A LEGAL APPRAISAL OF INTERNALLY GENERATED REVENUE IN NIGERIA AS A CATALYST TOWARDS ECONOMIC DEVELOPMENT

Ekhator Atise Johnson*

Wodo Chika Okah**

ABSTRACT

This article examines the sources of internally generated revenue in Nigeria. It also examines Constitutional provisions which empower states on revenue collection. The article reveals inconsistencies between the relevant constitutional provisions and section 4 (1) of the Allocation of Revenue (Federation Account, Etc.) Act, which provides that in addition to the allocation made from the Federation Account to Local Government Councils, each state must distribute ten percent of its internally generated revenue among the local government councils in the state. Thus, each state government is expected to pay ten percent of its internally generated revenue to local government councils in the state and not compel them to pay their internally generated revenue into state accounts, giving them ten percent of it in return. The paper concludes that internally generated revenue is the live wire of the government; therefore, the constitutional provisions for Government Ministries, Departments, Agencies, at different levels should be well followed, to ensure transparency and efficient economic developmental objectives.

Keywords**:** Economicdevelopment, Revenue,*Internally Generated Revenue*.

INTRODUCTION

The increasing cost of running government, coupled with dwindling revenue has forced various local, state and the federal governments in Nigeria into formulating strategies to improve their revenue base. More so, the recent recession in the Nigerian economy has created serious financial stress for all tiers of government. Prior to the discovery of crude oil and other revenue generating natural resources in Nigeria, taxation was the major source of revenue for governments in Nigeria. However, upon the production and exportation of crude oil, taxation was abandoned and attention was shifted to the revenue generated from the sale of crude oil to the extent that the economy and the yearly budget was based entirely on the amount that may likely be generated from the sale of crude oil. However, recently, attention has been gradually shifted back from crude oil to taxes. The serious decline in the price of oil in recent years has led to decrease in funds available for distribution to the three tiers of governments in Nigeria. This underscores the eagerness on the part of state and local governments and even the federal government to look for new sources of revenue or to become aggressive and innovative in the mode of collecting revenue from existing and new sources.[1]

Internally Generated Revenue (IGR) denotes the revenue that the federal, state and local governments generate within their respective areas of jurisdiction.[2] IGR for State governments has also been described as revenues that are derived within the state from various sources such as taxes (pay as you earn, direct assessment, capital gain taxes, et cetera) and motor vehicle license, among others.[3] Unfortunately, this rich source of IGR in the Nigerian regions providing unlimited economic development has been sacrificed at the dwindling 'altar of oil'. The undue dependence on statutory allocations has become a major constraint why most Nigeria States cannot perform basic functions. The paper seeks to examine the legal framework regulating internally generated revenue in Nigeria.

CONCEPTUAL CLARIFICATION

Economic Development

*Ekhator Atise Johnson, PhD, BL, FCNA, FCTI, FCE. Senior Lecturer, Department Of Business And Industrial Law, School Of Law, Christopher University Lagos/ Ibadan Expressway Mowe, Ogun State. Phone Number: 08033028752, 09039393720 Email Address: Atiseekhator@Gmail.Com.

**Wodo Chika, LLM,BL, LLB, Lecturer, Department of Private and Property Law , Faculty of Law, Rivers State University. Email; chikawodo@yahoo.com. Phone: 07033723299.

1 R G. Okafor,'Tax Revenue Generation and Nigerian Economic Development' [2012] (19) *European Journal of Business and Management*, 49-56.

2 G A., Abiola & U K., Ehigiamusoe , 'Analysis of internally generated revenue and its Implications on fiscal viability of states governments in Nigeria' [2014] (2)(3) *JournalofEmpiricalEconomics*, 216-228.

3 A A. Adenugba & F O. Chike, 'The effect of internal revenue generation on Infrastructural development. A study of Lagos State Internal Revenue Services' [2013] (3)(2) *JournalOfEducationandSocialResearch*, 419 – 436. https://doi.org/10.5901/jesr.2013.v3n2, 419.

Economic Development is the development of economic wealth of countries, regions or communities for the well-being of their inhabitants.[4] From the policy viewpoint, Economic Development can be referred to as efforts that seek to improve the economic well-being and quality of life for a community by creating and/or retaining jobs and supporting or growing incomes and the tax base.[5] The scope of economic development includes the process and policies by which a nation improves the economic, political and social well-being of its people.[6] The goals of economic development policies are to seek economic growth through higher productivity, establishing political systems that represent the preferences of its citizens as accurately as possible, extension of rights to all social groups, creating opportunities for institutions/organizations to function properly, such that they will be capable of handling complex technical and logistic tasks. These tasks involve raising revenues through taxes and utilizing it to provide public service.[7]

Revenue

Revenue refers to income that a business or government receives regularly, or an amount representing such income.[8] Also, revenue is an increase in net worth resulting from a transaction. For general government units, there are four main sources of revenue: taxes and other compulsory transfers imposed by government units, property income derived from the ownership of assets, sales of goods and services, and voluntary transfers received from other units.[9] Revenue may refer

---

[4] (n 2).

[5] I Salmon, What is Economic Development? Salmon Valley Business & Innovation Centre (2011). <https://www.svbic.com/node/24>accessed 29 March 2024.

[6] M Oseni, 'Internally generated revenue (IGR) in Nigeria: A panacea for state Development', [2013] (21)(1), *Europeanjournalofhumanitiesandsocialsciences*, 1050-1066.

[7] (n 6).

[8] Cambridge Academic Content Dictionary <https://dictionary.cambridge.org/us/revenue> accessed 10 January, 2024.

[9] *Government Finance Statistics Manual 2001*<https://www.imf.org>*gfs>manual>pdf >accessed 10 January, 2018.*

to business income in general, or it may refer to the amount, in a monetary unit, earned during a period of time.[10]

For non-profit organizations, annual revenue may be referred to as gross receipts.[11] This revenue includes donations from individuals and corporations, support from government agencies, income from activities related to the organization's mission, and income from fundraising activities, membership dues, and financial securities such as stocks, bonds or investment funds.

In a lay man's understanding, revenue is income received by an organization in cash or kind. Sales revenue(s) is income received from selling goods and services over a period of time. Tax revenue is earnings that a government receives from taxpayers.

In more formal usage, revenue is a calculation or estimation of periodic income based on a particular standard accounting practice or the rules established by a government or government agency.[12] Corporations that offer shares for sale to the public are usually required by law to report revenue based on generally accepted accounting principles or International Financial Reporting Standards.[13]

Other revenue[14] is revenue from peripheral (non-core) operations.[15] For example, a company that manufactures and sells automobiles would record the revenue from the sale of an automobile as 'regular' revenue. If that same company also rented a portion of one of its buildings, it would record that revenue as 'other revenue' and disclose it separately on its income statement to show that it is from something other than its core operations. The combination of all the revenue generating systems of a business is called its revenue model.

---

[10] Ibid.

[11] *Warren C.S. and Reeve J.M. and Duchac J., Financial & Managerial Accounting (11 Edn.).* *<https://www.amazon.com>accessed 20 January, 2018.*

[12] Ibid.

[13] HM Revenue & Customs<https://www.gov.uk/government/organisations/hm-revenue-customs> accessed 20 February, 2018.

[14] Also known as 'non-operating revenue'.

[15] Merritt C., *What Is Other Revenue on an Income Statement*? 1. <smallbusiness.chron.com> accessed 20 February, 2018.

Government revenue includes all amounts of money (i.e. taxes and fees) received from sources outside the government entity. Large governments usually have an agency or department responsible for collecting government revenue from companies and individuals.[16]Association non-dues revenue is revenue generated through means besides association membership fees. This revenue can be found through means of sponsorships, donations or outsourcing the association's digital media outlets.[17]

Internally Generated Revenue

Internally Generated Revenue (IGR) in normal day to day parlance refers to those revenue sources that are generated solely by the state and local governments.[18] Internally generated revenue can also mean revenues generated internally apart from subventions, allocation, and grants from governments.[19] These are revenues generated from sources other than crude oil. For instance, the National Bureau of Statistics released[20] the position of IGR at state level for January to June 2016. In the report, Lagos state recorded the highest IGR figure of N150.59bn in half of the year 2016, closely followed by Ogun state with N28.15bn while Nasarawa state generated the lowest revenue for the period under reference at N1.05bn.[21] A total of N317.79bn was generated by twenty-nine (29) states that have reported their first half of the year 2016[22] IGR figure and the revenue was generated across the following types – PAYE, Direct Assessment, Road Taxes, revenue from Ministries, Departments & Agencies (MDAs) and other taxes.[23]There are challenges that have affected IGR collection in the Nigeria. These challenges have been identified below:

[16] (n 13).
[17] Ibid.
[18] (n 1).
[19] Nigeria Governor's Forum, 'Improving Revenue Generation Through Taxation in Nigeria' Workshop Communiqué, Abuja, DFID, 2012.
[20] (n 1).
[21] (n 1).
[22] (n 2).
[23] National Bureau of Statistics, 'Internally Generated Revenue at State Level (2017) <http://www.nigerianstat.gov.ng> accessed 10 January, 2018.

- Lack of Adequate Information on Taxpayers. Taxpayers can easily avoid reporting their income to the State.
- Lack of Cooperation from the Taxpayers: Many taxpayers in Nigeria do not see payment of tax as their civic responsibility and an obligation to the government. This is because, they believe that on the part of the government, there is no adequate provision of public goods and services that the citizens need as part of their benefit from their tax payment.
- Lack of Uniformity in the Incidence of Taxation: It is obvious that the principle of fairness and equity in taxation do not apply in the Nigerian tax practice and administration. As a result most tax payers feel unjustifiably levied as there are no benchmarks for proper tax assessment in Nigeria.
- Incompetence of Tax Inspectors: Some tax officials lack adequate training and communication skills. The uncivilized manner with which they relate with tax payers does not encourage them to make payments that are due. They approach their job with selfish interest and aggression, thereby giving a taxpayer the option of defending his civic right.
- Complex Tax Laws and System: Tax laws in Nigeria have not been brought to the layman’s understanding. Even among the elites it is still very complicated, such that tax liability becomes difficult to comprehend.[24]

CONSTITUTIONAL PROVISIONS FOR STATES ON REVENUE GENERATION

As Kontagora[25] puts it, Nigerian tax law is basically and purely statutory. By that it means our tax system is found in a wide range of statutes by which our governments, at different levels, generate internal revenues with which they run the government and provide basic social amenities to their citizens. Certainly,the 1999 Constitution of Nigeria contains provisions related to internal revenue generation.These include:

[24] (n 1).
[25] Kontagora A.M., ‘A Review of Income Tax Enforcement Procedures under the Nigerian Tax System’, Thesis in Fulfillment of the Requirements for the Award of Ph.D in Law of the University Of Abuja, 2017, 2.

Section 4: This section outlines the legislative powers of the National Assembly. It specifies that the National Assembly has the authority to make laws for the peace, order, and good government of Nigeria, including laws related to taxation and revenue generation.

Paragraph 10, item D of the Concurrent Legislative List: This item falls under the Concurrent Legislative List, which means both the federal and state governments have the power to legislate on matters listed here. Item D specifically addresses taxation and revenue generation. It allows both levels of government to enact laws related to taxes, fees, and other revenue sources. These provisions play a crucial role in shaping Nigeria's revenue generation mechanisms and ensuring effective governance.[26]

By virtue of Section 4 of the Constitution,[27] the federal government is given exclusive jurisdiction to make laws in respect of matters set out in Part 1 of the Second Schedule to the Constitution. It is also given power in respect of matters contained in Part II of the same Schedule (referred to as the Concurrent Legislative List) to the extent stated therein. Though the latter is referred to as Concurrent Legislative List (CLL), a closer look at the provisions of the Constitution, Section 4(4)(a),[28] will reveal that there is no such area of concurrent jurisdiction in the list. What we have are mutually exclusive legislative powers over certain items. Thus, the federal government cannot go beyond the extent provided in the column opposite the items in the list. Consequently, by virtue of Items 15, 22, and 57 of the Exclusive Legislative List (ELL), the National Assembly[29]is given exclusive power to impose Customand Excise duties; Export duties and Stamp duties respectively. In addition, Item 58 gives it exclusive power to impose tax in respect of incomes, profits and capitals gains. Thus, the Federal Government is given the unfettered power to make laws in respect of these matters.

[26](n 1).
[27] CFRN (as ammended) s4.
[28] Ibid.
[29] Para 10, Item D of the Concurrent Legislative List.

By virtue of the same section 4 of the Constitution, States are empowered to make laws in respect of any matter whatsoever, provided such is neither on the Exclusive Legislative List nor specifically allocated to the Federal Government on the Concurrent Legislative List, and it is not that on which the federal government is empowered to make laws in accordance with any provision of the Constitution.[30] The result is that the power to impose any tax not specifically allocated to the Federation is properly within the legislative jurisdiction of the States. This is confirmed by Item D Paragraph 7 of the Concurrent Legislative List.

Though the power to impose any tax is not expressly vested in the States as is done in relation to the Federal Government, the power must be assumed in view of the unambiguous provision of the Constitution, Section 4(7) and in view of the constitutional maxim *delegatusnon potestdelegare*. Surely, the States must have power to impose any tax before it could delegate the function of collection to the Local Government Council, and before it could 'regulate the liability of persons to the tax, fee or rate'.

The Constitution, section 44(1) also protects citizens from taking of their property without justification or authorize by the law. It provides that 'No moveable property or any interest in an immovable property shall be taken possession of compulsorily….'[31]However, sub section (2)(a)[32] of the same Constitution allows derogation from that right by any law and for the purpose of enforcing payment of tax. Going by its definition, taxation is a compulsory levy, extortion (albeit a justifiable one). Ordinarily, levying of tax is a violation of the fundamental right, but as we have pointed out there is the need for the individual to surrender some of his rights for the good of all; that is utilization of tax money for the government's capital project.

Again, we have said that the government has an inherent right to impose tax. Definitely an imposition of tax would amount to an infringement of the individual's right to his property. In order to avoid this conflict, the 1999 Constitution of the Federal Republic of Nigeria (as amended)

[30] (n 23) 37.
[31] CFRN, s 44.
[32] Ibid, s 44(2)(a).

provides that the prohibition of compulsory taking of property shall not be construed as affecting any 'general law for the imposition or enforcement of any tax, rate or duty' as stated in Section 44 (2) of same Constitution.[33]

The Constitution further made an equal protection on discrimination under Section 42 Sub-Section (a) and (b) which preserves the right of every citizen of Nigeria to the equal protection of the law. Sub (b) provides that no citizen shall be subjected to any disability or deprivation on account of sex, place of origin, religion, ethnic group or political opinion.The same sub-section 2 further provides that no citizen shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth. In this case even though the Constitution protects Nigerian citizens from discrimination, the same Constitution allows for tax. Therefore in relationto taxation it can be argued that a law granting reliefs on the basis of sex to members belonging to a sex or group will not be construed as denial of certain reliefs or violation of that particular provision.

THE TAXIES AND LEVIES APPROVED LIST FOR COLLECTION ACT 1998

The Taxies and Levies (Approved List for Collection) Act of 1998,[34] in its schedule, lists the taxing power of the federal, state and local governments.[35] Section 1(2) of the Act vested the Minister of Finance with legislative powers ordinarily reserved for theNational Assembly when it provides that the Minister of Finance may, on the advice of the Joint Tax Board and by Order published in the Gazette, amend the Schedule to the Decree. Part 1 of the schedule contains Taxes and levies to be collected by the Federal Government while Part 2 contains taxes and levies reserved for the State government. However, the Act gave an erroneous impression that the taxes listed in Part 2 are within the legislative competence of the state. The major taxes reserved in the Act are: Personal Income Tax in respect of Pay as You Earn (PAYE), Direct Taxation (Self Assessment),

[33] Ibid.
[34] Formerly Decree No. 21 of 1998.
[35] Nduka I., 'How Much Force is Still Left in the Taxes and Levies (Approved List for Collection) Act'[2021](10)(1)*Nigerian Juridical Review*.

Withholding Tax, Capital Gains Tax and Stamp Duties on instruments executed by individuals. These are federal laws and the states are only acting as collection agents on behalf of the federal government by virtue of Item D7 of part 11 of the second Schedule of the Constitution and by virtue of the Constitution, Section 162 also, the revenue generated from these taxes are to be paid into the Revenue Consolidated Account and the net proceed of the taxes will be distributed among the states on the basis of derivation.[36] Furthermore, where the tax above is collected by the government of a state, it will only be treated as part of the consolidated revenue for that state.[37] From the above provisions, it is clear that the state does not have absolute control and authority over the taxes listed in the Act and that the said taxes were erroneously tagged as taxes to be collected by state governments.

The Value Added Tax Act,[38] Personal Income Tax Act,[39] Stamp Duties Act[40] and the Capital Gains Tax Act[41] are federal laws enacted by the National Assembly. The Value Added Tax was introduced in January 1994 to replace the unsuccessful state based sales tax, and in the year 1994 alone, the whopping sum of 8.6 billion Naira was generated from VAT.[42] The VAT is a tax payable on the supply of all goods and services referred to by the Act as taxable goods and services.[43] The Value Added Tax is neither in the ELL nor in the CLL and should therefore be a matter residual only to the states. The tax is computed at the rate of 5 percent on the value of all goods and services.[44] The Federal Inland Revenue Service (FIRS) is vested with the administration of the tax.

---

[36] Section 163 37 Section 163(a).
[37] Section 163(a).
[38] Cap V1 LFN 2004, formerly Decree No 102 of 1993.
[39] Cap P8 Laws of the Federation of Nigeria 2004.
[40] Cap S4 LFN2004.
[41] Cap C2 LFN 2004.
[42] O O. Emmanuel, 'The Politics of Revenue Allocation and Resources Control in Nigeria: Implications for Federal Stability', (7) (1) *Federal Governance*, 15 – 38.
[43] Section 2 of the Value Added Tax .
[44] Section 4.

CONCLUSION

Currently, Nigeria has its tax policy known as National Tax Policy with laudable objectives. Nigeria's IGR system has come a long way and much has been achieved but a lot still has to be done. There is no way a responsible government can enhance its country internally generated revenue without devising some form of strategy or strategies to not only achieve but sustain it. It is not in doubt that many States in Nigeria, including the Federal Government, are currently making efforts to diversify and increase their internally generated revenue. Methods or measures being put in place by these states, range from extensive tax policy reforms to administrative measures like improved remittances and recording. However, any strategy adopted has to address and take into account legal implications, policy matters and operational circumstances.

The taxing power of the States under the 1999 Constitution needs to be reviewed. There have also been calls from various sections of the country for a National Conference with the object of inserting into the Constitution, the American fiscal approach to federalism. There is an urgent need to carry out a comprehensive tax reform in the country. Presently, the States are not capable of defining what to tax and worse still, they cannot determine the rate of taxes.

Given that we are in the technological age, technology is necessarily and essentially one of the methods by which states can enhance and sustain their internally generated revenue. To this end, there should be legislative instruments legalizing revenue generation and collection through the use of technology and phase out manual collection completely. The 2017 report of the National Bureau of Statistics is indicative of the fact that while a few states have woken up to the realization that the monthly allocation from FAAC is not sustainable and are deploying innovative and rigorous IGR's strategies to further their developments, a large number of states are still much dependent on FAAC to survive. In the whole, the Nigerian States have recorded improvements in internal revenue generation owing to their improved strategies, which include blockage of leakages.

RECOMMENDATIONS

1. There is urgent need for Constitutional amendments to address the jurisdictional issue between Federal High Court and the Tax Appeal Tribunal. However, the greatest factor frustrating enhanced revenue generation in Nigeria is 'endless' litigation. To this end, the Constitution should be amended to make decisions on tax matters from the Federal High Court final and unappealable, unless on breach of fair hearing to the Court of Appeal and not further than that.
2. Government should provide basic amenities of high quality in the country in appreciation of various taxes paid by Nigerians. It is strongly suggested that by so doing, the people's interest would be geared towards giving their maximum support to the local government in terms of faithfulness in the payment of taxes leading to the development of rural areas.