

AN APPRAISAL OF TAXATION AND TAX LEGAL FUNCTIONS IN NIGERIA

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ABSTRACT: An appraisal of taxation is required, particularly regarding the conventional understanding of tax as a compulsory financial payment imposed on citizens and business entities by the government, without any guarantee of receiving infrastructural amenities in return. This necessity arises from years of studies and practical experience which indicate that for the taxation system to properly fulfill its societal role under the social contract theory, a reciprocal arrangement is essential. While it is understood that citizens and corporations must remit taxes as mandated by law, the government must also provide tangible proof of its performance by delivering public amenities that enhance the well-being of taxpayers. It was this understanding that spurred the undertaking of this detailed appraisal of taxation, examining it as a legal concept and analyzing its functions within society.

Keywords: *Social Contract Theory, Tax Morale, Fiscal Policy, Public Governance, Nigerian Tax Law, Government Accountability, Economic Development*

Introduction

The authority to impose and administer taxation in Nigeria is rooted in the Constitution of the Federal Republic of Nigeria 1999 (as amended). This foundational legal document provides that where an Act of the National Assembly imposes a tax or duty concerning matters detailed in item D of Part II of the Second Schedule, the net proceeds from that levy must be shared among the states according to the principle of derivation. The constitution further clarifies this by stating that if such a tax is collected by a state government or its designated authority, the net proceeds are to be considered part of that specific state's Consolidated Revenue Fund. In contrast, if the tax is collected by a federal government body, a portion of the net proceeds equivalent to what was sourced from each state must be returned to that state at intervals determined by the National Assembly.

This constitutional directive establishes the framework for how taxes are imposed, gathered, and their proceeds distributed between the federal and state governments. Beyond these two levels, the local governments, representing the third tier of governance, also levy and collect taxes as provided for under the residual list of the constitution to finance their operations. The administration of these taxes, however, is not without its difficulties. The administration of property tax, for example, is notably plagued by challenges such as inconsistent valuation methodologies and inadequate enforcement structures. It is these complexities and the fundamental nature of the concept that motivated this appraisal of taxation and its intended legal functions.

Numerous definitions of taxation and tax have been proposed, and they all converge on the central idea of a relationship between individuals and corporate entities on one side, and the government on the other. This relationship is characterized by one party (the citizens and businesses) supplying the funds, while the other party (the government) uses these funds to manage state affairs and provide public amenities. The predicament often encountered in developing economies, however, is a breakdown in this reciprocity. While the populace provides the financial resources, the government often fails to meet its obligation to deliver the necessary

infrastructure and services. This persistent failure presents a significant obstacle for tax administrators across many parts of the world.

The Concept and Definition of Tax

In the context of modern economies, taxes represent the most significant source of governmental revenue. What distinguishes taxes from other revenue sources is their compulsory nature; they are not voluntary payments made in direct exchange for a particular public service or good. Although a taxpayer's liability is not contingent on a specific benefit received, some notable exceptions to this principle exist. For example, payroll taxes are frequently levied on labor income specifically to fund social security programs, including retirement pensions and medical care, which are likely to benefit the taxpayer in the future. Due to this identifiable link between the payment and the potential benefit, such payroll taxes are sometimes termed "contributions," even though they remain mandatory and the connection to the eventual benefit can be tenuous. A similar example is the taxation of motor fuels, where the revenue is typically earmarked for the construction and upkeep of roads and highways—a system where the benefit is linked to the consumption of the taxed product.

Broadly, taxation is the framework through which a government collects funds from its population to finance public expenditures on items such as education, healthcare, and national defense. It is also understood as the practice of gathering money from citizens based on their income and property assets. The revenue generated from this practice supports the government, enabling it to operate police forces and judicial systems, maintain a military, and build essential infrastructure like roads.

While a single, universally endorsed definition of "tax" is elusive, the Oxford Advanced Learner's Dictionary offers a simple definition of tax as "money that has to be paid as taxes," with taxation being "the system of collecting taxes". In a similar vein, the Business Dictionary describes it as "a means by which governments finance their expenditure by imposing charges on citizens and corporate entities".

Judicial pronouncements have also provided clarity. In the Nigerian case of **Eti-Osa Local Government v Jegede**, the court characterized taxation as the "life wire of

government expenses" that empowers a responsible government to provide for the welfare of its populace. An Australian court, in the case of **Matthew v Chicory Marketing Board**, defined a tax as "a compulsory exaction of money by public authority for public purposes". The Supreme Court of the United States, in **United States v Butler**, similarly affirmed that a tax is understood to be an "extraction for the support of the government". Furthermore, Nigeria's Supreme Court, in **Shell v FVIR**, established the legal standing of a tax as a "debt due to the government".

Regarding the principles for imposing taxes, a significant guideline was articulated by the Court of Appeal in **Phoenix Motors Ltd v National Provider Fund Management Board**. Justice Tobi JCA stated that for statutes that are revenue-focused, it is sound judicial policy to interpret their provisions liberally in a way that favors the government's ability to generate revenue, unless a clear provision exists to the contrary. The justification offered was that it is in the public's best interest for the government to be financially robust, as this enables it to cater to the needs of the citizenry and distribute wealth to foster national development. However, this power is not unlimited. The court in **S.A Authority v Regional Tax Board** made it clear that no tax can be levied on a citizen without explicit language in an Act of Parliament demonstrating the clear intention to impose such a burden.

A widely accepted definition describes tax as a mandatory levy imposed on a taxpayer by a state or its equivalent to fund public expenditures. This definition is favored because it underscores the principal objective of taxation, which is to raise revenue for government operations. Most governments employ a tax system, with some levying a flat percentage on income, while others use a progressive scale based on earnings. The collection is managed by dedicated agencies like the Federal Inland Revenue Service (FIRS) in Nigeria, the Internal Revenue Service (IRS) in the United States, and His Majesty's Revenue and Customs (HMRC) in the UK. In Nigeria, tax collection is tiered, involving the FIRS at the federal level, State Internal Revenue Services, and Local Government Revenue Committees. Other governmental bodies like the Nigerian Customs Service also participate in tax collection for the federal government. Failure to pay taxes can result in civil penalties, such as fines and asset forfeiture, or criminal sanctions like imprisonment. However, Nigeria's enforcement

system contends with significant operational hurdles, including procedural delays and gaps in compliance.

Taxpayer Resistance and Judicial Interpretations

The payment of taxes has historically been met with resistance, leading citizens to challenge their obligations on various grounds, which in turn has prompted courts to intervene and provide definitive rulings. In the case of **Cheney v. Conn**, a taxpayer objected to paying taxes that would be partially used to procure armaments, arguing it contravened the Geneva Convention. The court dismissed this claim, with the judge asserting that an act of statute is the supreme law of the land and therefore cannot be deemed unlawful.

In the United States, taxpayer arguments that wages do not constitute taxable income have been consistently rejected by the courts as frivolous, as seen in **Gramzon v Commissioner**. Similarly, in **Waters v. Commissioner**, the court not only rejected the taxpayer's argument against the constitutionality of taxing wages but also imposed damages for filing a frivolous lawsuit.

The "direct tax" clause of the U.S. Constitution has also been a frequent point of contention. In **Springer v. United States**, the taxpayer claimed that an income tax on his professional earnings and bond interest was a "direct tax" and therefore unconstitutional. The Supreme Court disagreed, classifying the levy as an excise or duty, and clarified that at the time, "direct taxes" were understood to be only capitation taxes and taxes on real estate. The court's perspective, however, was later challenged in **Pollock v. Farmers' Loan and Trust Company**. In that case, the plaintiff argued that since a tax on land itself is a direct tax, any tax on the income generated from that land must also be a direct tax. Consequently, he contended that such an income tax was unconstitutional unless it was apportioned according to population, as required by the Constitution for direct taxes. This case demonstrated a closer judicial focus on the precise wording of the Constitution compared to the earlier *Springer* decision.

This perpetual contest between legislatures seeking to impose taxes and taxpayers seeking to minimize their burden was aptly described in **Chapman v Chapman**. The

court noted a continuous cycle: "Parliament imposes a charge; the tax (Adviser) finds a way to avoid it. Parliament enacts anti-avoidance legislation, and advisers' device a more elaborate avoidance". This illustrates that no matter how meticulously a tax law is drafted, ingenious tax planners can often find unforeseen loopholes. When such a loophole is exploited, the legislature typically responds by amending the statute to close it, but in doing so, may inadvertently create new ones.

The Societal and Economic Functions of Taxation

It is a core responsibility of any government to perform a multitude of activities, including maintaining law and order, ensuring peace and security, providing public utilities, and spearheading development programs. The successful execution of these duties necessitates a consistent and reliable flow of funds. In a market-based economy, the government's role is to supply certain public goods and services that are funded by taxes, such as national defense, environmental protection, and the enforcement of property rights. The government also intervenes to provide services that the private sector is either unable or unwilling to offer, such as the development of large-scale transportation and power infrastructure or the provision of financial subsidies to stimulate specific economic sectors. Another vital governmental role is to help establish stable capital and money markets to foster lender confidence, which is essential for sustained and rapid economic growth. For the vast majority of nations, tax revenue is the primary source of funding for these crucial activities.

Beyond its primary revenue-raising purpose, taxation serves several other key functions:

- **Fiscal Function:** This is the role of taxation in forming the state budget. The revenue collected is essential for realizing national programs and government objectives, enabling the state to fulfill its core duties like defense and social protection.
- **Allocation Function:** Taxation acts as a critical tool for allocating resources and redistributing wealth within society. It facilitates the transfer of funds from more affluent citizens to the less fortunate, which in turn helps to ensure social stability.

- **Regulatory Function:** When a state actively participates in the economic life of a society, taxation becomes a mechanism for regulation. This function is used to achieve specific policy objectives through the tax system and can be broken down into three sub-functions:
 - **The Stimulating Sub-Function:** This is aimed at encouraging particular socio-economic activities through a system of allowances, exemptions, and preferential tax treatments. For example, tax benefits may be granted to small enterprises, agricultural producers, or charitable organizations. However, the real-world effectiveness of these reliefs can be limited by complicated eligibility rules and administrative burdens.
 - **The De-stimulating Sub-Function:** This is designed to inhibit certain processes by deliberately increasing the tax burden on them. This is often achieved through excessively high tax rates, such as protectionist import duties intended to shield local industries or prohibitive excise taxes on products deemed harmful to public health, like alcohol and tobacco, to make them less affordable.
 - **The Replication Sub-Function:** This function is geared towards replenishing resources that are consumed. By levying taxes on the use of natural resources like timber and minerals, the state can generate funds specifically for regeneration programs, such as government-led reforestation efforts.
- **Controlling Function:** Taxation provides the state with a means to monitor the financial and economic activities of both individuals and corporate entities. It helps control income sources and spending patterns. For instance, by adjusting personal income tax rates, the government can influence disposable income and thereby manage consumer spending to help control inflation.
- **Incentive Function:** This function involves using special tax arrangements to reward socially valuable groups, such as manufacturers and entrepreneurs. Tax incentives are designed to encourage specific economic activities by

reducing tax burdens. When designed and implemented correctly, these incentives can be a powerful tool to attract foreign investment, increase employment, facilitate technology transfer, and promote development in underserved regions. While they can raise the overall economic welfare, tax incentives must be carefully managed as they can also negatively impact a government's financial position.

Taxation as an Instrument of Economic Management

Taxation is not only one of the most ancient methods for financing government costs but also a crucial instrument for managing public debt and improving the performance of the public sector. It is a vital mechanism for any nation striving for self-reliance and seeking to achieve its economic regulation goals. Through tax policy, a government can shape the consumption patterns of its citizens, direct investment towards priority sectors, and curtail economic activities that are considered socially harmful, even if they are legal. Taxation can also be strategically employed to protect emerging local businesses from the pressure of larger foreign competitors, giving them the space to grow and mature.

Crucially, the revenue from taxes funds the government's traditional functions, such as providing roads, maintaining law and order, and defending national borders. The provision of this public infrastructure significantly lowers the operational costs for private businesses, allowing them to reinvest their capital into expansion instead of having to provide these essential services for themselves. Tax incentives, such as pioneer status and tax holidays, are effective tools for attracting foreign direct investment, as they give investors a window to recoup their initial capital outlay and reinvest for larger-scale operations. Furthermore, capital allowances enable businesses to recover the costs of capital expenditures, further stimulating an expanding economy. However, the economic efficacy of these policies can be compromised if there is a misalignment between the tax regimes for capital gains, capital transfers, and allowances.

Conversely, poorly conceived tax policies can act as a drag on economic progress. This often manifests in the form of excessively high tax rates, multiple taxation (the

levying of several different taxes on the same income source), and double taxation (taxing the same income in more than one jurisdiction). These practices can severely deplete the investible funds available to taxpayers, thereby stifling economic activity. Moreover, when citizens evade taxes, the government is deprived of the revenue needed to provide essential services. This forces businesses to bear these infrastructure costs themselves, a far less efficient outcome than funding them through a collective tax revenue pool.

Further Analysis: The Social Contract Perspective

The obligation to pay tax is a constitutional mandate, part of a broader set of duties expected of citizens. Section 24 of the Nigerian Constitution explicitly outlines the duties of a citizen, which include:

- To abide by the Constitution and respect its ideals, institutions, the National Flag, the National Anthem, and legitimate authorities.
- To help enhance the power and good name of Nigeria, defend the country, and render national service when required.
- To respect the dignity and rights of other citizens and to live in unity and harmony.
- To make positive contributions to the well-being of their community.
- To assist lawful agencies in maintaining law and order.
- And, critically, to "declare his income honestly to appropriate and lawful agencies and pay his tax promptly".

In exchange, the government has its own set of obligations, detailed as economic objectives in Section 16 of the Constitution. The state is directed to:

- Harness the nation's resources to promote national prosperity and a self-reliant economy based on social justice and equality.
- Control the national economy to secure the maximum welfare and happiness of every citizen.

- Ensure that the economic system does not operate in a way that permits the concentration of wealth or the means of production in the hands of a few.
- Direct its policy towards providing all citizens with suitable and adequate shelter, food, a reasonable minimum wage, old age care, pensions, and welfare for the disabled.

The underlying logic of this constitutional framework is that citizens perform certain duties for the state, and the government, in return, provides certain goods and services. This arrangement constitutes a form of social contract between the governed and the government. A positive relationship is expected to exist, where the government's actions positively influence and justify the payment of taxes. If the government fails to uphold its end of this contract, the justification for citizens to fulfill their civic obligations, including tax payment, is significantly weakened.

From this perspective, the conventional definition of tax—as a compulsory payment with no guaranteed corresponding benefit from the government—can be viewed as oppressive and exploitative. Such a definition frames tax payment as a one-sided civic duty, where people must pay regardless of how the government uses the money. This model can foster corruption and financial recklessness. There is a clear need for a new definition that integrates the mandatory payment by citizens with a compulsory duty for the government to provide necessary services. This provides the assurance taxpayers need that their contributions will not be squandered. A more fitting definition might be: "a compulsory levy made to the government by the people, for which the government is obligated to provide a specified number of projects and facilities in proportion to the revenue collected". Such a definition would introduce accountability into the system. If this process were in place, tax evasion and avoidance could be more effectively controlled, as the common excuse that the government wastes tax money would lose its validity.

A substantial body of research validates the connection between government performance and tax compliance. For instance, one study established that government accountability has a significant positive effect on voluntary tax compliance in Nigeria. Another study found a direct positive relationship between

the quality of public governance and the tax behavior of Nigerian citizens. Research has also shown that higher institutional quality correlates with higher tax compliance, and that the success of any policy aimed at improving tax generation is dependent on the government's level of accountability.

Conclusion

While tax payment is a mandatory duty for every citizen of a country, the government, for its part, is expected to utilize that tax revenue by providing necessary facilities for the tax-paying public. When a government fails in this obligation, instead wasting the money or using it for personal aggrandizement, the moral authority to compel people to continue fulfilling their civic responsibility of tax payment is eroded. The only way to justify the concept of taxation and ensure compliance is for the government to honor its side of the social contract. By fulfilling its obligations to the public, the government can build trust and legitimize its authority to tax, thereby fostering a sustainable culture of compliance.

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