

OVERVIEW OF THE NATIONAL TAX POLICY AND ITS IMPLICATION FOR TAX ADMINISTRATION IN NIGERIA*

Abstract

Taxation as a critical fiscal policy measure is a veritable tool, for social economic development which has been used by several countries in the world, to further their economic objectives. This study evaluates the effect of the National Tax Policy on tax administration in Nigeria. The National Tax Policy although identified the challenges of the Nigeria tax system, failed to provide workable solutions to address these challenges. For instance, it did not address the issue of lack of fiscal federalism in the distribution of taxing powers in the constitution, which has led to the proliferation and duplication of taxes in Nigeria. This paper recommends the amendment of the Constitution of the Federal Republic of Nigeria, 1999 to address the issue of fiscal federalism by expanding the taxing powers of State Governments.

Keywords: *Taxation, Tax Law, Tax Policy, Tax Administration, Fiscal Federalism, Nigeria.*

1. Introduction

In Nigeria, taxation for many years was not a major contributor to the revenue profile of any tier of Government, because of the over reliance on revenue from oil. However, in recent times, government at all levels have been compelled to seek for non-oil revenue through taxation due to the volatility of the international oil market.¹ Unfortunately, the renewed interest in the generation of tax revenue has led to the proliferation of taxes and abuse of taxing powers. To address these challenges, the need to formulate a National Tax Policy was conceived to specify the objectives of taxation and to set basic guidelines for the administration of the Nigerian tax system. The formulation of the National Tax Policy was heralded by the Setting up of a 20 man Study Group in 2002 to among other things review all aspects of the Nigerian tax system, review all tax legislations and the entire tax administration structure and recommend improvements.² In 2004, a 12 man Working Group was set up to among other things; critically evaluate the recommendations of the Study Group and propose strategies to reform the Nigerian tax system. In 2010, the final draft of the National Tax Policy was adopted by the Federal Executive Council.³ However, necessary legislative action to give effect to the provisions of the National Tax Policy was not taken. Consequently, the policy was to a large extent unimplemented and failed to achieve the set objectives by the Government. On 10 August 2016, the Minister of Finance inaugurated another committee to review, update and recommend implementation strategies for the National Tax Policy. The committee submitted its report on 29 September 2016⁴ and the New National Tax Policy was adopted by the Federal Executive Council on 1 February 2017 and thereafter it was sent to the National Economic Council for endorsement.⁵ It is the thinking of the Federal Government that a ratification by the National Economic Council will imply that States have adopted the NTP.⁶ It is doubtful if that objective is attainable considering that the mandate of the National Economic Council is to advise the president on economic matters and not to take legislative steps on economic matters.⁷

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¹ <www. Statista.com/262858/ change in opec-crude.oil prices-since 1960 > accessed on the 15 January 2019.

² Ifueko Omoigui Okauru (ed), *Federal Inland Revenue Service and Taxation Reforms in Democratic Nigeria*, (Abuja; FIRS, 2012), 10, 11, 74-75.

³ *Ibid.*, 75, 76.

⁴ Taiwo Oyedele, Nigeria's New National Tax Policy: A new Dawn or Another False Start' < <https://www.pwc.com/assets/pdf> > Accessed 28 January 2018.

⁵ Federal Ministry of Finance, 'National Tax Policy and Tax Laws and Regulations' < <https://www.finance.gov.ng/index> > accessed 21 January 2017.

⁶ *Ibid.*

⁷ S18-19, Third Schedule, Part 1, Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN 1999).

The New National Tax Policy (NTP) is concise and easy to read. It consists of five chapters and appendixes. Chapter One defines taxation, identifies the challenges of the Nigerian Tax System and outlines the objectives of the policy. Chapter two spells out the guiding principles of the Nigeria Tax System and the role of taxation as a tool for economic management and development. Chapter three stipulates the responsibilities of stakeholders while chapter four identifies key issues in effective tax administration and dispute resolution mechanisms. Chapter five identifies the strategies for the implementation of the Policy. The NTP is a deliberate attempt to set out the guiding principles in the Nigerian tax system, and strategies to make the tax system an effective tool for socio economic development.

This paper seeks to examine the impact of the NTP on the administration of the Nigeria tax system with particular references to the effect of lack of fiscal federalism on the distribution of taxing powers, tax dispute resolution and the general challenges confronting the Nigerian Tax System.

2. Objectives of the National Tax Policy

The objectives of the National Policy as clearly outlined in paragraph 1.5 of Chapter One of the NTP, are to:

- (a) Guide the operation and review of the tax system.
- (b) Provide the basis for future tax legislation and administration.
- (c) Serve as a point of reference for all stakeholders on taxation.
- (d) Provide benchmark on which stakeholders shall be held accountable; and
- (e) Provide clarity on the roles and responsibilities of stakeholders in the tax system.

The NTP identifies taxation as an effective tool for economic management and development. In this direction the policy advocates that the Nigerian tax system should support sustainable growth and development.⁸ Thus, it is expected that the Nigerian tax system and laws should not only be a tool for revenue generation but should promote social, political development, create employment, stimulate local and foreign investment.⁹ Also, it is expected that taxation should help to diversify the economy.¹⁰ This can be achieved by introducing fiscal policy measures like tax concessions to stimulate investment in some selected sectors. The policy encourages the introduction of more indirect taxes because it is the thinking of the formulators that they are easier to collect and administer and more difficult to evade.¹¹ In practice it is doubtful if indirect taxes are easier to collect and administer. Furthermore, the policy advocates that tax rates should be progressive and designed to promote equality.¹² The policy expects all existing and future taxes to be fair, equitable and devoid of discrimination. Thus, tax payers are expected to pay according to their income.¹³ Taxes should be simple, certain and clear to understand. Also the mode of payment should be convenient and easy for tax payers and the cost of compliance and administration of taxes should be low. Furthermore taxes are expected to be flexible to adjust to economic realities and should provide sustainable revenue and economic growth.¹⁴ In this direction there should be a synergy between tax policies and other economic policies.

3. Legal Status of the National Tax Policy

The legal status of the NTP is not clear, the pertinent question is whether it has the force of law or is it just a policy document or to put it in another way; is a policy a valid and enforceable law? A policy was defined by the Black's Law Dictionary as 'the general principles by which a government is guided in its

⁸ Chapter 2, para 2.2.

⁹ Chapter 2, para 2.2.1.

¹⁰ Chapter 2, para 2.2.2.

¹¹ Chapter 2, para 2.2.3.

¹² Chapter 2, para 2.2.4.

¹³ Chapter 2, para 2.1.

¹⁴ *Ibid.*

management of public affairs.¹⁵ In *UBN Plc v Ifeoruwa Nig. (Ent.) Ltd.*,¹⁶ the Court of Appeal held that a policy document is not a subsidiary legislation. Thus, a policy is a set of rules or guidelines put in place as a framework to guide an organisation on a particular subject matter. Although the NTP is not legislation, it is intended to have some force of law and operate as the foremost guiding regulation for tax administration in Nigeria. Thus, it should be enacted as a law, or made pursuant to the provisions of an existing law as a subsidiary legislation. It is obvious that the objective of formulating the NTP cannot be achieved without some legislative action to give it legal backing. This is more so as, there is need to amend all tax laws to reflect the principles enunciated by the NTP which is yet to be done. Another legal issue that needs to be addressed is the constitutionality of the NTP. The pertinent question is whether the Federal Government has powers to make a tax policy for all tiers of government. It is clear that the Federal Government does not have absolute powers on taxation; State governments also have powers on taxation based on the provisions of Section 4(7) item 9 and 10 of the Concurrent Legislative List and the Fourth Schedule to Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999). Furthermore, the Federal Government does not have exclusive powers to formulate economic policies which include taxation. This position is fortified by the decision of the Supreme Court in *AG Ogun State v Aberuagba*,¹⁷ where it held that the control of the economy is not within the exclusive powers of the federation. That each tier of government has a share in the control of the economy, based on the provisions of section 7(3) and item 18, of the Concurrent Legislative List of the Constitution of the Federal Republic of Nigeria 1979 which is *in pari materia* with Section 7(3) and item 18 of the Concurrent Legislative List of the CFRN 1999.

From the forgoing, it appears that the Federal Government lacks the constitutional powers to unilaterally formulate a national tax policy that stipulates guidelines on tax administration for all tiers of government. In practice most state tax authorities hardly refer to the provisions of the NTP in decision making. A better approach would be to have all states represented at the formulation stage of the NTP with the understanding that it will be domesticated by all states through legislative action. Another approach will be to amend the constitution to stipulate the fundamental guiding principles for all tiers of government and empower the Federal and State Governments to formulate tax policies. The drafters of the policy admitted this fact when they said: 'For an orderly and sustainable development of the Nigeria tax system, the Federal and State Ministries of Finance shall have the primary responsibility for tax policy matters, including initiating proposals for amendments to tax laws.'¹⁸

4. The National Tax Policy on Tax Administration and Fiscal Federalism

The NTP establishes clear guidelines that are crucial to tax administration at all levels of Government. The policy mandates tax authorities to ensure that all taxable persons are registered and issued with Taxpayer Identification Number (TIN). Also they are expected to leverage on the database of the Central Bank of Nigeria on Bank verification Number (BVN), National Identity Card Management Commission (NIMC), Nigerian Communications Commission (NCC), Corporate Affairs Commission (CAC), Federal Road Safety Commission (FRSC), Nigeria Immigration Service (NIS) and other sources to update their data bank.¹⁹ However, it is hoped that registration processes by different agencies should be harmonised.²⁰ Also tax authorities should encourage voluntary compliance of tax payers by making the process of self-assessment

¹⁵ Bryan A Garner (Ed. in Chief), *Black's Law Dictionary* (9th ed, St. Paul, Minnesota: Thomson Reuters, 2009), 1276.

¹⁶ (2007) 7 NWLR (pt. 1032), 135.

¹⁷ (1985) 1 NWLR (pt. 3) 395.

¹⁸ Proviso to Chapter 3.

¹⁹ Chapter 4, para 4.1.

²⁰ *Ibid.*

simple, embark on tax education and enlightenment, reward voluntary compliance and develop frameworks for tax amnesty,²¹ and other amicable means of resolving disputes.²²

The NTP advocates financial and administrative funding for tax authorities and tax authorities are to ensure that tax payment procedures are easy and convenient.²³ The NTP advocates that collection processes shall leverage on modern technology.²⁴ This is in line with global best practices and further strengthens the implementation of electronic taxation (E-Taxation) in Nigeria. Although, there is no legislative framework for the operation of E-taxation in Nigeria;²⁵ the National Tax Policy advocates for the use of technology in the administration of tax laws. The policy provides that: ‘The Minister of Finance/Commissioners of Finance shall ensure automation of collection and remittance of taxes by all Ministries, Extra Ministerial Departments and Agencies.’²⁶ Also ‘collection system shall leverage on modern technology towards advancing ease of payment and prevention of revenue losses.’²⁷ In addition tax authorities shall ensure the, ‘deployment of technology to aid all aspects of tax administration.’²⁸ These provisions provide necessary policy support for the on-going efforts by the Federal Inland Revenue Service (FIRS) to automate tax administrative processes.²⁹

Furthermore, the NTP recognised the role of all tiers of Government in tax administration³⁰ however; it failed to address the issue of lack of fiscal federation under the CFRN 1999 and its implications for tax administration. Under the CFRN 1999 there is an over concentration of taxing powers at the federal level, this is obvious from the provisions of section 4, items 16,25,39,58,59,62,68 of the Exclusive Legislative List of CFRN 1999. This fact was admitted by the drafters of the policy in the former NTP wherein they stated as follows:

Suffice it to say that the prevailing position is that the Federal Government ultimately has overriding authority on taxation matters with some latitude to state governments to introduce taxes, fees and charges collectible by the Local Governments in those areas that do not conflict with the position of the Federal Government.³¹

It follows that for the NTP to effectively address the challenges of the Nigerian tax system, it must address the issue of lack of fiscal federalism under CFRN 1999. This is because most of the challenges confronting the Nigerian tax system like multiple taxation and double taxation are induced by the lack of fiscal federalism under the Constitution. Nigeria is a federation comprises of 36 states and a federal capital territory; a consequence of this is that taxing powers of the federation are distributed between the Federal Government, State Government and Local Government Councils.³² Fiscal Federalism is concerned with how fiscal powers are distributed among the federating units. Taxation is a fiscal matter thus, fiscal federalism must address the limits of each tier of government on issues of taxation and must clearly state who collects what and how what is collected is shared.

²¹ Chapter 4, para 4.2.

²² Chapter 4, para 4.5.

²³ Chapter 4, para 4.3.

²⁴ Chapter 4, para 4.3; Chapter 5, para 5.1 (x).

²⁵ Although, none of the extant tax laws have direct provisions on e-taxation, there are provisions for the taxation of profits from businesses carried on through electronic means otherwise known as electronic commerce. See sections 14(1) and 15 of the Companies Income Tax Act (as amended) 2011 (CITA). Cap C21 LFN, 2004.

²⁶ Chapter 5, para. 5.1 (x).

²⁷ Chapter 4, para 4.3.

²⁸ *Ibid*, para 4.4.

²⁹ <www.firs.gov.ng> accessed on 10 December 2018. For a detailed discussion on Electronic Taxation in in Nigeriasee Newman U. Richards and Eghosa Ekhaton, ‘Electronic Taxation in Nigeria: Challenges and Prospect’ (Sweet and Maxwell: 2019) *ICCLR*, Vol. 30. 1, 47-64.

³⁰ Proviso to Chapter 4.

³¹ Chapter 1, paragraph 1.6 of the former NTP.

³² Section 4, Second and Fourth Schedule to CFRN 1999.

The National Tax Policy identified: ‘the lack of clarity in the distribution of taxing powers amongst the federating units and the encroachment on the powers of one level of Government by another,’³³ as one of the challenges of the Nigerian tax system; but did not propose measures to address this challenge. Rather, the policy document merely prescribes how all tiers of Government and their tax authorities should administer their taxes.³⁴ It is opined that this is an attempt to further compound the complexity and uncertainties surrounding the distribution of taxing powers in Nigeria. The Federal Government clearly lacks the powers to dictate how states and local Governments should administer taxes within their constitutional powers to impose and collect taxes. It is expected that the NTP will encourage the application of fiscal federalism principles in the imposition and collection of taxes and suggest necessary constitutional amendments to clarify the limits of the powers to impose and collect taxes among the federating units.

5. National Tax Policy on Multiple and Double Taxation

Multiple and double taxation are among the major challenges confronting the Nigerian tax system. The National tax policy recognises that the, ‘inordinate drive by all tiers of Government to grow internally generated revenue... has led to the arbitrary exercise of regulatory powers for revenue purposes’.³⁵ Consequently taxpayers suffer multiple taxation and bear a higher tax burden than expected. In the former NTP it was noted that multiple taxation has impacted negatively on the investment climate in Nigeria therefore; elimination of multiple taxation should be a major concern for all levels of Government.³⁶ In their wisdom to avoid double taxation the provisions of the Constitution on tax matters and the Taxes and Levies (Approved List for Collection) Act³⁷ should be strictly complied with by all tiers of Government.³⁸ This conclusion is based on the fact that the federal government is comfortable with the position of CFRN 1999 on the distribution of taxing powers and wants the position to remain. However, until the states are given more taxing powers it will be difficult to address the issue of multiple taxation and double taxation in Nigeria. This is more so as the Taxes and Levies Act cannot override, modify or clear any ambiguity in the constitution as it must be read subject to the provisions of the constitution.³⁹

Although, the NTP did not address the issue of lack of fiscal federalism which is the major cause of proliferation of taxes and abuse of taxing powers in Nigeria; it recommended the reduction of the number of effective taxes and tax harmonisation as strategies to address the issue of multiple taxation. The policy states that: ‘taxes should be few in number, broad based and high revenue-yielding and that the administration of the taxes should also be simplified for ease of enforcement and compliance.’⁴⁰ Also ‘taxes similar to those being collected by a level of Government should not be introduced by the same or another level of Government. The Federal, State and Local Governments shall ensure collaboration in harmonising and eliminating multiple taxation.’⁴¹ This provision is laudable, however it will be difficult to implement without the amendment of the constitution to expand the taxing powers of State Governments and to clarify the distribution of taxing powers among all the tiers of Government. Furthermore it appears that the policy sees the issue of multiplicity of taxes as an issue of administrative lapses which could be addressed administratively through tax harmonisation and collaboration between all tiers of Government. However, taxes cannot be harmonised without some legislative action by way of repeal, review and amendment of tax laws.

³³ Chapter 1, paragraph 1.4.

³⁴ See Chapter 4.

³⁵ Chapter, 1 paragraph 1, 4 of the NTP.

³⁶ Chapter, 1 paragraph 1, 4 of the Former NTP.

³⁷ Cap T2 LFN, 2004.

³⁸ Chapter 3, paragraph 3.4 (d) ii of the Former NTP.

³⁹ See the Court of Appeal decision in *AG Cross River State & Anor. v Mathew Ojua* (2011) 5 TLRN, 1. See also Newman U. Richards, ‘An Examination of the Powers to Impose and Collect Consumption Taxes in Nigeria’ (2017) *Ebonyi State University Law Journal*, Vol. 8, No 2, 1.

⁴⁰ Chapter 2, para 2,2.6 (i) of the NTP

⁴¹ Chapter 2, para 2,2.6 (ii) of the NTP

Nigeria is overdue for tax harmonisation, with the continuous proliferation of tax laws there is an urgent need to review and harmonise tax laws. For instance capital gains tax can conveniently be taxed under the Personal Income Tax Act⁴² (PITA) and CITA thus; there is no need to have another law⁴³ to tax it. In the same vein instead of having another law to provide for education trust fund, CITA and the Petroleum profit tax Act⁴⁴ (PPTA) could be amendment to provide to the effect that 2% of the total proceeds from companies' income tax and petroleum profit tax should be transferred to the Tertiary Education Trust Fund. Multiple taxation is a serious challenge to the development of trade and investment in Nigeria. Thus, the policy ought to have looked at the factors responsible for the multiplicity of taxes in Nigeria, and recommend how to reposition the Nigerian tax system to address it. One quick way of doing this is to look at the fiscal federalism structure under the provisions of the constitution, and recommend the restructuring to expand the taxing powers of State Governments.

6. National Tax Policy on Tax Dispute Resolution

The NTP as part of strategies for effective tax dispute resolution provides that the executive should sponsor a bill for the establishment of special tax courts to handle tax matters.⁴⁵ This provision appears to be unnecessary because special tax courts have already been established at both federal and state levels pursuant to the powers of the National and State Assemblies to establish Courts with subordinate jurisdiction to a high court.⁴⁶ At the Federal level, Section 59 of the Federal Inland Revenue Service (Establishment) Act, 2007 (FIRS(E) Act) established the Tax Appeal Tribunal (TAT) which is vested with the powers to adjudicate on disputes arising from the administration of all Federal tax laws.⁴⁷ Also in several states, State Revenue Courts have been established to handle state tax matters. For instance, the Delta State Revenue Court is established by the Revenue Court Law of Delta State.⁴⁸ It is humbly opined that what the policy ought to advocate for is a constitutional amendment to strengthen tax courts by establishing them as the courts of first instance in all tax matters. This will put an end to the debate on whether the jurisdiction of the Tax Appeal Tribunal is in conflict with the exclusive jurisdiction of the Federal High Court on Revenue Matters of the federation as enshrined in section 251 of CFRN 1999. This controversy was compounded by several conflicting decisions of the Federal High Court,⁴⁹ before the Court of Appeal while allowing the appeal against the decision of the Federal High Court in *CNOOC Exploration & Production Ltd & Anor v Nigerian National Petroleum Company & Anor*⁵⁰ held that all tax disputes must commence at TAT and that the jurisdiction of TAT does not conflict with that of the Federal High Court.

The decision of the Court of Appeal in *CNOOC Exploration & Production Ltd & Anor case*,⁵¹ with the greatest respect does not appear to reflect the letter and the spirit of the constitution. It is obvious from the provisions of 251(1) of that the CFRN 1999 vested on the Federal High Court exclusive jurisdiction over all matters relating to the revenue of the Federal Government and Company taxation and until it is amended it will be unconstitutional for any subordinate court established by an Act of the National Assembly to share that jurisdiction with it. However, the desirability of having specialised tax courts must be sustained because

⁴² (As amended), Cap P8 LFN, 2004.

⁴³ Capital Gains Tax Act, Cap C1 LFN, 2004. (CGTA)

⁴⁴ Cap P13 LFN, 2004.

⁴⁵ Chapter 5, para 5.1. (iii) of the NTP.

⁴⁶ S 6(4) a of the CFRN 1999.

⁴⁷ For a more detailed discussion of TAT see Newman U. Richards, 'An Examination of Tax Dispute Resolution Mechanisms in Nigeria: A Case for the Adoption of Alternative Dispute Resolution Methods,' *Uniport Law Review*, Volume 1(2017), 196-199. (Available online < <https://www.uniportlawjournals.com/uniportlawreview> >)

⁴⁸ Cap R7, Laws of Delta State, 2006.

⁴⁹ Newman U. Richards, as above, note 47, 198.

⁵⁰ Appeal No. CA/L/1144/2015 and CA/L/1145/2015 Delivered on 10 March 2017 by the Court of Appeal, Lagos Division.

⁵¹ *Supra*.

of its obvious advantages which include having tax experts as the adjudicators over tax matters. It is therefore suggested that section 251(1) of the CFRN 1999 be amended to recognize TAT as the court of first instance in all Federal tax matters, while the Federal High Court will exercise appellate jurisdiction over it.

Furthermore, the policy encourages tax authorities and stakeholders to use alternative means of resolving disputes including arbitration before resorting to litigation.⁵² This provision is laudable considering that litigation is not always the best and fastest means of resolving disputes and the use of Alternative Dispute Resolution (ADR) methods has proven to be an efficient and effective means of resolving disputes because of its advantages.⁵³ ADR methods involve negotiation, mediation, conciliation, arbitration etc. Although the policy advocates for the use of ADR especially arbitration in resolving tax disputes, in practice tax authorities frustrate the use of ADR or arbitration in tax disputes on the grounds that it is against public policy.⁵⁴ For instance, the Court of Appeal, in *Esso Petroleum and Production Nigeria Limited & SNEPCO v NNPC*⁵⁵ and *Shell (Nig.) Exploration and Production Ltd. & 3 ors v Federal Inland Revenue Service*,⁵⁶ upheld the contention of the FIRS that arbitral tribunals have no jurisdiction to determine tax disputes, as same are within the exclusive jurisdiction of the Federal High Court.⁵⁷ These decisions foreclose the use of arbitration in the resolution of tax matters, unless the Supreme Court holds otherwise.

The position on tax arbitration in Nigeria seems not to be different in other jurisdiction. In the Uganda case of *Heritage Oil & Gas Limited v Uganda Revenue Authority*⁵⁸ The High Court of Uganda per Helen Obura J. refused to give effect to an arbitral clause on the grounds that tax matters are statutory and not contractual, thus cannot be varied by contractual agreements.⁵⁹ Furthermore, a study of several South American countries like Colombia, Ecuador, Argentina, Peru, Bolivia shows that, their laws does not support the use of ADR in the resolution of tax disputes.⁶⁰ However, in international tax matters, several countries have embraced the idea of International Tax Arbitration in resolving disputes arising from tax treaties.⁶¹ It is therefore suggested that if tax authorities who are expected to drive this policy continue to frustrate the use of alternative dispute resolution methods in the resolution of tax disputes, it will be difficult to implement the provisions of the policy on dispute resolution.

The policy also encourages tax authorities to adopt tax amnesty schemes as strategies to widen the tax net.⁶² Tax amnesty 'is a scheme that allows tax defaulters to voluntarily declare their assets and income and pay outstanding tax liabilities within a specified time, on the expectation that tax authorities will either waive penalties, interest, tax audit and investigation, prosecution of tax defaulters or in some cases reduce the principal tax liabilities.'⁶³ Tax amnesty is a strategic fiscal policy measure to encourage voluntary compliance in the payment of tax and has some obvious advantages. Some of the advantages are that: it

⁵² Chapter 4, para 4.5. There was a similar provision in para. 5.6 of the former NTP.

⁵³ Newman U. Richards, as above, note 47, 201.

⁵⁴ See *Federal Inland Revenue Service v Nigerian National Petroleum Corporation & 4 ors* (2012) 6 TLRN, 1, 4-5.

⁵⁵ Unreported Appeal No. CA/A/208/2012 delivered on 22 July, 2012.

⁵⁶ Unreported Appeal No. CA/A/208/2012 delivered on 31 August, 2012.

⁵⁷ For a more detailed discussion see Funke Adekoya and Ibifubara Berenibara 'Case Review: Esso Petroleum and Production Nigeria Limited & SNEPCO v NNPC' < www.aalex.com > accessed 14 December, 2017; Olaniwun Ajayi, 'Tax Dispute in The Oil and Gas Sector: Are they Subject to Arbitration.' < www.olaniwunajayi.com > accessed 14 December, 2017.

⁵⁸ (2013) 9 TLRN, 55.

⁵⁹ *Ibid* at 71-72.

⁶⁰ NQ Cruz, 'International Tax Arbitration and the Sovereignty Objection: The South American Perspective,' (2008) 51, *Tax Notes Int'l* No.6, 534.

⁶¹ *Ibid* at 533.

⁶² Chapter 4, para 4.2 (ii); Chapter 5, para 5.1 (xviii).

⁶³ Newman U. Richards, 'Tax Amnesty In Nigeria: An Examination of the Voluntary Assets and Income Declaration Scheme (VAIDS), (2017) Vol. 1, No. 1, *OAUJPL*, 326.

could lead to an increase in tax revenue and widen the tax net within a short time. In addition it helps to improve the tax data bank of the revenue authorities and increases the level of information and awareness on tax matters of the populace. Furthermore, it reduces the cost of tax administration and helps to trigger the repatriation of capital abroad. However, there are criticisms against the introduction of tax amnesty, some of which are that it is unfair to complaint tax payers for the government to give reliefs or benefits to defaulters as it invariably rewards people who have cheated the governments and seems to give a pat on the back to criminals considering that tax evasion is a crime.⁶⁴ Notwithstanding these criticisms, the desirability of tax amnesty as a short term measure to encourage tax defaulters to regularise their tax status cannot be faulted.

In Nigeria, the earliest attempt to introduce tax amnesty was in October 2016 when the Federal Inland Revenue Service (FIRS) declared a 45 days tax amnesty on penalties and interest for outstanding tax liabilities for the years 2013-2015 by a public notice.⁶⁵ The amnesty was a partial amnesty and was by way of waivers and pardon for accumulated interest and penalties. This was the closest attempt at tax amnesty in Nigeria before the introduction of the Voluntary Assets and Income Declaration Scheme (VAIDS) in 2017,⁶⁶ which provided a Nine months window (commencing on 1 July 2017 and ending on 31 March 2018) for tax defaulters to declare their income and assets from sources within and outside Nigeria relating to the preceding six years of assessment and pay their outstanding tax obligation.⁶⁷ The VAIDS scheme which is geared towards curbing tax evasion and stimulating voluntary tax compliance⁶⁸ has similar benefits with the previous amnesty scheme.

7. Strategies for the Implementation of the National Tax Policy.

The implementation of the policy is hinged on the commitment of key critical stakeholders and provides advisory action plans for them. The president and Governors are expected to ensure that budget speeches for each fiscal year contain the overriding fiscal policies and summary statements of the expected tax revenue.⁶⁹ They should ensure that there is only one revenue agency for each level of Government.⁷⁰ The legislature at all levels is expected to treat tax bills with utmost importance and is enjoined to establish taxation committees to expedite the passage of tax bills. Also the legislature is expected to pass a bill establishing the Joint Tax Board.⁷¹ This provision seems to be unnecessary as the board has already been established by the provisions of the PITA.⁷² The effectiveness of the board is hindered by the fact that it is a mere advisory body with no mechanism to enforce its decisions. An Act of the National Assembly cannot cure this impediment rather the constitution should be amended to establish the JTB.

The committee as part of measures to align existing tax laws and regulations to the policy suggested the review and amendment of some tax laws and regulations and provides that future tax laws should be consistent with the policy.⁷³ Some of the proposed amendments include section 19 of CITA to exempt certain categories of profit from excess dividend tax, section 33 of CITA to remove the payment of minimum tax or

⁶⁴ *Ibid* at 326-327.

⁶⁵ See Taiwo Oyedele, 'FIRS Declares Tax Amnesty' (*PWC Nigeria*, 5 October 2016), <http://pwc-nigeria.typepad.com/tax_matters_nigeria/2016/10/firs-declares-tax-amnesty-.html> 16 October 2018. For a Downloadable copy of the notice. ; See also, Dyepkazah Shibayan 'Hurray! FIRS Grants Partial Amnesty to Tax Defaulters' (*The Cable*, 17 October 2017) <<https://www.thecable.ng/hurray-firs-grants-partial-amnesty-tax-defaulters>> Assessed 16 October 2018.

⁶⁶ Launched by the then Acting President on the 1 July 2017 by Executive Order No. 004, 2017. Downloadable copy available at 'Download VAIDS Executive Order: Tax Matters Nigeria' (*PWC Nigeria*) <<http://pwc-nigeria.typepad.com/files/vaids-executive-order.pdf>>. Assessed 16 October, 2017.

⁶⁷ Paras. 2 and 3.

⁶⁸ Para. 3.

⁶⁹ Chapter 5, paragraph 5.1. (i) of the New NTP.

⁷⁰ Chapter 5, paragraph 5.1. (ii) of the New NTP.

⁷¹ Chapter 5, paragraph 5.1. (iv) and (iv) of the New NTP

⁷² S 86.

⁷³ See Appendix 11(A and B) of the New NTP.

reduce it to 0.3%. It is opined that the provision on minimum tax should be expunge from tax laws, because it is unnecessary and a disincentive to tax a company that suffers a loss or have no taxable income. The committee also recommended the repeal of the Value Added Tax Act⁷⁴ (VAT Act) and the enactment of a new VAT Act that will clearly define a VATable person, define goods and services, remove the powers to deduct VAT at source by Government and Oil companies and to introduce a progressive VAT system where some goods like luxury goods will attract a higher VAT rate. This is a laudable initiative, in this direction it is suggested that imported goods that local alternatives are available in Nigeria should attract a higher VAT rate to encourage local production of goods. The committee noted that the Stamp Duties Act⁷⁵ (SDA) is out dated and should be repealed and re-enacted to specify the specific instruments that are subject to stamp duty and the rate of the duty. It is suggested that the provision on the stamping of a deed of mortgage should be expunged.⁷⁶ This provision is against the principle of taxation as it seeks to tax a loan (capital) rather than income. The committee also recommended the amendment of the CGTA⁷⁷ to allow for the deduction of capital losses since all chargeable gains are subject to capital gains tax.

Furthermore, as part of commitment on its part to implement the policy, the Federal Ministry of Finance set up the National Tax Policy Implementation Committee (NTPIC). In its progress report submitted in February 2018, the committee recommended among other things the amendment of section 19 of CITA to avoid double taxation of retained earnings on which tax has been paid and deletion of commencement rule provisions to reduce its impact on new companies; the amendment of section 2 and 46 of the VAT Act to include 'intangible Property' as a chargeable item and the modification of section 58 of PITA to expand the mode of delivery of objection to include courier and electronic mail. The recommendations of the committee are contained in two proposed executive orders and five amendment bills.⁷⁸ The recommendations of the committee are a step forward; however a complete review of tax laws instead of piecemeal amendments will have more impact on the Nigerian tax system.

8. Conclusion

The extant National Tax Policy is an improvement on the previous attempt however; its impact on tax administration in Nigeria will be largely dependent on the implementation strategy of the government. It is conceded that the proposed amendments to tax laws will lead to considerable improvement in the Nigeria Tax System; however it is inadequate to address the challenges of the Nigeria tax system or position it as an effective economic management tool. It is suggested that most tax laws in Nigeria are out dated and there is need for a total review of all tax laws. Furthermore, there is need to harmonise tax laws in Nigeria to reduce the number of effective taxes in the system. This fact was acknowledged by the NTP drafting committee hence, they suggested the need for tax harmonisation. However, they failed to recommend necessary steps to be taken in that direction. Lastly, the implementation of the National tax policy cannot be effective without the amendment of the CFRN 1999 to entrench the principles of fiscal federalism and expand the taxing powers of States. This is more so as States and Local Governments see the NTP as a Federal Government tax reform initiative which failed to address the concerns of State and Local Government authorities on the issue of taxation. It is therefore suggested that the provisions of the CFRN 1999 should be amended to clarify all ambiguities in the distribution of taxing powers, expand the taxing powers of States and address the issue of lack of fiscal federalism in Nigeria.

⁷⁴ As amended, 2007, Cap V1, LFN, 2004.

⁷⁵ Cap S8 LFN, 2004.

⁷⁶ See s80-82.

⁷⁷ Cap C1, LFN, 2004.

⁷⁸ Deloitte, 'National Tax Policy Implementation Committee Presents Report on Tax Law Reforms', <<https://blog.deloitte.com/ng/national-tax-policy-implementation-committee-presents-progress-report-on-tax-law-reforms/>> accessed 15 January 2019.