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An overview of corporate taxation and economic development in Nigeria: A legal approach

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Abstract
Corporate taxation plays no less significant roles in development of economies globally. Corporate taxation is a viable source of government revenue and an armoury for management of the economy towards developmental goals. In Nigeria, the government has been consistent in its policy of deliberate regime of tax incentives for stimulation of investment in the manufacturing, agriculture and the gas sub-sectors of the economy. The idea being that a conscious tax incentive regime will positively impact on both domestic and foreign investment, which is a critical factor in economic development. However, Nigeria ranks very low in terms of the desired development. Through the doctrinal research methodology, this paper has found that the regime of tax incentives in the manufacturing, agricultural and gas sub-sector has largely been abused through expatriation of profits, transfer pricing abuse and activities of tax avoiders and evaders. In addition, the government of Nigeria has not demonstrated the required willingness towards budgetary implementation in terms of fiscal policies, thus, denying the country the opportunity of taking advantage of the potential gains of corporate taxation in management of the economy for development purposes. As a way forward, the paper recommends an amendment to corporate laws making it mandatory for companies enjoying tax incentives to remain in the firm for a stipulated minimum period after the expiration of the tax incentive period. Again, a maximum percentage of profits to be expatriated by multinationals benefiting from a tax incentive regime should be considered in the proposed amendments. These, it is hoped will make more meaning and curb the wasteful tax incentive regime and ensure economic development of the country.

Keywords: taxation, corporate, economic, development, legal

Introduction

Corporate taxation is an integral part of the tax system. It is indispensable as a powerful armoury for revenue generation and management of the economy for development towards desired goals. According to Ogbonna and Ebimobewei [1], the political, economic and social development of any country depends on the amount of revenue generated for the provision of infrastructure in the given country, and that a well-structured tax system would boost the development of such a country.

Corporate tax, therefore presents itself as one of the viable ways of raising revenue for development. The indispensability of taxation, particularly, personal and corporate taxes was adumbrated in the Court of Appeal case of *Best Children International School V. Federal Inland Revenue Service* [2] in the dictum of S.J. Adah, JCA as follows:

…The essence of taxation is to enable the state have money to meet up with its traditional obligation of maintaining law and order, ensure good governance and available essential commodities for its teaming population. …If the people pay taxes there will be money to cause prosperity not pain to flourish. By the demographic outlay of Nigeria, our human population is about 200 million people and we have also artificial persons in the name of registered companies to the tune of one million, five hundred thousand artificial persons. If these phones their dues to the economy, we will be better for it.

The dictum of S.J. Adah, JCA stresses the importance of not just the tax system in generating government revenue for development, but goes further to particularly identify the important role of company taxation in revenue generation and development of the economy. It has been shown that in 1997, there were 4.7 million active corporations in the United States of which approximately 9,000 had assets exceeding $250 million. These 9,000 large corporations accounted for 86 percent of total U.S. corporate assets, 80 percent of net corporate income, and 78 percent of total corporate tax payments [3]. This corporate tax revenue is bound to impact greatly on the development of the United States.

Corporate taxation also creates other incentives for economic development of a nation. This is achieved through a legal framework designed to stimulate investment and development in particular sectors of the economy.

This paper therefore identifies and analysis the economic impact of corporate taxation on the entire economic fabric of Nigeria. It begins with a conceptual clarification of terms or concepts the forms the building blocks for this discourse, and turns to the vexed issue of the incidence of corporate taxation. It then delves into legislative attempts at the use of corporate tax for development of the economy. The paper proceeds to assess the impact of government efforts on development of economy and concludes by suggesting the way forward.

Conceptual Clarifications

Corporate Taxation

A corporation has been severally defined by text writers. The Mariam Webster has defined a corporation as a body "formed into an association and endowed by law with the rights and liabilities of an individual [4]. It has also been defined as "a legal entity created by stakeholders with the purpose of operating for profits" [5].

Corporate income tax for present purposes would therefore mean the taxation of incomes of corporations. In Nigeria, business oriented corporate bodies are subjected to tax under the Companies Income Tax Act (CITA) [6] while petroleum companies are liable to tax under the Petroleum Profits Tax Act (PPTA) [7]. Taxation of these forms of corporate bodies is what we refer to in this paper as corporate taxation.

Development

The term development has also been defined by various text writers. It has been defined to mean improvement in a country's economy and social conditions. More especially, it refers to the improvement in ways of managing an area's natural and human resources in order to create wealth and improve people's lives [8]. A more accurate definition is that given by the Chartered Institute of Taxation of Nigeria which defines the term "development" as the process of improving the quality of all human lives [9]. The Institute has also identified essential elements of development to include:

1. Raising peoples living levels;
2. Creating conditions conducive for growth of peoples' self-esteem through the establishment of social, political and economic system and institutions which promote human dignity and respect; and
3. Increasing peoples' freedom to choose by enlarging the range of their choice variables, e.g. varieties of growth and services.

Development, in the light of the foregoing, therefore, implies provision of social infrastructures like good roads, water and uninterrupted power supply. It would also extend to provision of employment opportunities, good educational system, equal opportunities and adequate security for the citizenry.

Liability to Corporate Taxation in Nigeria

Section 9 of the Companies Income Tax Act (CITA) [10] which charges company profits to tax provides that:

1. Subject to the provisions of this Act, the tax shall, for each year of assessment, be payable at the rate specified in subsection (1) of Section 40 of this Act upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria in respect of –

a. any trade or business for whatever period of time such trade or business may have been carried on;

b. rent or any premium arising from a right granted to any other persons for the use or occupation of any property and where any payment on account of such a rent as is mentioned in this paragraph is made before the expiration of the period to which it relates and id induced for the purposes of this paragraph in the profits of a company, then, so much of the payments as relates to any period beginning with the date on which the payment is made shall be treated for these purposes as accruing to the company proportionately from the day to day over the last mentioned period or over the five years beginning with that date, whichever is the shorter;

c. dividends, interests, royalties, discounts, charges or annuities;

d. any source of annual profits not failing within the proceeding categories;

e. any amount deemed to be income or profit under a provision of this Act or, with respect to any benefit arising from a person or provident fund, of the Personal Income Tax Act;

f. fees, dues, and allowances (wherever paid) for services rendered;

g. any amount of profits or gains arising from acquisition and disposal of short-term money instruments like Federal Government securities, treasury bills, treasury or savings certificates, debenture certificates or treasury bills, treasury or savings certificates, debenture certificates or treasury bonds.

2. For the purpose of this Section, interest shall be deemed to be derived from Nigeria if –

a. there is a liability to payment of the interest by a Nigerian company or a company in Nigeria regardless of which way the interest may have accrued.

To be liable to tax in Nigeria, therefore, an income or profits must have accrued in, derived from, brought into or received in Nigeria. To give effect to this, the Companies Income Tax Act has divided companies into two broad categories for tax purposes [11], viz; Nigerian companies and foreign companies. Section 105(1) of the Companies Income Tax Act goes further to define a Nigerian company to mean any company incorporated under the Companies and Allied Matters Act (CAMA) or any enactment replaced by that Act while a foreign company is defined to mean any company or corporation (other than a corporation sole) established by or under any law in force in any territory or country outside Nigeria.

This distinction is very important for tax purposes. The global profits of a Nigerian company are taxable in Nigeria whether or not all or any part of the profits have been remitted into Nigeria [12], while profits of a foreign company are taxable in Nigeria only to the extent that they are derived from a source within Nigeria. According to Section 13 of CITA.

1. The profits of a Nigerian company shall be deemed to accrue in Nigeria wherever they have risen and whether or not they have been brought into or received in Nigeria.
2. The profits of a company other than a Nigerian company from any trade or business shall be deemed to be derived from Nigeria –

a. if that company has a fixed base of business in Nigeria to the extent that the profit is attributable to a fixed base;

b. if it does not have a such a fixed base of business in Nigeria but habitually operates a trade or businesses through a person in Nigeria authorised to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person on behalf of the company, to the extent that the profit is attributable to the business or trade or activities carried on through that person;

c. if that trade or business or activities involves a single contract for surveys, deliveries, installations or construction, the profit from that contract; and
d. where the trade or business or activities is between the company and another person controlled by it or which has a controlling interest in it and conditions are made or imposed between the company and such person in their commercial or financial relations which in the opinion of the Board is deemed to be artificial or fictitious, so much of the profit adjusted by the Board to reflect arm's length transaction.

The combined effect of Sections 9 and 13 of CITA is, that the global profits of Nigerian companies are taxable in Nigeria whether or not they are brought into, received in or imported into Nigeria, while for foreign companies, it is only the profits that are derived from a source within Nigeria that are liable to Nigerian tax. In *Addex V. FIRS* [13], the Tax Appeal Tribunal, Lagos Zone held that foreign companies cannot be taxed in Nigeria unless and to the extent that they do business in or derive profits in Nigeria and have a fixed based in Nigeria.

Incidence of Corporate Taxation

It has been convincingly argued that corporations do not pay tax, people do [14]. This theory finds justification in the fact that tax on the company is usually externalised to one or more of its components.

In the short-term run, it is the company as an entity that bears the tax burden. However, in the long run, individuals not companies bear tax. The true burden of any tax that is imposed upon a company will ultimately fall upon or be transferred to one or more of the company's customers through increased prices of the company's products or services, the company's employees through a reduction in wages, and the suppliers of capital to the business in a reduction in the return on their investment.

There has consequently been an argument as to whether or not there is need to tax companies at all, rather than just individuals whether in their capacity as customers, employees or suppliers of capital, since the tax burden ultimately falls on these individuals. In support of taxing individuals rather than the company, the advantage is that taxing of individuals would allow for certainty, equity and neutrality. This will further enhance the use of tax as a powerful tool for redistribution of income and management of the economy.

On the other hand, reasons why any system of taxing company profits will involve a tax on the company as a separate entity. First, taxing consumers, shareholders or workers directly instead of the company may cause a lot of administrative inconvenience and inefficiency. Secondly, a tax on companies is needed to prevent them from becoming simply receptacles for convenient storage and accumulation of income free of tax, though the eventual distribution will be taxable, that liability might be avoided through undistributed dividends and by device of sale of the shares, thus raising a capital gain [15].

Tilley [16], further argues that a tax on companies is needed to protect the individual income, and that, moreover, taxing companies is politically more acceptable than taxing individuals, as being less personal and because companies occupy so important a place in the economy, government cannot afford not to tax them. In all, the arguments in favour of taxing the company rather than the individuals display more potentials for economic development.

Company Taxation and Economic Development in Nigeria

Taxation is one of the surest ways of mobilizing revenue for economic development. Corporate taxation therefore forms an integral part of the machinery for revenue mobilisation. Corporate taxation for this purpose would therefore mean Companies Income Tax (CIT) and Petroleum Profits Tax (PPT). Corporate bodies also pay Capital Gains Tax, Value Added Tax (VAT), Stamp Duties and Customs and Excise Duties.

For development purposes, corporate taxation can be appreciated basically from two major perspectives. These are revenue generation and economic management approaches.

Revenue Generation

Revenue obilization is the key to sustainable development. It is important for the provision of infrastructural development in the areas of good roads, quality education, power supply, and most importantly, investment in the production of goods and services.

The United Nations [17] has shown that in achieving the Millennium Development Goals (MDGs), low income countries (LICs) have the responsibility to increase their domestic revenues by about 4 percent of Gross Domestic Product (GDP). According to the report [18], this is necessary due to the fact that infrastructural development demands a lot of resources and funding. In essence, revenue generation in low income countries is extremely low and there is need for improvement if those countries are to achieve any meaningful development.

In Nigeria, revenue generation has not been very impressive due to the weak and administrative nature of the tax system. In the face of this, tax avoidance and evasion schemes prevail resulting to extremely low revenue yields. Company taxation in particular, has not in recent years formed a significant percentage of the gross revenue collections in the country.

Table 1: Percentage of Gross Revenue Collections of selected Taxes including Company Income Tax

Item	2012	2013	2014	2015	2016	2017
Company Income Tax % of Gross Revenue	5.1	4.5	3.3	2.9	3.4	4.8
Customs and Excise Duties as % of Gross Revenue	10.5	7.6	5.5	4.2	2.9	4.2
Value Added Tax as % of Gross Revenue	6.3	5.3	4.1	3.2	3.3	5.1
Non-oil Revenue as % of Gross Revenue	6.3	4.9	4.8	5.3	4.9	3.6

***Source*:** CBN Annual Report, 2017

The spread in the table shows that despite the importance of company taxation in revenue generation, its contribution to the gross revenue collections over the years has not been impressive. What this translates into is that there is need to improve on the administration of company taxation.

Economic Management

Over the years, governments have been consistent in the use of tax incentives to stimulate both local and foreign investment in particular sectors of the economy. These may take the following forms:

Tax Exemptions

Tax exemption otherwise called tax holiday may come inform of outright or partial exemption of income from tax. Tax exemption simply means a period of exemption from the payment of taxes imposed by the government. The exemption may be in favour of an industry, region or type of investment. This form of tax incentive is the most predominant form of incentive used in fiscal strategies aimed at stimulating investment, be it local or foreign. Currently, the types of income exempted include profits in respect of goods exported, interest on deposits in Nigeria by non-residents and income earned from abroad repatriated to Nigeria.

The driving force towards the use of tax exemption among the developing countries is that it stimulates investments by making available to companies within the exemption period tax free income. It is therefore a direct subsidy to the cost of production of pioneer companies.

The usual argument against tax exemption is that it grants disproportionate benefits to firms which enjoy a higher rate of profit, since the greater the profits, the greater is the saving out of the postponement of tax payments, thereby discriminating against the need and the profit-less companies [19].

Rural Investment Allowance

Where a company incurs capital expenditure on the provision of facilities such as electricity, water, tarred road or telephones for the purpose of a trade or business which is located at least 20 kilometer away from such facilities provided by the government, there shall be allowed to the company in addition to the initial allowance under the Second Schedule to the Companies Income Tax Act [20] an allowance at the appropriate percent certain as set out in subsection (2) of this Section of the amount of expenditure [21].

The rates of the rural investment allowance for the purpose of this allowance are as follows [22]:

a. no facilities at all- 100%
b. no electricity- 50%
c. no water- 30%
d. no tarred road- 15%
e. no telephone- 5%

Investment allowance cannot be claimed on the same asset on which rural investment allowance has been claimed in the year the capital expenditure is incurred and cannot be carried forward. Rural investment allowance is aimed at stimulating investment in rural areas thereby discouraging rural-urban migration.

Accelerated Development Allowances

This is referred to as accelerated depreciation and covers all methods are investment and initial allowance. Investment allowance provides for a write off of depreciable property in addition to that provided by ordinary depreciation allowances thereby permitting depreciation in excess of the cost of the asset. Accelerated depreciation system has been said to be advantageous since it allows a company realise interest free loan in the form of postponement of taxes and so long as the company continues to expand there is tax savings [23].

Import Duties Relief

This provides relief from custom duties of equipment and construction, lowering the cost of a firms' import, which consequently has a trickledown effect on the cost of the firms' production. The role of these incentives in the development of some sectors of the Nigerian economy is therefore examined in the ensuing discussion.

Tax Free Zones

Individual and corporate bodies are generally subject to tax in Nigeria subject to certain exceptions [24]. However, there are instances where a special tax advantage may be created for a particular economic activity, in order to attract, retain or increase investment in that particularly activity. In other words, tax free zones mean the total exclusion of certain activities from tax in order to attract foreign investments.

Until the 1980s, governments in developing countries based the development of their national economies on policies of import substitution, protecting local industries by imposing high customs barriers and strict control of foreign investment. However, it has now been realised by developing countries that foreign investment is desirable. The modern trend is therefore the breaking down of national barriers to promote foreign investment. In doing this, the establishment of free zones appears attractive to many developing countries including Nigeria. The role of these incentives in the development of some sectors of the Nigerian economy is therefore examined in the ensuing discussion.

Manufacturing

In the context of Nigeria, the regime of tax incentives in the manufacturing industry can broadly be categorised into three phases. These are the periods between 1914-1959, 1960-1969, and 1970 to date.

The Period between 1914-1959

Prior to independence in 1960, such industrial projects as could be embarked upon were financed by a combination of annual budget surplus, external grants and loans and foreign reserve generated by export of cash crops, notably; cocoa, cotton, groundnuts, soya beans as well as minerals like tin and columbite [25]. At this time, most commercial activities in Nigeria were in foreign hands since Nigerians lacked capital for any meaningful investment. Moreover, Nigeria needed foreign investors to facilitate the execution of government industrial development projects [26]. A regime of tax incentives to encourage both local and foreign investment was therefore deliberately packaged. Prominent among legislations on tax incentives of that era included the Industrial Development (Import Duties Relief) Act of 1957, Industrial Development (Income Tax Relief) Act of 1957, Customs (Dumped and Subsidised Goods) Act of 1958 and the Customs (Draw Back) Regulations of 1958.

These legislations provided tax exemptions, reliefs and concessions on imported raw materials and assessable profits of Nigerian companies made during the pioneer period. The legislations were meant to encourage large-scale investment and consequently, production or manufacturing. However, at this time, Nigerians had no capital to go into manufacturing with the effect that the entire economy was in the hands of foreign capital. Early European companies that took advantage of these tax incentives and exploited the benefits thereof included the United African Company (U.A.C), Lever Brothers, the Royal Niger Company, and John Holt.

Therefore, tax incentives and concessions given in the manufacturing sector during the colonial era were simply meant to encourage European businessmen to exploit the abundant resources and cheap labour in Nigeria and therefore establish economic hegemony over the Nigeria economy.

From another perspective, it is also logical to argue that by encouraging more European businessmen to invest in Nigeria, more revenue could be generated for the colonial government in the long-run since most of these tax incentives and concessions were not forever. This submission is particularly true in view of the fact that throughout the colonial era, the main objective of taxation in Nigeria was that of raising revenue, and any benefit to the taxpayer was incidental. When in 1884/85 thirteen (13) European countries sat in Berlin and with the aid of maps, and consumed by their national interests, divided Africa among themselves, it was basically a meeting of free boosters sharing among themselves their spoils.

For all purposes, therefore, the revenue raising function of taxation was predominant in the hands of the colonial authorities. Yet, the tax incentive regime in Nigeria in that era was basically designed to serve colonial interests.

The Period between 1960-1969

At independence, about eighty percent of the Nigerian population was engaged in subsistence agriculture [27] while few industries, basically in the extraction industry were still in foreign hands [28]. The few local entrepreneurs that ventured into manufacturing did not receive much encouragement from the government of the day in continuation with the earlier colonial policy of not encouraging local entrepreneurs. Hence, the attempts by the local industrialists were stifled and growth of the industries stunted as they generally did not qualify for the generous incentives extended to their foreign counterparts [29]. Trade and investment policy of the period therefore focused on the promotion of direct foreign investment, in most cases, with direct participation of government [30].

Thus, the Industrial Development (Income Tax Relief) Act, 1958 continued in operation and was neither amended nor abrogated. The Act provided relief for companies registered in Nigeria which were treated as pioneer industries. Pioneer industry status was granted to any industry not being carried on in Nigeria at all or not being carried on at a scale commensurate with the country’s economic requirements and it is expedient in the public interest to encourage the development or establishment of the industry in Nigeria [31]. The major relief granted by the Act was a tax holiday for a maximum period of five years from the time the company commenced business. The tax holiday granted under the Act was not limited to the industry but also extended to shareholders of the pioneer industry.

Since independence, economic policy of the government in general and fiscal regime in particular greatly favoured an open-door attitude to foreign companies and transnational business concerns. The intelligentsia who thought that political independence would bring economic emancipation was frustrated. Hence, the voice of dissent to foreign domination of the economy grew louder by the day [32].

The Period from 1970 – date

Towards the end of the first decade of independence, the national campaign by the intelligentsia that Nigerians should assume prominent positions in the ownership, control and management of the economy started to receive the serious consideration of government [33]. At the regulatory level, the change of attitude started with the promulgation of the 1968 Companies Act [34], and culminated into the promulgation of the Nigerian Enterprises Promotion Act in 1972 [35]. At the fiscal level, constant reviews and streamlining of Customs and Excise duties regulations aimed at controlling imports and protecting domestic industries were made [36]. Consequently, foreign investment in the economy was discouraged. It therefore became necessary to further provide tax incentives to encourage foreign investment.

Currently, there are quite a number of incentives under various laws designed to attract investments generally into certain sectors of the economy. Tax reliefs have been provided under the Companies Income Tax Act [37], Petroleum Profits Tax Act [38], and the Liquefied Natural Gas Act [39]. Under Section 23(1) (q) of the Companies Income Tax Act, any company applying for tax exceptions satisfy certain requirements which are that:

a. the profits must have been made from goods exported;
b. the profits from the said export must have been repatriated; and
c. the profits are used exclusively for the purchase of raw materials, plants, equipment and spare parts.

In *Olokun Pisce Limited V. Federal Inland Service* [40], the Federal High Court Lagos held that the onus is on the claimant to establish or prove completely by giving particulars of how the proceeds were repatriated and more importantly, by stating the specific raw materials, plants, equipment and spare parts purchased with the said proceeds with receipts being hard evidence.

The liberalisation of conditions generally culminated into what is now termed “globalisation”. Globalisation has its major components, namely; commercialisation, liberalisation and privatisation of companies. The most important aspects of economic globalisation are breaking down of national economic barriers, which imply the absence of protectionalism or self-sufficiency of states.

Agriculture

The importance of agriculture in any economy cannot be over-emphasized. Agriculture is important even for countries that are blessed with abundant minerals resources like petroleum.

This is in view of the fact that to depend solely on oil revenue is unsafe for any economy. In the first place, oil revenue responds to fluctuations in the oil prices in the international market. Secondly, oil being a mineral deposit may depreciate or get exhausted entirely. In recognition of the unreliability of oil as a sole source of revenue and the need for a diversified economy to enhance industrial growth, successive Nigerian administrations have under various captions launched programmes aimed at stimulating investment in and promoting agriculture and agro-allied industries [41]. Regrettably, most of the investments have been infact, undertaken by government and its direct agencies and not much, in relative terms, has been achieved by way of increased output in this direction [42].

Apart from these programmes, a five-year tax-free period is granted by the Companies Income Tax Act [43] for pioneer Agro-Allied Companies and an exemption from taxation on interest payable on bank loans for agriculture.

Inspite of all the measures taken, not much can be said to have been achieved in this direction [44]. This has been largely due to the fact that only wealthy members of the society who are not farmers take advantage of these tax incentives to the exclusion of the peasant farmer who is the actual producer of agricultural products in the country. The conditions for grant of bank loans are so stiff and beyond the reach of the peasant farmer. Consequently, the peasant farmer has no access to bank loans and therefore, has no opportunity to benefit from any tax incentive in that regard. Unfortunately, the wealthy Nigerians that benefit from such loans end up diverting them for other purposes, thus leaving the agricultural sector to still suffer neglect.

The Gas Sub-Sector

In 1970, when oil production hit 2 million barrels per day, about 2 billion cubic feet of associated natural gas was produced on a daily basis with the flaring of ninety percent of that, Nigeria's flared gas at that rate of oil production was estimated at the equivalent of 300,000 barrels of oil per day [45]. By 1977, oil companies in Nigeria flared about 2 billion cubic feet of gas daily [46]. The government has consistently made fiscal legislative efforts to encourage associated gas utilisation, which has the potentials to encourage investment and curb flaring.

In 1997, substantial tax concessions were granted and strengthened through the grant of additional fiscal incentives under the Associated Gas Fiscal Arrangement (AGPA of 1992). These fiscal incentives for exploitation of associated gas have been consolidated under a legislation known as Fiscal Incentive (Guarantee and Assurance) Act Nos. 18 and 19 of 1998. These fiscal incentives for the upstream operations are summarised as follows:

1. Investment required to separate crude oil from the reservoir into useable products shall be considered as part of oil field development;
2. Capital investment on facilities or equipment to deliver associated gas in useable form of utilisation or designated custody transfer points shall be treated for tax purposes, as part of the capital investment for oil development; and
3. Capital allowances, operating expenses of the Petroleum Profit Act and tax incentives under the reserved MOU.

The incentives for the utilisation of associated gas (downstream operations) include

1. Companies in gas utilisation are to be subjected to the provisions of the Companies Income Tax Act;
2. An initial tax-free period of three years, renewable for additional two years subject to satisfactory performance, is applicable;
3. Accelerated Capital Allowances after the tax-free period of 90% retention for investment in plant and machinery;
4. An Investment Capital Allowance of 15% which shall not reduce the value of the asset;
5. Tax-free dividends during the tax-free period where:
   a. The investment for the business was in foreign currency; and
   b. The introduction of plan and machinery during the period was not less than 30% of the quality share capital of the company.
6. Interest on loan for gas project is deductible provided prior approval is obtained from the Federal Ministry of Finance before taking the loan;
7. In cases of integrated oil gas projects all expenditure pertaining to the integrated oil and gas project would be chargeable under the Petroleum Profit Tax Act;
8. Gas is transferred at 0% PPT and 0% Royalty; and
9. Plant, machinery and equipment purchased for utilisation of gas are exempted from VAT and import duty.

Government in partnership with some oil companies is already involved in the Liquefied Natural Gas (LNG) project with an investment of over US$ 30 billion [47]. There is a special legislation which spells out clear terms in respect of incentives, guarantees and assurances given to foreign investors in the project. The Special Legislation, Nigeria LNG (Fiscal Incentives, Guarantees and Assurances) Act [48] among other things gives the following fiscal incentives:

a. tax incentives for a period of ten years to the company, that is, Nigeria LNG Limited, irrespective of the provisions of the Industrial (Income Tax Relief0 Act, 1971;
b. exemption from taxation of interest and dividend payable to any non-Nigerian company in respect of loans or other financial arrangements made with the company (i.e. Nigeria LNG);
c. exemption from withholding tax payments of interest, rent, hire and other payments normally subjected to withholding taxes;
d. exemption from withholding tax of dividend paid out of pioneer profits;
e. exemption from tax on income accruing to non-Nigerian company or citizen in respect of any work or services provided from outside Nigeria to the economy, contractors and sub-contractors in respect of all necessary imports or plant, machinery, goods and materials for use in the construction of, or incorporation in the plant, jetties, shipping, transmission facilities and ancillary works used in the company's business, and in respect of any major spare parts needed in the event of a plant failure and ordered within two years of commission in the part of the plant for which the particular spare parts are required;
f. capital allowance accumulated during its pioneer period shall not be subject to restriction at the end of its pioneer period when the company shall be liable to pay tax;
g. various guarantees and assurances by the Federal Government to the company and its shareholders including permission for the company to maintain foreign bank accounts; permission to declare any paying dividend in US Dollar (after necessary provision has been made for tax), guarantee that the company will be able to receive its finance in Nigeria in the form of

either or both money transferred directly from abroad, and plant, machinery, materials, equipment and services imported from abroad, and guarantee not to impose constraints on the amount of loans for other financing which may be provided to the venture among others.

The Associated Gas Re-Injection Act makes it an offence to flare gas without the written permission of the Minister of Petroleum Resources [49]. However, the Petroleum Profits Tax Act (PPTA) [50] permits a tax incentive to a company engaged in the utilisation of associated gas to pay the minimum amount charged by the Minister of Petroleum Resources for any gas flare by the company. To flare gas therefore a company must obtain the written permission of the Minister. In *Federal Inland Revenue Service V. Mobil Production Nigeria Unlimited* [51], the Lagos Federal High Court held that if a company is unable to obtain permission in writing of the Minister or the Minister fails to issue a certificate, it will not be appropriate and will amount to an invalid act if the said company proceeds to flare gas without compliance. The whole idea is to encourage companies to produce gas and therefore develop the sector.

The government has therefore through the foregoing fiscal measures been deliberately steering the wheel of investment to the exploitation and utilisation of natural gas.

On the efficacy of these incentives in stimulating investment in the gas sub-sector, official figures shows that gas flared in Nigeria has been reducing since 2002 and stood at 10 percent in 2018 [52]. However, it has been shown that with the volume of gas flared, Nigeria still ranks in the top ten gas flaring countries in the world, with 7.4 billion cubic feet in 2018 [53]. Worst still, new local data shows that flaring has even gone up or increased dramatically [54]. It shows, for instance, that in the village of Ebedei in Nigeria’s Niger Delta flares as tall as ten storey building burn day and night [55].

The overall picture is that the regime of tax incentives as a tool to stimulate investment in the gas sub-sector and therefore reduce pollution of the environment arising therefrom has had no significant impact on the economy.

Another dimension through which taxation can be used in shaping the economic growth and development of a country is that it can be employed to encourage or discourage certain economic activities through reduction or increase in tax rates as appropriate. Increase in tax rates has the capacity to increase the prices of certain items and therefore discourage their production and consumption. For instance, since 1998, the government has been deliberately pursuing a policy of increased duty rates or outright ban on importation of raw materials in both the cigarette and alcohol industries termed the “sin industry” with the aim of discouraging their production and consumption [56].

However, this approach has not been very effective in Nigeria. The non-effectiveness of fiscal measures has been duly largely to lack of government commitment to budgetary implementation and activities of tax evaders and avoiders.

Summary/Findings

Corporate taxation is of significant importance in economies globally. First, it is a source of government revenue for development. Apart from being an important source of government revenue, company taxation is an important fiscal and social weapon in the hands of government capable of being used to manage and direct the economy towards desired goals of government.

Given the foregoing therefore, successive Nigerian governments have over the years seen corporate taxation as a viable source of government revenue notwithstanding the fact that oil is the main stay of the economy.

While pursuing the revenue raising function of taxation, the government has over the years implemented a deliberate regime of tax incentives to stimulate investment in other sectors of the economy. The policy thrust being that a friendly legal environment, including a tax incentive regime would stimulate investment and development by both local and foreign capital.

However, a tax incentive regime has not been very effective in promoting investment and development in Nigeria. In both manufacturing and agricultural sectors, tax incentives appear to be lame in developing the sectors as both incentives are not available to the desired beneficiaries, but abused.

Apart from the fact that some companies that enjoy tax incentives in form of tax holiday, may wind up after the tax holiday ends and relocate to more friendly tax jurisdictions, it is possible for multinationals to repatriate profits earned from the tax incentive regime through transfer pricing abuse. The end result is that investment in the particular sectors is not sustained.

In the gas sub-sector, the tax incentive regime has not been shown to be of significant benefit as Nigeria still ranks among the world’s top ten gas flaring nations.

The tax rate can also be effectively manipulated to direct the economy towards desired goals. In Nigeria, tax rates have since 1998 through the National Annual Budgets to either encourage or discourage certain consumption habits. These changes in tax rates have for most of the time not produced the desired result due to lack of will on the part of government to vigorously implement budgetary proposals and the activities of tax avoiders and evaders.

Proposals For Reform

In terms of the non-effectiveness of tax incentives as a toll for the stimulation of investment and therefore development arising out of the beneficiary’s abuses, a legislation can be passed prescribing a number of years which a company enjoying tax incentives must remain in an industry at the expiration of the tax incentive period. Again, the proposed legislation must also stipulate a maximum amount of profit which a company can repatriate and a minimum which must be reinvested in the industry.

Furthermore, government must exhibit commitment to vigorously implement budgetary proposals. This will ensure that budget proposals reflect positively on prices with a trickledown effect on development.

Conclusion

This paper has critically analysed the role of corporate taxation in the development of the Nigeria economy. The role of corporate taxation in raising government revenue for development has been stressed.

In particular, the role of tax incentives in stimulating investment and development in the manufacturing, agriculture and gas sub-sector have been appraised in the paper which has established that the regime of tax incentives in the country has not played any significant role in investment decisions and development of the economy.

Proposals for reforms amendments to tax incentive regime provisions and government commitment to budgetary implementation have been made. It is only then that corporate taxation can be better positioned for the development of the Nigerian economy.

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