Business Tax in Nigeria: The Controversy of Multiple Taxation

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Introduction

Doing business in Nigeria is ranked 125th in the world out of 183 economics by the latest ranking of the World Bank. A major parameter for this assessment is using the incidences of regulatory controls and taxation of business activity to determine the ease of doing business in Nigeria. The controversy of multiple taxations has become one of the constraints of businesses in Nigeria due to overlaps of the various tiers of government taxing rights on business entities.

Nigeria practices fiscal federalism in which the fiscal responsibility of government is based on a three-tiered tax structure divided between the federal, state and local governments. Each of the federal, 36 states and over 400 local governments enjoy some measure of autonomy in the administration of their fiscal responsibilities. They have the constitutionally empowered right to tax individuals and corporate entities operating within their jurisdiction. These have however created myriad of problems for corporate entities as they are assailed with several demands to pay tax from the various tiers of government.

The taxing right of each of the tier of government has raised incidences of multiple taxation on both corporate bodies. The desire to increase revenue and capture tax within each of their jurisdictions has brought about cases where the tiers of government have crossed path and the ultimate burden of these multiple taxes are borne by the taxable entity.

The purport of this article is to examine the right to tax vested on each of the governmental authorities and the controversy of multiple taxation that has turn out to be the outcome of their competing demands to raise revenue through taxes.

Overview of Nigerian Tax System

Nigeria operates a three-tier government with certain fiscal responsibilities delineated to each level. The 1999 constitution has classified governmental responsibilities and powers into exclusive, concurrent and residual categories and specifies the right of each tier of government to exercise authority over the items in the lists.

The National Assembly is empowered to issue legislation on the taxation of incomes, profits and capital gains. It is also imperative that the National Assembly has the right to issue legislation on tax of any of the 67 subject matters on the Exclusive Legislation List in addition to the customs duties, excise duties, export duties and stamp duties specifically mentioned in the List.
The State Houses of Assembly have their powers to make laws and by extension, the right to levy a charge limited to matters not included in the Exclusive List (otherwise referred to as the Residual List) and those specified in the Concurrent List.

The Local Governments are guaranteed a system of democratically elected local government council and the Constitution mandates each state to confer functions on the council by its own law. Furthermore, the functions conferred upon the local government council shall also include the matters specified in the Fourth Schedule.

In view of the broad delineation of fiscal responsibility by the Constitution, the various tiers of government also have in place organs that have the responsibility of administering these taxes. The Federal Inland Revenue Board is saddled with the responsibility of managing companies' income tax, petroleum profit tax, value added tax, capital gains tax and also the implementation of the tax laws and issuing of guidelines in realization of the provisions of its enabling Act.

The states of the federation have their State Boards of Internal Revenue with the State Internal Revenue Service as their operational arm. They have the responsibility of administering the taxes within the purview of the prescribed powers of the State Government.

Another important organ in the administration of taxes in the Nigerian tax system is the Joint Tax Board. The body was created under the provisions of the Personal Income Tax Act (PITA) 1993 and has the responsibility of exercising the powers conferred it under the provisions of PITA and any subsequent legislation. It assumes advisory role in matters of double taxation arrangement and promote uniformity in incidences of tax on individuals amongst other functions.

**Taxing rights of corporate entities**

Given the multilateral nature of Nigerian fiscal regime in which the tiers of government enjoy some degree of independence in their revenue generation through taxes, companies have sometimes been subjected to same tax or different tax of same nature by the various tiers of government. These situations have brought about incidences of incomes of these corporate entities subjected to multiple taxes.

This therefore raises the question-what are the taxing right of each of these tiers of government on the incomes of tax payers? What are the limits to which these governments can exercise their legitimate right to levy a charge on the operations of corporate entities operating within their jurisdictional authority?

The constitution reserves the federal government the exclusive preserve to provide legislation on the taxation of incomes, profits and capital gains. In
addition, these powers extend to all other matters listed in the Exclusive and Concurrent Lists. Nevertheless, item 7 of the Concurrent List allows the federal government to delegate the collection or administration of some taxes to the state government or any of its agencies.

The legislative capacity of the state governments to levy taxes is to the extent of matters listed in the Concurrent Legislative List, any matter not listed in the Exclusive List and any other matter with respect to which it is empowered to make laws in accordance with the provisions of the constitution. Also, item 9 of the Concurrent List reserves the state the power to make provisions for the collection of any tax, fee or rate or for the administration of laws providing for such collection by a local government. By this provision, the state government is allowed to regulate the administration of taxes by the third tier of government- the Local Government.

Given the entrenched right of each tier of government to levy taxes, there has been hash of taxes emanating from these authorities and leading to multiplicity of taxes on the corporate entities. It has been argued by some authors that the constitutional provision that reserves the taxation of companies' income, profits and capital gains for the federal government does not prevent taxes from being imposed on companies by states or local governments.

This position may not stand the strictest test. The general intent of the above constitutional provisions is to limit taxing rights of government to the extent of their prescribed powers. Issues of taxation of incomes, profits and capital gains as it affects companies are clearly the exclusive preserve of the federal government. This operates to exclude any other tier of government from passing any form of legislation to apply tax on any income derived by a corporate entity in the course of its business.

However, the federal government has sought to address the issue of multiplicity of taxes through the Taxes and Levies (Approved List for collection) Decree No. 21 of 1998. The legislation itemized the taxes to be collected by the Federal Government, State Government and Local Government.

Taxes prescribed for the Federal Government includes companies income tax, value added tax, withholding tax on companies, petroleum profit tax, stamp duties on companies and residents of the FCT, capital gains tax for companies, residents of FCT and non-residents and personal income tax for members of the armed forces, residents of FCT and staffs of the Foreign Affairs. The state government was limited to personal income tax (particularly PAYE), withholding tax, capital gains tax and stamp duties as it applies to individuals, pools tax, road taxes, business premises fee, market taxes and levies etc. The local governments were listed to collect shops and kiosks rates, tenement rates, marriage, birth and death fees and other fees which are usually of little significance.
The Decree had a good job in clearly delimiting the taxes that can be collected by the various tiers of government and also vested in the Joint Tax Board the responsibility of advising the Minister of Finance on amendments to the schedule of taxes affecting each tier of government.

In a recently decided case, the Court of Appeal ruled that the federal government has the responsibility to determine the kind of taxes and levies that should be imposed by each tier of government and that the Joint Tax Board is to coordinate the nature of taxes allowable by the appropriate tier of government.

The ruling of the court has added vent to the position that the right to levy tax reposed on each tier of government is not an unfettered right. This should be exercised in a manner that reflects the intendment of the framers of the constitution. A situation in which the state and local governments pronounce all manner of taxes on corporate entities within their jurisdictional control is not an acceptable practice.

**Conclusion**

Multiplicity of taxes is not a healthy development for corporate entities. It is a disincentive for their growth and these at times affect their corporate social responsibility where they perceive the host state government as being unfriendly.

The establishment of the Joint Tax Board is a laudable act in bringing sanity to the crisscrossing demands for tax by each of the governments. However, there is the need to harmonize the provisions of Decree 21 of 1998 in order to fully achieve the objective of the law. The provisions of the Decree which are at variance with the constitution should be amended to be in the consonance of the supreme law of the land. In this way, the fruits of saving the corporate entities from the ills of multiple taxes will be fully realised.

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