/2019/09/lirs-launches-etax.html(accessed 5 August 2021).

Finance Act is the effort towards ensuring the taxation of Non-Resident Companies (NRC) providing digital services in Nigeria.[15]

4.0 BARRIERS TOWARDS IMPLEMENTING DIGITISATION OF TAX ADMINISTRATION IN NIGERIA

Despite the efforts made to facilitate the transition into the digitalized administration of our tax system, there are specific barriers, and they will be highlighted subsequently.

First, despite the introduction of digital means of administering taxation, it is shocking that there are still physical requirements to carry out those activities. For example, companies still utilize the parallel paper filing process three years after the FIRS introduced the e-filing platform, which mandates filing taxes and levies collected online.[16] The requirement for paper filing is inconsistent with the idea of an electronic system and hampers the efficiency of the digitalization process.

Second, the electronic tax platforms are not properly optimized; thus, users are frustrated when accessing the platforms. An example of this is the downtime experienced during the peak of tax filling or Tax Clearance Certificate (TCC) application. Furthermore, some companies are discouraged in their efforts to download their withholding tax credit notes, as the portal could be inaccessible for days.[17]

Third, security and confidentiality are crucial to tax administration. In 2020, globally, Nigerian companies ranked second in cyberattacks[18]. An issue like this could influence the reluctance of

---

[15] *The Finance Act 2020*, s. 7.
[16] Supra n. 3.
[17] Ibid.
[18] "Nigerian Companies Record 2nd Highest Percentage of Global Cyberattacks", Available at:https://techpoint.africa/2020/07/17/nigerian-companies-global-cyberattacks/ (accessed 12 August 2021).

taxpayers to share their financial information due to confidentiality doubts. Fourth, ICT requires an investment of capital and cannot be done haphazardly; the government's failure to invest in modern technology and people with ICT expertise is also a barrier. Finally, the dearth in the technical competence of tax officers is also a challenge.

Certain peculiarities in Nigeria could be barriers; for instance, E-Systems in English could create language barriers. There is no cognizance that many Nigerians are more at ease in transacting in Pidgin English, Yoruba, Hausa, Igbo. Factors such as inadequate electrical supply and the illiteracy of taxpayers are also barriers in Nigeria.[19]

5.0 RECOMMENDATIONS

To effectively administer a digital tax administration system, staff of the tax administration authorities and bodies must be effectively equipped with the technical know-how. Therefore, it is recommended that tax administration authorities in Nigeria provide specialised training for their staff and include projects to educate taxpayers on using relevant technological systems. For example, proper education played a huge role in the success of the Korean tax administration process, as the Korean National Tax Service (NTS) provided educational training for staff to improve their computer literacy. It is also prudent to assess previous methods and experiences (self-assessment of digitalization capacity survey) to keep new plans future-proof.[20]

---

[19] "Digitising Taxation in Nigeria Challenges and Recommendations". Available at:https://www.ictd.ac/blog/digitising-taxation-nigeria-challenges-recommendations/ (accessed 5 August 2021).

[20] Simbarashe H, "Digitalisation and the Challenges for African Administrations", (2020) 1 Financing for Development 177, Available at:http://uonjournals.uonbi.ac.ke/ojs/index.php/ffd/article/view/564 (accessed 5 August 2021).

To ensure the availability of relevant data, an adequate record-keeping system is needed. A centralized database system must be created to improve evidence and information-based taxation. Tax Identification Numbers (TIN) should also be linked to National Identification Numbers (NIN), Bank Verification Numbers (BVN), and even the Permanent Voters Card (PVC). This would help ensure that all information regarding taxpayers, including their income stream, is traceable by relevant authorities, thereby preventing tax evasion and allowing for risk-based enforcement of tax laws.

Furthermore, to protect data shared via technological channels, tax administration authorities should use modern cybersecurity measures such as firewalls, solid encryptions, and the requirement of strong passwords to access a taxpayer's account online. This would further help in building the confidence of taxpayers in the technological tax services provided.

Lastly, while the Finance Act is applauded, particularly for the inclusion of technology in the tax administration process through an amendment of Section 25 of the Federal Inland Revenue Service (FIRS) Establishment Act,[21] there is the need for a more comprehensive legal enactment that deals with issues peculiar to the digitalization of the tax administration process, such as the prospects of appending signatures to legal tax documents online. Furthermore, any planned tax reform should include all aspects of new technologies required to digitalize public administrations and should also legislate on how they impact taxpayer rights and guarantees.[22]

---

[21] *Finance Act (2020)*, s. 51

[22] "Digitalization of Tax Administrations and the Necessary Simplification of Tax Systems", (ciat.org) Available at https://ciat.org/digitalization-of-tax-administrations-and-the-necessary-simplification-of-tax-systems/?lang=eng (accessed 5 August 2021).

BOOSTING FOREIGN DIRECT INVESTMENTS IN NIGERIA THROUGH AN EXTENSIVE DOUBLE TAX TREATY FRAMEWORK IN THE EMERGING SINGLE AFRICAN ECONOMY

Otitoola Olufolajimi Aduralere

ABSTRACT

A country's tax system is a factor that strongly impacts investment by first impacting the investment climate. One mechanism used by countries to attract Foreign Direct Investments (FDI) is Double Taxation Treaties. The quest to magnetize more FDI due to its direct impact on economic development has become the most glaring purport of countries signing DTTs with other countries. Between 2007 and 2016, Nigeria's investment share of GDP declined from 18.7% to 12.6%, reaching the lowest level in the past two decades.[1]Nigeria needs to boost foreign investments. With the emergence of the African Continental Free Trade Agreement (AfCFTA), necessity is laid on Nigeria to strategically leverage its status as the 26th largest economy in the world and the biggest in Africa by proactively harnessing its every potential, promise and prospect in the continent and globally through useful economic partnerships enshrined in double tax arrangements.

1.0 INTRODUCTION

In a modern world, taxation is used as an instrument of economic policy, because it affects the total volume of production, consumption, investment, choice of industrial location and techniques, distribution of income, etc. On the other hand, globalization and regionalization of the international economy have made foreign direct investments important for governments that are keen on

[1]Pwc 'Boosting Investments: Nigeria's Path to Growth' July 2017 https://www.pwc.com/ng/en/assets/pdf/boosting-investment-nigeria.pdf (accessed 10 September 2019).

promoting economic growth and development in their countries. Hence, virtually all governments, especially developing and least developed countries, are determined to attract FDI. FDI is mostly defined as capital flows resulting from the behaviour of multinational companies (MNCs).[2] The continuous inflow of FDI is linked to the inflow of benefits such as infrastructure, resources, technological know-how/innovation and human capital. Thus, the factors that affect the behaviour of MNCs may also affect the magnitude and the direction of FDI.[3] A country's tax system is therefore a major consideration in varying levels of FDI.[4]

The 2019 International Monetary Fund's Economic and Country report shows that Nigeria is the largest economy in Africa.[5] Nigeria is the third largest host economy for FDI in Africa.[6] Estimated at $99.6 billion in 2018, the total stock of FDI represents 25.1% of Nigeria's GDP. However, the level of FDI attracted by Nigeria is mediocre compared with the resource base and potential need.[7]In present times, FDI in Nigeria has largely been concentrated in the oil sector.[8] While this has been beneficial to the sector, Nigeria's overall oil wealth has not provided the needed stimulus for growth and has paradoxically hindered the growth of other sectors of the economy.[9] FDI flows to Nigeria totalled $1.9 billion in 2018 and showed a decrease compared to $3.5 billion in 2017 under the effects of austerity measures. Between 2007 and 2016, Nigeria's investment share of

---

[2] Agiomirgianakis, G., Asteriou, D., & Papathoma, K. "The Determinants of Foreign Direct Investment: A Panel Data Study for the OECD Countries" (2003), http://www.city.ac.uk/economics/dps/discussion_papers/0306.pdf (access 9 September 2019).
[3] Dunning, J. H. "Multinational Enterprises and the Global Economy" (1993) Harlow, Essex: Addison Wesley publishing Co.
[4] Dessai, M.A., Foley, C.F., and Hines, J.R. "Foreign Direct Investment in a World of Multiple Tax" (2004) Journal of Public Economics, 88, Pp2727-2744.
[5]IMF "Largest economies in Africa by GDP in 2019" available at https://www.legit.ng/1236940-imf-ranking-the-largest-economies-africa-by-gdp-2019.html (accessed 25 August 2019).
[6] United Nations Conference on Trade and Development, "World Investment Report 2019", Special Zones. https://unctad.org/en/PublicationsLibrary/wir2019_en.pdf (accessed 12 September 2019).
[7] Asiedu, E. "Capital Controls and Foreign Direct Investment", (2003), World Development, 32(3), pp. 490-497.
[8] George T. Peters, Bariyima D. Kiabel (2015), Tax Incentives and Foreign Direct Investment in Nigeria, IOSR Journal of Economics and Finance (IOSR-JEF).
[9] Dele Babalola (2019), The Political Economy of Federalism in Nigeria, 67.

GDP declined from 18.7% to 12.6%, reaching the lowest level in the past two decades. Nigeria's underperformance in FDI attraction in areas outside the oil sector is evident in the absence of prominent MNCs that are not present in Nigeria but have invested in neighbouring nations.[10] Nigeria's failure to address this has restricted our growth. Because of the continuous decline in oil revenue, Nigeria is currently in need to increase revenue and technological development, through diversification of the economy.[11] However, the investment rate in Nigeria has been so low and there have not been any significant technological improvements.[12] The National Bureau of Statistics (NBS) reports a steady decline in FDI in Nigeria and there is reason to suggest if drastic action is not taken, that this situation could be worse.

Inevitably, Nigeria needs improved and diversified FDI. More specifically, Nigeria needs improved foreign participation with a view to the diversification of its economy. With the emergence of the single African economy and the creation of a single African market, it has become pertinent to ensure that Nigeria consistently attracts FDI across all sectors of its economy.

2.0 THE SINGLE AFRICAN ECONOMY AND ITS IMPLICATIONS FOR FDI

Africa has begun charting a new path towards a single continental market – and it is going to be an economic revolution. In 2018, the African Continental Free Trade Agreement (AfCFTA) was signed and it came to effect on 7 July 2019, which is also the same day Nigeria became a party to it. Its objectives are: to create a single continental market for goods and services, with free movement of businesspersons and investments; expand intra-African trade through better harmonization and coordination of trade liberalization and enhance competitiveness and enterprise

[10] United Nations Conference on Trade and Development (2009), Investment Policy Review of Nigeria; available at https://unctad.org/en/Docs/diaepcb20081_en.pdf(accessed 8 September 2019).
[11] FIAS "Special Economic Zones Performance, Lessons Learned, and Implications for Zone Development" (2008).
[12] UNCTAD World Investment Report, (2005).

level through exploiting opportunities for scale production, continental market access and better reallocation of resources.

According to the African Union, the AfCFTA aims to bring together all African countries – comprising 1.2 billion people and a combined GDP of over $3.4 trillion – under a single continental market for goods and services.[13] It is characterized by the removal of trade barriers/tariffs across all Member States, making the African market the largest in the world. This will potentially trigger industrialization and manufacturing across the continent and, in turn, create vast employment opportunities on a continent home to the world's fastest-growing labour force.[14] AfCFTA will be reinforced by cooperation on investment measures, intellectual property rights and competition policy to support innovation, competitiveness, and product development and diversification. The implementation of AfCFTA over the transition period is expected to boost African welfare, intra-African trade and GDP.[15] It has the potential to push regional trade levels up from 15% to 25% within a decade, which will exponentially increase the continent's annual economic growth, create wealth more inclusively and reduce poverty.[16] The overall beneficial impact of AfCFTA does not come automatically, because States are still to carry out national plans, policies or actions to ensure they harness the best of this agreement.

It is therefore worthy of note that the AfCFTA does not have a unified tax policy despite the above-highlighted implications that it would have for the continent.

[13]The African Union 'About the Continental Free Trade Agreement' https://au.int/en/ti/cfta/about (accessed 8 September 2019).
[14]https://qz.com/africa/547929/africa-has-the-worlds-fastest-growing-labor-force-but-needs-jobs-growth-to-catch-up/(accessed 8 September 2019).
[15] M Saygili, R Peters and C Knebel, 2018, African Continental Free Trade Area: Challenges and opportunities of tariff reductions, UNCTAD Research Paper No. 15.
[16]According to the United Nations Economic Commission for Africa, AfCFTA could boost intra-African trade by 52% by 2022.

While it is one of the last countries to sign on, Nigeria could yet be the biggest beneficiary of AfCFTA. According to Brookings Institution, the unique continental market access combined with the increasing focus on industrialization as a catalyst for growth and priority of the government to shift away from over-reliance on volatile primary commodity exports will contribute to boosting Nigeria's manufacturing sector and exports.[17] This market is characterized by the free movement of investments, which will facilitate the massive investment of capital into the Nigerian economy (if the right actions are taken) in the bid to access Africa's market. This will aid the government's aim of diversifying the economy, solving our infrastructural problem, creating jobs and increase the prospects of growth and development of the economy.

3.0 THE NEED TO PREPARE NIGERIA THROUGH DOUBLE TAX TREATIES (DTTS)

A country's tax system is a factor that strongly impacts investment by first affecting the investment climate.[18] One mechanism used by countries to attract FDI is DTTs. DTTs are bilateral treaties signed between two countries to divide or efficiently allocate taxing powers for MNCs that operate within their jurisdictions. They provide for how much the two countries are prepared to forego taxing rights that would be available under domestic law, with a view to avoiding double taxation of MNCs operating across borders, preventing tax evasion and avoidance, and encouraging investment.[19] However, in recent times the use of DTTs has led to double non-taxation through the sophisticated tax planning activities of MNCs. Undeniably, DTTs have advantages as well as

---

[17] Stanley Ebube 'Nigeria and the Free Trade Agreement' 6 July2019 http://leadership.ng/2019/07/06/nigeria-and-the-free-trade-agreement/(accessed 8 September 2019).

[18] Swenson, D. L. "The Impact of U. S. Tax Reform on Foreign Direct Investment in the United States" (1994) Journal of Public Economics, 54, pp. 243-266.

[19] 'OECD and UN updated income and capital Model Tax Conventions provide guidance on BEPS and other issues' Pwc Tax Policy Bulletin, 6 August 2018. See J Adams & J Whalley, The International Taxation of Multinational Enterprises in Developed Countries 42 (1977).

disadvantages, but economists and policy experts argue that the advantages significantly outweigh the disadvantages.[20]

Among the major advantages of entering into DTTs is the attraction of more FDI.[21] Various empirical studies have revealed the positive effect of DTTs on FDI. Research by Hong,[22] Lejour,[23] and Baker[24] reveal a strong positive relationship between DTTs and FDI in countries. A study in 2010 shows that countries that entered into treaties received greater FDI than those without one.[25] Data from the Nigerian Stock Exchange and the NBS from the year 2005 to 2014 shows that there is a strong positive relationship between DTT and FDI.[26] The National Tax Policy identifies DTTs as one way of attracting foreign direct investments to Nigeria.

Despite these statistics, Nigeria has signed just 22 DTTs, out of which only 15 have been ratified, and only two of these are with African countries; Mauritius and South Africa.[27] This is out of the 54 parties to the AfCFTA. This situation shows that Nigeria's DTT framework is ill-prepared for the emerging single African economy. This is because, the essence of DTTs, as stated earlier is to drive FDI. The AfCFTA would bring investors who have interests in engaging in this single African economy. In doing this, the MNCs/investors will be looking for the most favourable

[20] Hong, S. (2017). Tax Treaties and Foreign Direct Investment: A Network Approach; OECD, (2010). Model Tax Convention on Income and on Capital, Condensed Version. Paris: Organisation for Economic Cooperation and Development.
[21] Egger, P., Larch, M., Pfaffermayr, M., & Winner, H. (2006). The impact of endogenous tax treaties on foreign direct investment: theory and evidence. The Canadian Journal of Economics, 39(3), 901-931.
[22] Hong, S. (2017). Tax Treaties and Foreign Direct Investment: A Network Approach
[23] Lejour, A. (2014). The Foreign Investment Effects of Tax Treaties. CPB Netherlands Bureau for Economic Policy Analysis, 1-26.
[24] Baker, P. (2012). An Analysis of Double Tax Treaties and their Effect on Foreign Direct Investment.
[25] Barthel, F., Busse, M., & Neumayer, E. (2010). The impact of double taxation treaties on foreign direct investment: evidence from large dyadic panel data. Contemporary economic policy, 28(3), 366-377
[26] Olaleye, M.O. (2016). Effect of tax incentives on foreign direct investment in listed Nigerian manufacturing companies. An unpublished PhD dissertation of Jomo Kenyatta University of agriculture and technology, Kenya.
[27]Deloitte Inside Tax 'Improved Double Tax Arrangements in Nigeria: Any reason for delay?' https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/tax/inside-tax/ng_improved_double_tax_arrangements_in_nigeria.pdf(accessed 13 September 2019).

African country to “set up in”. A country with an extensive DTT framework with other African countries will most likely be considered. Because where an MNC sets up in that country, their goods and services can get to every other African country (because of the single African economy) without them being taxed continuously at every African country they export their goods to. Also, because the country has an extensive DTT with other African countries, where the MNC sets up, for example, a marketing office, in any of those other countries the main country has a DTT with, they can return their profits to the main country, without being taxed twice.

The negotiation of more DTTs, with the emerging single African economy, has the following implications:

3.1 Fostering of International Trade for Nigeria

Trade is crucial to development. The performance of a given economy in terms of growth rates of output and per capita income is also based on the international transaction of goods and services.[28] According to the economic complexity index, Nigeria is the 52nd largest importer in the World and commodities like wheat, corn, rice, raw sugarcane, dairy products consume over $22billion of foreign exchange annually.[29] Nigeria, once a large net exporter of food, now imports some of its food products.

However, the number of DTTs Nigeria has with other countries is limited, compared to the volume of international trade it has with other countries. To accelerate Nigeria's growth to being one of the top 20 economies in the world, it is clear that Nigeria has to widen its current DTT network.[30]

---

[28] M. L. Jhingan (2006). *The Economics of Development and Planning*, thirty eight edition, Vrinda Publications (P) ltd.

[29] https://www.ceicdata.com/en/nigeria/trade-statistics-monthly/imports(accessed 8 September 2019).

[30] Akintola Williams ‘Improved Double Tax Arrangements in Nigeria: Any reason for delay?’ Inside Tax Deloitte, available at https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/tax/inside-tax/ng_improved_double_tax_arrangements_in_nigeria.pdf(accessed 8 September 2019).

This can be done by increasing the number of African Countries and key global economic hubs we currently have DTTs with.

Being an import-dependent country, Nigeria should have more DTTs negotiated and ratified to mitigate the incidence of double taxation risk that exists during the trade. Nigeria can take a cue from other developed countries in enhancing its foreign trade negotiations. The number of effective DTTs generally reflects the volume of favourable cross-border trade negotiations that these countries have entered into. For instance, United Kingdom has with 131 countries, the United States has with 70 countries, Canada has 92 and Malaysia has with 68 countries.

Furthermore, Nigeria currently has no ratified DTT with any ECOWAS country and has only two ratified DTTs with other African Nations (South Africa and Mauritius). The AfCFTA provides an opportunity that must not be overlooked for the country to enter into economically viable and beneficial DTTs. In addition, there is an urgent need for treaties to be put in place with all our major trading partners to enable taxpayers to begin to benefit from the provisions of such DTTs. This will help to mitigate the double taxation impact on the income earned from the cross-border transactions conducted between taxpayers in Nigeria and other countries.

3.2 Increase in FDI through the Attraction of Huge Capital Investments into the Nigerian Market

It must be stated that while the AfCFTA aims to promote intra-African trade, MNCs from outside Africa will want to partake of the benefits by expanding their businesses into Africa. Apart from the other factors mentioned, DTTs with the origin countries of these foreign MNCs will further encourage their foreign participation and investments in Nigeria. Taxation is a significant consideration for foreign investors who seek to do business in Nigeria, as MNCs seek countries with low tax regimes to carry out their businesses in as their African base.

As stated earlier, despite being the last to sign the AfCFTA because of certain doubts, Nigeria could still be the biggest beneficiary of it. One way is through the use of taxation (DTTs) as a means of economic policy. The tax burden can be lifted for foreign MNCs through DTTs with their countries of origin. There is ample research that validates how impossible it is to achieve economic development without trade. According to Oby Ezekwesili, former vice-president of the World Bank's Africa division, only a single market model has the enormous potential to deliver a massive scale of disruption and, ultimately, place Africa, especially Nigeria on the route to economic prosperity.[31]

Being the seventh most populous country in the world and Africa's largest market, Nigeria is already attractive to many economies and companies looking to make inroads with their products and services. In 2017, intra-African trade was estimated at $135 billion, growing by 9% year-on-year from US$124 billion in 2016.[32] Nigeria remains one of the main drivers of intra-African trade, with its total intra-African trade growing by 8% in 2017, from a contraction of 27% in 2016.

The use of these DTTs will make Nigeria further attractive for FDI, Making Nigeria the hub for international investments in the single African economy. This will, in effect, bring about an influx of infrastructure and promote diversification. Diversification creates more employment, which in turn creates more taxable income.

[31] Shakir Akorede 'How a single market would transform Africa's economy' 28 February 2018 https://www.weforum.org/agenda/2018/02/how-a-single-market-will-transform-africa-s-economy/(accessed 8 September 2019).

[32] International Trade Centre – Trade Map.

3.3 Impact on the Small and Medium Enterprises (SMEs) Participation in Intra-African Export

The SME sector is the backbone of major developed economies, as well as important contributors to employment, economic and export growth. In Nigeria, SMEs contribute 48% of national GDP, account for 96% of businesses and 84% of employment.[33] According to NBS, SMEs in Nigeria have contributed about 48% of the national GDP in the last five years. With a total number of about 17.4 million, they account for about 50% of industrial jobs and nearly 90% of the manufacturing sector, in terms of the number of enterprises.

Though significant growth has been achieved in the SME sector, there is still much to be done. According to an article on "developing Africa through effective, socially responsible investing", "there still exists a 'missing middle', which finds it hard to access funds due to the category of funding they belong to."[34]

The increase in FDI and establishment of MNCs might seem to negatively affect SMEs on paper, as the SMEs will be competing with the MNCs for customers within Nigeria. If this was done without the consideration of AfCFTA, then there might be serious cause for concern.

However, the implication of AfCFTA is that it gives them the opportunity to take part in the intra-African trade. Hence, they can reach a wider consumer base in Africa, at little or no cost, because of the removal of tariff barriers or costs. Tariff cuts through the AfCFTA has a twofold effect: Intensifying existing trade relations within Africa (the intensive margin), and paving the way for

---

[33] Nigeria SME survey – 'Assessing current market conditions and business growth prospects' https://www.pwc.com/ng/en/events/nigeria-sme-survey.html(accessed 8 September 2019).
[34] Developing Africa through Effective, Socially Responsible Investing http://venturesafrica.com/developing-africa-through-effective-socially-responsible-investing/(accessed 8 September 2019).

the establishment of trade relationships among new country pairs or for new products (the extensive margin).

In the short term, businesses, especially SMEs, that are already supplying “Made in Nigeria” products to the regional markets are better placed to take advantage of the opportunities unlocked by the AfCFTA, as it is easier to expand existing trade relations on the intensive margin than it is to discover and test new export opportunities. The AfCFTA will enable African producers to enjoy higher trade preference margins vis-à-vis other external competitors, as long as the former comply with AfCFTA rules of origin.[35] This will give African businesses an important advantage over their foreign competitors.

The AfCFTA will allow African economies to reach higher economies of scale, thus making manufacturing potentially more attractive. These benefits will certainly accrue for big and small economies alike. By liberalising trade across Regional Economic Communities, the AfCFTA will enable African countries to better harness their trade complementariness. Ideally, the AfCFTA will support SMEs to link into regional value chains simply to better exploit trade preferences within the continent and add value to “Made in Africa” goods.

Furthermore, while the argument that increased foreign involvement might lead to reduced local participation in certain sectors of the economy does find some merits, however, it will only be in the short run. The benefits of foreign participation and FDI are immense. Due to the resulting influx of FDI, which will bring in things like infrastructure and other benefits, the SMEs will benefit in the long run. This will enhance their growth and possibly lead to their expansion, making

[35]Rules of origin are the used to grant trade preferences to goods from within Africa, rather than import from abroad. By doing so, more trade would be created within the AfCFTA, serving as a base to support the development of regional value chains and the building of manufacturing capacities in Africa. See Rules of Origin Key to Success of African Continental Free Trade Area https://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=2128(accessed 8 September 2019).

some of them even become MNCs. And with Nigeria's extensive DTTs framework with several States (within and outside Africa), this will help reduce their tax burden in the process of expansion, as there will be the possibility that the State expanded to has a DTT with Nigeria.

3.4 Government Revenue

There is the question of the negative impact of a DTT for AfCFTA on tax revenue. However, it must be stated that it will just affect custom and excise duties of goods from fellow African countries alone, other national taxes are not affected. Fortunately, customs and excise duties, in contrast to other taxes- like company income tax, personal income tax, value-added tax and petroleum profit tax- is the lowest tax revenue contributor to the Nigerian economy.[36] According to UNCTAD, overall, Nigeria will benefit from the agreement, which should bring about $16.1 billion in welfare gains. The gains, which already take into account a loss of $4.1 billion in tariff revenue, will arise from increased employment, better use of domestic resources to increase production in manufacturing and agriculture, and access to a variety of cheaper products.[37] This is because of the expected strong expansion in intra-African trade from the formation of the AfCFTA.

UNCTAD estimates show, for example, that, in general despite cuts in applied tariffs by sub-Saharan African countries between 1998 and 2013, an increase in trade tax revenues took place over the same period due to the increase of trade, except in 2012–2013 when declines were experienced.[38] Therefore, revenue losses resulting from further reductions in trade tariffs may also be compensated for by the expected high level of expansion in intra-African trade from the

[36] Ogundana, O. M., Ogundana, O. M., Ogundana, O. M., Ibidunni, A. S., & Adetoyinbo, A. (2017). Impact of Direct and Indirect Tax on the Nigerian Economic Growth. Binus Business Review, 8(3), 215-220 http://dx.doi.org/10.21512/bbr.v8i3.3621 (accessed 8 September 2019).
[37] The African Continental Free Trade Area: The Day after the Kigali Summit – UNCTAD Policy Brief No. 67, May 2018 https://unctad.org/en/PublicationsLibrary/presspb2018d4_en.pdf (accessed 8 September 2019).
[38] African Continental Free Trade Area: Advancing Pan-African Integration Some Considerations – UNCTAD UNCTAD/WEB/DITC/2016/5 https://unctad.org/en/PublicationsLibrary/webditc2016d5_en.pdf.

formation of the AfCFTA. It must be noted, however, that the increase in export revenue was also due to a large degree to commodity price rises in this period. In fact, the fluctuation of export revenue is associated with commodity price fluctuations, which are externally determined.[39]

Furthermore, the use of DTTs can also increase government revenue, if Nigeria moves from the use of the Organisation for Economic Co-operation and Development (OECD) Model to the United Nations (UN) Model in negotiating these bilateral tax agreements with developed countries. In negotiating DTTs, two major models are utilised: the OECD Model[40] and the UN Model.[41] Comparatively, the UN Model favours retention of greater taxing rights under a tax treaty for the host country of investment (source country) as opposed to those of the investor (residence country). The UN Model of DTT is considered more favourable for capital importing countries, usually developing countries like Nigeria. In negotiating DTTs with fellow African countries, however, the OECD Model can be used.

Thus, the federal government should also review the DTTs it currently has with developed countries to determine if Nigeria is truly benefitting from these DTTs. Where it is established that Nigeria is not, re-negotiating and amending key clauses of the DTTs, should not be out of place. This will help the government resolve the dilemma between raising internally generated revenue through taxes and still maintaining an investment-friendly climate.

[39] UNCTAD, 2013, Economic Development in Africa Report 2013 – Intra-African Trade: Unlocking Private Sector Dynamism (New York and Geneva, Sales No. E.13.II.D.2, United Nations publication).
[40] OECD Model Tax Convention on Income and Capital, available athttp://www.oecd.org/ctp/treaties/model-tax-convention-on-income-and-on-capital-condensed-version-20745419.htm(accessed 8 September 2019).
[41] UN Model Double Tax Convention between Developed and Developing Countries, available at http://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf. See Surrey, *United Nations Group of Experts and the Guidelines for Tax Treaties Between Developed and Developing Countries*, 19 Harvard International Law Journal 1, 4 (1978) (accessed 8 September 2019).

For example, Nigeria currently has a DTT with Mauritius. However, the Mauritius leaks situation reveals also that Nigeria needs to join the growing list of countries that are withdrawing from existing DTTs with Mauritius. In addition, an analysis by Taiwo Oyedele, of the DTT with Mauritius, reveals that the cost (financial and otherwise) of the treaty to Nigeria outweighs the perceived benefits.[42] DTTs like this should either be renegotiated or disposed of.

3.5 Negotiation of a Multilateral Tax agreement

It is important to note that the AfCFTA does not contain sufficient provision for the treatment of income that may arise where a company conducts trade in a foreign country. This seeming policy gap provides an opportunity for signatories to the AfCFTA to adopt a unified rule for the tax treatment of income arising from such trading activities. This can be in form of a multilateral double-tax agreement governing the taxation of income derived within the AfCFTA. Although, this may raise the question of the possible reduction of tax revenue for the Nigerian Government, in the long run, it will still positively affect the Nigerian economy. This will is because it will boost the already high potential of investment that was estimated from the commencement of the AfCFTA.

4.0 CONCLUSION

Currently, Nigeria has the problem of encouraging foreign participation and investments, and the Government seeks to strengthen our economy. AfCFTA is an imperative catalyst for economic prosperity and sustainable development. It presents itself as a golden opportunity for Nigeria to solve its FDI problem because it is assured that it will encourage FDI. It is then Nigeria's extra or

[42] Taiwo Oyedele 'Review of Mauritius-Nigeria Double Taxation Treaty' ActionAid, available at https://nigeria.actionaid.org/sites/nigeria/files/mauritius-nigeria_double_taxation_treat.pdf(accessed 8 September 2019).

added efforts that will increase the already high potential. This can be done by using tax as an economic policy, through DTTs, to make Nigeria an attractive destination for FDI. The effect of this, in the long run, will help the government achieve its aim of a diversified economy, as well as reaping the numerous benefits that come along with FDI, such as infrastructure and technology transfer.