



# AMERICAN JOURNAL OF SOCIETY AND LAW (AJSL)

VOLUME 1 ISSUE 1 (2022)



PUBLISHED BY: E-PALLI, DELAWARE, USA

## Personal Income Tax in Nigerian Fiscal Federalism: Matters Arising

Idachaba Martins Ajogwu<sup>1\*</sup>

### Article Information

**Received:** September 18, 2022

**Accepted:** November 10, 2022

**Published:** November 20, 2022

### Keywords

*Fiscal Federalism, Constitution,  
Income Tax, Government*

### ABSTRACT

Fiscal federalism is a by-product of federalism. Federalism is a political concept in which power to govern is shared between national and sub-national Governments creating what is often called a federation. Federalism is a political concept in which the power to govern is shared between Federal, States and Local Governments, creating what is often called a federation. Fiscal federalism is characterized by fiscal relations between central and lower levels of Government. The progression in taxation in Nigeria is from personal income tax to taxation on other sources such as petroleum, companies etc. Personal Income Tax Act identifies taxable persons, chargeable incomes, determines assessable income and tax that income. The Act also determines the residence of the tax payer for the purpose of payment and or collection of personal income tax. This paper contains primary and secondary sourced materials, such as laws, statutes, and other resource materials. This paper revealed the aspect of personal income that raises concerns on the ownership of funds collected by State Governments through the State Boards of Internal Revenue under personal income tax regime. Though it is argued by some school of thought that the rules of agency suggest that an agent acting under a delegated authority cannot be heard contesting the subject matter of agency with the principal. However, due to the combined provisions of sections 80(1), 120(1) and 163 of the Constitution which direct that the personal income tax collected by the State Government be paid into the Consolidated Revenue Fund of the State and used for the benefit of the State lay to rest the issue of ownership of the personal income tax collected by the State Government.

### INTRODUCTION

In Nigeria there is a constitutional duty to pay tax by every taxable adult and this duty gives corresponding rights to every taxpayers. Such rights as right to life, right to dignity of human person, right to personal liberty, right to private and family life, right to freedom from discrimination (Constitution Chapter, 2011) and so on are intrinsically available to Nigerian taxpayers. It is against this background that we shall be considering the importance of tax and related matters within the Nigerian economy.

The Government of Nigeria, like other countries in different parts of the world, has legislative powers to impose on its citizens, any form of tax and whatever amount it deems appropriate. Tax, like most legal concepts, is not amenable to a single or universally accepted definition. There are as many definitions of the word as there are scholars who define the subject from their own perspectives. For the purpose of this paper, definitions proffered by judicial decisions, policy document, learned authors and would be considered.

Tax has been defined in the Australian case of *Mathews v Chicory Marketing Board* (S A Ateiza, 2008) as:

a compulsory exaction of money by a public authority for public purposes, or taxation is raising money for the purpose of Government by means of contribution from individual persons.

Ola defined tax as the demand made by the Government of a country for the compulsory payment of money by the citizens of a country (C S Ola, 2001) Adam Smith did not define tax, but rather described it in his treatise where

he brought to the fore the characteristics of tax (A Smith, 1776). In his maxims relating to taxes, he stated that the subjects of every State ought to contribute towards the support of the Government as nearly as possible, in proportion to the revenue which they respectively enjoy under the protection of the State. He identified the characteristics of a good tax to include: certainty, equity, neutrality and administrative efficiency. From Smiths description, it can be deduced that tax, though a compulsory contribution made by persons in support of Government, is proportionate.

In the perception of Agbonika, Tax is an obligatory levy exacted by Government on eligible persons, goods or activities for particular purposes which may be expressed or implied in the interest of the nation (J A A Agbonika, 2015). It is easily deduced from the definition that taxes are not paid by everybody, the taxpayer must be eligible and it is not the entirety of a person's earned income that is assessed to tax, it is the residue, that is, what remains after all the statutory deductions, allowances and incentives have been subtracted that is assessed for the purpose of tax.

The 2017 revised National Tax Policy succinctly defines tax as any compulsory payment to Government imposed by law without direct benefit or return of value or a service whether it is called a tax or not is apt. (The National Tax Policy Document). The absence of direct benefit *qui pro quo* should not lead to a wrong conclusion that Government could collect taxes and care less about the taxpayers or society. Such an attitude will be most unfortunate and may precipitate civil unrest. There is

<sup>1</sup> Faculty of Law, Kogi State University, Anyigba, Nigeria

\* Corresponding author's e-mail: [Idachabamartins1@gmail.com](mailto:Idachabamartins1@gmail.com)

an underpinning principle in furtherance of the Social Contract Theory (J J Rousseau, 2020), that tax revenue is supposed to be utilized for the provision of social services and development of the society; which Nigerian parlance includes the advancement of the provisions of the Fundamental Objectives and Directive Principles of State Policy (Constitution, Chapter, 1999)

### Personal Income Tax

Personal income tax (PIT) is a tax imposed on individuals or entities that varies with respective income or profits. Income tax generally is computed as the product taxable income (H Peter, 2001). Taxation rates may vary in type depending on the taxpayer. The tax rate may increase as taxable income increases. The tax imposed on companies is usually known as corporate tax and is levied at a flat rate of 30% subject to some exceptions as introduced under the 2019 and 2020 Finance Act. Most jurisdictions exempt locally organized charitable organizations from tax. Capital gains may be taxed at different rates than other income. Credits of various sorts may be allowed that reduce tax. Some jurisdictions impose the higher of an income tax or a tax on an alternative base or measure of income.

Most jurisdictions require self-assessment of the tax and payers of some types of income to withhold tax from those payments. Advance payments of tax by taxpayers may be required. Taxpayers not timely paying tax owed are generally subject to significant penalties, which may include jail for individuals or revocation of an entity's legal existence.

The concept of taxing income is a modern innovation and presupposes several things: a money economy, reasonably accurate accounts, a common understanding of receipts, expenses and profits, and an orderly society with reliable records. For most of the history of civilization, these preconditions did not exist, and taxes were based on other factors. Taxes on wealth, social position, and ownership of the means of production (typically land and slaves) were all common. Practices such as tithing, or an offering of first fruits, existed from ancient times, and can be regarded as a precursor of the income tax, but they lacked precision and certainly were not based on a concept of net increase (I. A. Ayua, 1996).

The first income tax payment was recorded in Egypt (A. Sanni, 2019). In the early days of the Roman Republic, public taxes consisted of modest assessments on owned wealth and property. The tax rate under normal circumstances was 1% and sometimes would climb as high as 3% in situations such as war. These modest taxes were levied against land, homes and other real estate, slaves, animals, personal items and monetary wealth. The more a person had in property, the more tax they paid. Taxes were collected from individuals.

In the year 10 AD, Emperor Wang Mang of the Xin Dynasty recorded an unprecedented income tax, at the rate of 10 percent of profits, for professionals and skilled labor. He was overthrown 13 years later in 23 AD and

earlier policies were restored during the re-established Han Dynasty which followed.

One of the first recorded taxes on income was the Saladin tithe introduced by Henry II in 1188 to raise money for the Third Crusade. The tithe demanded that each layperson in England and Wales be taxed one tenth of their personal income and moveable property. The inception date of the modern income tax is typically accepted as 1799, at the suggestion of Henry Beeke, the future Dean of Bristol (Clark, 2019). This income tax was introduced into Great Britain by Prime Minister William Pitt the Younger in his budget of December 1798, to pay for weapons and equipment for the French Revolutionary War. Pitt's new graduated (progressive) income tax began at a levy of 2 old pence in the pound (1/120) on incomes over £60 (equivalent to £6,200 in 2018) and increased up to a maximum of 2 shillings in the pound (10%) on incomes of over £200. Pitt hoped that the new income tax would raise £10 million a year, but actual receipts for 1799 totalled only a little over £6 million. (, 2019)

Pitt's income tax was levied from 1799 to 1802, when it was abolished by Henry Addington during the Peace of Amiens. Addington had taken over as prime minister in 1801, after Pitt's resignation over Catholic Emancipation. The income tax was reintroduced by Addington in 1803 when hostilities with France recommenced, but it was again abolished in 1816, one year after the Battle of Waterloo. Opponents of the tax, who thought it should only be used to finance wars, wanted all records of the tax destroyed along with its repeal. Records were publicly burned by the Chancellor of the Exchequer, but copies were retained in the basement of the tax court (C. Adams, 2003).

In the United Kingdom of Great Britain and Ireland, income tax was reintroduced by Sir Robert Peel by the Income Tax Act 1842. Peel, as a conservative, had opposed income tax in the 1841 general election, but a growing budget deficit required a new source of funds. The new income tax, based on Addington's model, was imposed on incomes above £150 (equivalent to £13,870 in 2018) (A B Steven, 2011). Although this measure was initially intended to be temporary, it soon became a fixture of the British taxation system. A committee was formed in 1851 under Joseph Hume to investigate the matter, but failed to reach a clear recommendation. Despite the vociferous objection, William Gladstone, Chancellor of the Exchequer from 1852, kept the progressive income tax, and extended it to cover the costs of the Crimean War. By the 1860s, the progressive tax had become a grudgingly accepted element of the English fiscal system. The United State (US) Federal Government imposed the first personal income tax on August 5, 1861, to help pay for its war effort in the American Civil War (3% of all incomes over US\$800) (equivalent to \$22,300 in 2018) (S Pollack, 2016). This tax was repealed and replaced by another income tax in 1862. It was only in 1894 that the first peacetime income tax was passed through the Wilson-Gorman tariff. The rate was 2% on income over \$4000

(equivalent to \$116,000 in 2018), which meant fewer than 10% of households would pay any (S. Pollack, 2014). The purpose of the income tax was to make up for revenue that would be lost by tariff reductions. The US Supreme Court ruled that the income tax was unconstitutional, the 10th amendment forbids any power not expressed in the US Constitution, and there being no power to impose any other than a direct tax by apportionment.

In 1913, the Sixteenth Amendment to the United States Constitution made the income tax a permanent fixture in the U.S. tax system. In fiscal year 1918, annual internal revenue collections for the first time passed the billion-dollar mark, rising to \$5.4 billion by 1920 (A. Young, 2007). The amount of income collected via income tax has varied dramatically, from 1% in the early days of US income tax to taxation rates of over 90% during World War 2. While tax rules vary widely, there are certain basic principles common to most income tax systems around the world, whether in China, Canada, Germany, United Kingdom and so on.

Individuals are often taxed at different rates than corporations. Individuals include only human beings. Tax systems in countries other than the United State of America treat an entity as a corporation only if it is legally organized as a corporation. Estates and trusts are usually subject to special tax provisions. Other taxable entities are generally treated as partnerships. In the US, many kinds of entities may elect to be treated as a corporation or a partnership. Partners of partnerships are treated as having income, deductions, and credits equal to their shares of such partnership items. Separate taxes are assessed against each taxpayer meeting certain minimum criteria. Many systems allow married individuals to request joint assessment. Many systems allow controlled groups of locally organized corporations to be jointly assessed.

Tax rates vary widely. Some systems impose higher rates on higher amounts of income. Example: Elbonia taxes income below E.10,000 at 20% and other income at 30%. Tax rates schedules may vary for individuals based on marital status (P. Thomas, 2018). Residents are generally taxed differently from non-residents. Few jurisdictions tax non-residents other than on specific types of income earned within the jurisdiction. A very few countries (notably Singapore and Hong Kong) tax residents only on income earned in or remitted to the country.

Residence is often defined for individuals as presence in the country for more than 183 days. Most countries base residence of entities on either place of organization or place of management and control. The United Kingdom has three levels of residence. Most systems define income subject to tax broadly for residents, but tax non-residents only on specific types of income. What is included in income for individuals may differ from what is included for entities.

The timing of recognizing income may differ by type of taxpayer or type of income. Income generally includes most types of receipts that enrich the taxpayer, including compensation for services, gain from sale of goods

or other property, interest, dividends, rents, royalties, annuities, pensions, and all manner of other items (R. Chun, 2019). Many systems exclude from income part or all of superannuation or other national retirement plan payments. Most tax systems exclude from income health care benefits provided by employers or under national insurance systems.

Only net income from business activities, whether conducted by individuals or entities is taxable, with few exceptions. Many countries require business enterprises to prepare financial statements which must be audited. Tax systems in those countries often define taxable income as income per those financial statements with few, if any, adjustments. A few jurisdictions compute net income as a fixed percentage of gross revenues for some types of businesses, particularly branches of non-residents.

Nearly all systems permit residents a credit for income taxes paid to other jurisdictions of the same sort. Thus, a credit is allowed at the national level for income taxes paid to other countries. Many income tax systems permit other credits of various sorts, and such credits are often unique to the jurisdiction. Some jurisdictions, particularly the United States and many of its States and Switzerland, impose the higher of regular income tax or an alternative tax. Switzerland and U.S. states generally impose such tax only on corporations and base it on capital or a similar measure.

Personal income tax is generally collected in one of two ways: through withholding of tax at source and/or through payments directly by taxpayers. Nearly all jurisdictions require those paying employees or non-residents to withhold income tax from such payments. The amount to be withheld is a fixed percentage where the tax itself is at a fixed rate. Alternatively, the amount to be withheld may be determined by the tax administration of the country or by the payer using formulae provided by the tax administration.

Payees are generally required to provide to the payer or the Government the information needed to make the determinations. Withholding for employees is often referred to as 'pay as you earn' (PAYE) or 'pay as you go'. Income taxes of workers are often collected by employers under a withholding or pay-as-you-earn tax system. Such collections are not necessarily final amounts of tax, as the worker may be required to aggregate wage income with other income and/or deductions to determine actual tax. Calculation of the tax to be withheld may be done by the Government or by employers based on withholding allowances or formulae.

Nearly all systems require those whose proper tax is not fully settled through withholding to self-assess tax and make payments prior to or with final determination of the tax. Self-assessment means the taxpayer must make a computation of tax and submit it to the Government. Some countries provide a pre-computed estimate to taxpayers, which the taxpayer can correct as necessary. The proportion of people who pay their income taxes in full, on time, and voluntarily (that is, without being

fined or ordered to pay more by the Government) is called the voluntary compliance rate (A. Bernasek, 2010). The voluntary compliance rate is higher in the US than in countries like Germany or Italy. In countries with a sizeable black market, the voluntary compliance rate is very low and may be impossible to properly calculate.

Personal income taxes are separately imposed by sub-national jurisdictions in several countries with Federal systems. These include Canada, Germany, Switzerland, Nigeria and the United States, where provinces, cantons, or States impose separate taxes. In a few countries, cities also impose income taxes. The system may be integrated (as in Germany) with taxes collected at the Federal level. In Quebec and the United States, Federal and State systems are independently administered and have differences in determination of taxable income. Retirement oriented taxes, such as Social Security or national insurance, also are a type of income tax, though not generally referred to as such. In the US, these taxes generally are imposed at a fixed rate on wages or self-employment earnings up to a maximum amount per year. The tax may be imposed on the employer, the employee, or both, at the same or different rates.

Tax avoidance strategies and loopholes tend to emerge within income tax codes. They get created when taxpayers find legal methods to avoid paying taxes. Lawmakers then attempt to close the loopholes with additional legislation. That leads to a vicious cycle of ever more complex avoidance strategies and legislation]. (A. Pechman, 1974). The vicious cycle tends to benefit large corporations and wealthy individuals that can afford the professional fees that come with ever more sophisticated tax planning, thus challenging the notion that even a marginal income tax system can be properly called progressive. The higher costs to labour and capital imposed by income tax causes deadweight loss in an economy, being the loss of economic activity from people deciding not to invest capital or use time productively because of the burden that tax would impose on those activities. There is also a loss from individuals and professional advisors devoting time to tax-avoiding behaviour instead of economically-productive activities.

Income taxes are used in most countries around the world. The tax systems vary greatly and can be progressive, proportional, or regressive, depending on the type of tax. Comparison of tax rates around the world is a difficult and somewhat subjective enterprise. Tax laws in most countries are extremely complex, and tax burden falls differently on different groups in each country and sub-national unit. Services provided by Governments in return for taxation also vary, making comparisons all the more difficult. Countries that tax income generally use one of two systems: territorial or residential. In the territorial system, only local income – income from a source inside the country – is taxed. In the residential system, residents of the country are taxed on their worldwide (local and foreign) income, while nonresidents are taxed only on their local income. In addition, a very

small number of countries, notably the United States, also tax their nonresident citizens on worldwide income. Countries with a residential system of taxation usually allow deductions or credits for the tax that residents already pay to other countries on their foreign income. Many countries also sign tax treaties with each other to eliminate or reduce double taxation. Countries do not necessarily use the same system of taxation for individuals and corporations. For example, France uses a residential system for individuals but a territorial system for corporations (H. L. A. Hart, 1961) while Singapore does the opposite, and Brunei taxes corporate but not personal income.

### **Fiscal Federalism**

Fiscal federalism denotes an inter-governmental fiscal relation defining functions and responsibilities among the various tiers of Government as well as the financial resources to achieve stated objectives (R Ajibola, 2008). It is a term used to describe a system of Government in which the fiscal responsibilities rest with the various tiers of Government in the country. In Nigeria, for instance, the Federal, State and Local Governments have the joint responsibility of generating and expending revenue to carry on Government responsibilities. Fiscal federalism therefore relates to the division of tax income and functional responsibilities among the various tiers of Government in a Federal State. It follows, therefore, that both States and Federal authorities in a federation must be given the Constitutional power, each to have access to and power to control its own financial resources; each must have power to tax and to borrow for the financing of its own services by itself (A. Ferrara, 2010).

Hilman had argued that in a federal system of Government, there is allocation of taxing power, federally collectable revenue and Federal expenditure to the different level/ components of Government in a federation so as to enable them discharge their constitutionally assigned functions and responsibilities to their citizens. He added that in most federations, the taxes of citizens (corporate and biological) constitute the major items that go into the common purse of the federation (A. L. Hillman, 2003).

In view of the underlying imperatives of fiscal federalism, Gruber Jonathan maintained that the principle of fiscal autonomy and fiscal integrity is a sine qua non for the survival and continued existence of a truly federal system of Government. He advocated that each level of Government Federal, State and Local must necessarily have a minimum source of independent revenue and full control of such revenues in order to enable it discharge its constitutional responsibilities (J Gruber, 2010).

As a matter of the fact, the greater the fiscal independence through internally generated revenue amongst the component States, the stronger the foundation of its federal system and the greater the chances of the survival and continued existence of the federation. It is therefore essential that each unit of the Government in the federation must not only have identifiable independent

sources of revenue, but that such independent sources should to a large extent, provide a solid base for its revenue needs and economic potentialities.

Fiscal federalism is concerned with understanding which functions and instruments are best centralized and which is best placed in the sphere of decentralized levels of Government (W. E. Oates, 1999). In other words, it is the study of how competencies (expenditure side) and fiscal instruments (revenue side) are allocated across different (vertical) layers of the Government. An important part of its subject matter is the system of transfer of payments or grants by which a central Government shares its revenues with lower levels of Government (J. E. Stiglitz, 1999). Federal Governments use this power to enforce national rules and standards.

There are two primary types of transfers, conditional and unconditional. A conditional transfer from a Federal body to a province, or other territory, involves a certain set of conditions. If the lower level of Government is to receive this type of transfer, it must agree to the spending instructions of the Federal Government. An example of this would be the Canada Health Transfer. (J. P. Faguet & C. Poschl, 2015)

An unconditional grant is usually a cash or tax point transfer, with no spending instructions. An example of this would be a federal equalization transfer. This may be noted that the concept of fiscal federalism is relevant for all kinds of Government: Unitary, Federal and Confederal (C. K. Sharma, 2009). The concept of fiscal federalism is not to be associated with fiscal decentralization in officially declared federations only; it is applicable even to non-federal States (having no formal federal constitutional arrangement) in the sense that they encompass different levels of Government which have de facto decision-making authority. This, however, does not mean that all forms of Governments are 'fiscally' federal; only that 'fiscal federalism' is a set of principles that can be applied to all countries attempting 'fiscal decentralization'. In fact, fiscal federalism is a general normative framework for assignment of functions to the different levels of Government and appropriate fiscal instruments for carrying out these functions.

Governor of Rivers State of Nigeria, Ezenwo Nyesom Wike said that he believes true fiscal federalism will strengthen the economy of Nigeria as all sections will develop based on their comparative advantages (O Donatus, 2019). Agbonika and Agbonika, 2015 clarifies that while "fiscal federalism constitutes a set of guiding principles, a guiding concept" that helps in designing financial relations between the national and sub-national levels of Government, fiscal decentralization on the other hand is a process of applying such principles. Federal and non-federal countries differ in the manner in which such principles are applied. Application differs because Unitary and Federal Governments differ in their political and legislative context and thus provide different opportunities for fiscal decentralization.

The concepts of fiscal federalism are related to vertical

and horizontal fiscal relations. The notions related to horizontal fiscal relations are related to regional imbalances and horizontal competition. Similarly, the notions related to fiscal relations are related to vertical fiscal imbalance between the two senior levels of Government, which is the centre and the States/Provinces. While the concept of horizontal fiscal imbalance is relatively non controversial, the concept of vertical fiscal imbalance is quite controversial. Vertical Fiscal Imbalance (VFI) is conceptually distinct from the notion of Vertical Fiscal Gap (VFG) (R. Bahl & R. Bird, 2008).

Various activities of the Government are undertaken at different levels. Federal Government redistributes the income to lower levels of Government using tools that are called allocation or grant as the case may be. It does so because of several reasons. Local Governments have often better information about preferences of local people and costs. Another reason is that the Federal Government may try to offer States and localities incentives to undertake additional spending, from which will benefit also neighboring communities or the whole country. The composition of federal grants in the United State of America (USA) has changed significantly over the past 50 years. Nowadays, federal grants for health programs represent 65 percent of the total amount of money distributed by federal grants, compared with less than 20 percent in 1980 (J. P. Faguet & C. Poschl, 2015).

A number of constraints and challenges both within and outside the fiscal system are part of the problems that must be solved in order to achieve an effective fiscal system. The challenge to effective fiscal federalism can be identified to include the problem of external debt overcharge, macro-economic instability, distresses in domestic financial system, lack of political stability and above all, bad leadership or leadership ineffectiveness.

The external indebtedness of the country and inability to meet external debt service obligations had been a major constraint to fresh flow of foreign investment into the country, while the distress in the domestic banking system also constitutes a distinctive to the much needed growth in private savings and investments. This is further complicated by the high level of inflation experienced during the review period.

High inflation is destructive to private savings as it continuously increases the share of disposable income of consumption. It has been observed also that rapid growth and development cannot be achieved in an environment of political and social instability. Political stability implies an orderly system for a change of Government. The absence of an orderly system and dedicated leadership is a great challenge to the operation of an effective fiscal system needed to support economic growth. The challenge is formidable because it is the leadership that would dictate the pattern and direction of fiscal engineering.

In view of the foregoing points, Ajibola identified the following as the major challenges of fiscal federalism in Nigeria:

i. The major problem could be seen in the mismatch

between revenue sources and functions of the various tiers of Government. The revenue allocated to the lower tiers of Government is lower in comparison to the enormous duties expected of them. This has actually influenced meaningful infrastructural development in the country.

ii. Frequent change in Government and incessant military coups reduce the

operations and effectiveness of fiscal federalism. This is because during military intervention, constitution is usually suspended in favour of decrees and edicts. In this situation, the principles of fiscal federalism were affected and this in turn affected development in the country, especially within the state and local Government areas.

iii. Dwindling revenue due to reduction in the country's export and fluctuations in the prices of the nation's commodities in the international commodity market are among the challenges of the fiscal federalism in Nigeria.

iv. Economic and financial mismanagement which is reflected in corruption and financial impropriety of Government functionaries have actually affected development in Nigeria especially where leaders in the country are corrupt and self centered.

v. The sharing of federal revenue reflects political applications rather than economic consideration. Rapid increase in fiscal unit thereby reduces the funds allocated to each State and Local Government in the country.

The Federal Government controls all the major sources of revenue like import and excise duties, mining, rents and royalties, petroleum sales tax, petroleum profit tax and companies income tax among other revenues sources. State and Local Government taxes are minimal, hence this limits their ability to raise independent revenue and so they depend solely on allocation from the federation account (E. G. Emenuga, 2010). Much of the revenue collected by the Federal Government and distributed among the different tiers of Government using the vertical revenue allocation formula is from the federation account. But it is our view that the Federal Government exercises too much control over its distribution. So many deductions are made from the total revenue collected before the rest is distributed according to the sharing formula.

### **Matters Arising**

The significant aspect of personal income that raises matters bothers on the ownership of funds collected by State Governments through the State Boards of Internal Revenue under Personal Income Tax Regime. The Personal Income Tax Act being a Federal legislation delegates collection to States.

Where does the money so collected go to? Can States use the money without authorization of their principal i.e the Federal Government? There are two major positions on the above controversy.

The first group is of the view that the Federal Government being the initiator of the PITA through section 4 of the Constitution owns the money collected under PITA by

the States and can, at best, give State Governments a percentage of the collection pending division of money from the Federation Account (Constitution Chapter, 2011).

The second group says that personal income tax is residence-based and belongs to collecting States even though they were acting as delegates of the Federal Government. To resolve the controversy, there is need to consider the clear provisions of the Constitution and the Personal Income Tax Act. There seem to be two separate consolidated revenue funds one being for the federation and the other for the States (Constitution Chapter, 2011). Section 80(1) of the 1999 Constitution provides that:

All revenues or other moneys raised or received by the Federation (not being revenues or other moneys payable under this Constitution or any Act of the National Assembly into any other public fund of the Federation established for a specific purpose) shall be paid into and form one Consolidated Revenue Fund of the Federation. While Section 120(1) of the Constitution provides that: All revenues or other moneys raised or received by the State (not being revenues or other moneys payable under this Constitution or any Law of a House of Assembly into any other public fund of the State established for a specific purpose) shall be aid into and formone Consolidated Revenue Fund of the State.

It can be seen from the two provisions above that the Constitution creates two special accounts for money or funds made and earned by the Federal and State Governments. While section 80(1) is in respect to the Federal Government, Section 120(1) applies to revenue made by the State Government. This Consolidated Revenue Fund is different from the Federation Account (Constitution Chapter, 2011) and State Joint Local Government Account. The Federation Account is a special account which all revenues collected by the Government of the Federation are paid into, except the proceeds from the personal income tax collected by the Federal Inland Revenue Service.

The State Joint Local Government Account on the other hand is a special account which all allocations to the Local Government councils of the State from the Federation Account and from the Government of the State are paid into i.e excluding the proceeds or revenue internally generated by the State. Whereas funds in the Consolidated Revenue Fund of the Federation exclusively belongs to the Federation and is administered by the National Assembly to meet the administrative and other needs of the Federal Government and its agencies as they deem fit, funds in Consolidated Revenue Fund of the States belong to the State and is similarly utilized by the State, under the exclusive appropriation of the State House of Assembly, to meet its needs. Save for taxes collected from personnel of the Armed Forces, Nigeria Police, Ministry or Department of Government charged with foreign affairs and the residents of Federal Capital Territory which by operation of Sections 80 and 162 of the Constitution go into the Consolidated Revenue Fund of the Federation

and by implication belongs to the Federal Government, the rest enter the Federation Account en route to its final destination which is the Consolidated Revenue Fund of the States. Section 163 of the Constitution was apt when it stated:

Where under an Act of the National Assembly, a tax or duty is imposed in respect of any of the items listed in item D part II of the Second Schedule to this Constitution (i.e to say incomes or profits from persons other than companies/personal income tax, etc) the net proceeds of such tax shall be distributed amongst States on the bases of derivation and accordingly-

(a)Where such tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the consolidated revenue fund of that State.

(b)Where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such time the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from the State

Therefore, it can be seen that the Federal Government is not a beneficiary of the personal income tax collected by the State Government. This is due to the combined provisions of sections 80(1), 120(1) and 163 of the Constitution which direct that the personal income tax collected by the State Government be paid into the Consolidated Revenue Fund of the State and used for the benefit of the State.

#### Distribution of State Generated Revenue

With respect to the means of distribution of the revenue generated or collected by the State Board of Internal Revenue under the Personal Income Tax Regime, section 163 of the Constitution, the net proceeds of such tax or duty collected shall be distributed among the States on the basis of derivation.

The Supreme Court in *Attorney-General of the Federation v. Attorney-General of Abia State & Ors.* (No.2) has interpreted this to mean that whatever net revenue is collected from any State by the Government of the federation must be paid back to that State. The said section states aptly that:

Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation.

It is imperative to note that the net proceed is the whole amount collected as personal income tax minus the collection cost. This was made clear by Section 165 of the Constitution which enjoins the State to pay to the federation an amount equal to such part of the expenditure incurred by the federation for the purpose of collection of taxes or duty which is wholly or partly payable to the States pursuant to the provision of the Constitution. The rate of this collection cost is put at

5% by virtue of the proviso to section 88(1) (b) of the Personal Income Tax Act. Furthermore, where a tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State for the purposes distribution of the net proceeds. But where such tax or duty is collected by the Government of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from the State.

Personal income tax is an area that raises concerns of administration especially since the legislating Federal authority only delegate power of collection to the State authorities. The usual rules of agency suggest that an agent acting under a delegated authority cannot be heard contesting the subject matter of agency with the principal. It is therefore the constitutional responsibility of the National Assembly to make tax laws or amend existing laws as provided in the second schedule to the Constitution, and as may be required under section 4 of the Constitution so that each level of Government can impose tax in respect of any of the items that it has power to legislate upon.

#### CONCLUSION

Fiscal Federalism is all about the allocation of taxing powers and expenditures between the three tiers of Government i.e the Federal, State and Local Government. But a close look at the provisions of section 2(1) of the 1999 CFRN as amended provides that Nigeria is a federation consisting of the States and the federal capital territory. Taxing powers operates at two broad levels; the level of imposition by legislation and collection. From the combined statutory provisions considered above, it is apparent that the Federal Government is not a beneficiary of the personal income tax collected by the State Government. This is due to the combined provisions of sections 80(1), 120(1) and 163 of the Constitution which direct that the personal income tax collected by the State Government be paid into the Consolidated Revenue Fund of the State and used for the benefit of the State.

#### REFERENCES

- A. Smith, *Wealth of Nations*. Book v Chapter II Part II, (New York :Macmillan and Co., 1776), 261.
- A. Sanni, (September 24, 2019). A history of taxation, at <http://www.taxworld.org/history/taxhistory.html>
- A. Young, (January 24, 2007). Retrieved from *The Origin of the Income Tax*. Ludwig von Mises Institute.
- A. Bernasek, (March 7, 2010). Retrieved from *Should Tax Bills Be Public Information?*. The New York Times.
- A. Ferrara, (2010), *Cost-Benefit Analysis of Multi-Level Government: The Case of EU Cohesion Policy and US Federal Investment Policies*, (London and New York: Routledge Publishers, 2010), 234
- A. L. Hillman, (2003). *Public Finance and Public Policy*, 2nd edition (New York: Cambridge University Press,

- 2010), 728.
- A. B. Steven, (2011). *Anglo-American Corporate Taxation: Tracing the Common Roots of Divergent Approaches* (Cambridge: *Cambridge University Press*). 28–29.
- Constitution of the Federal Republic of Nigeria*, (1999), (as amended), Chapter 4.
- C. Adams, (2003). *Those Dirty Rotten Taxes*, (New York: The Free Press, 45.
- C. K. Sharma, (2009). When Does decentralization deliver? The Dilemma of Design, *South Asian Journal of Socio-Political Studies*, 38-45.
- E. G. Emenuga, (2010). *The Search for an Acceptable Revenue Allocation Formula: The National Question and Economic Development*, (Ibadan: Heinemann Books, 2010), 67.
- H. L. A. Hart, (1961). The Concept of Law, culled from Whitehouse C., *Revenue Law and Practice*, 13th Edition, (Butterworth's, Dublin & Edinburg, 1995), 6.
- H. Peter, (2001). *Income Tax in Common Law Jurisdictions: from the origins to 1820*, 1, 34.
- HM Revenue & Customs*. Archived from the original on July 24, 2010. Accessed September 24, 2019.
- I. A. Ayua, (1996). *The Nigerian Tax Law*. Lagos: Spectrum's Law Publishing.
- J. A. A. Agbonika, (2015). *Problems of Personal Income Tax in Nigeria*, (Ibadan: Ababa Press Ltd.).
- J. J. Rousseau, (March 1, 2020). *The Social Contract* available at [https://www.ucc.ie/archive/hdsp/Rousseau\\_contract-social](https://www.ucc.ie/archive/hdsp/Rousseau_contract-social).
- J. A. Pechman (1974). *Who bears the tax Burden?* The Brookings Institutions Washington D.C., 11.
- J. Gruber, (2010). *Public Finance and Public Policy*, 4th edition (New York: Worth Publishers, 2010), 269-271.
- J. E. Stiglitz, (1999). *Economics of the public sector*. (New York, London: W.W. Norton & Company, 1999), 733–734.
- J. P. Faguet and C. Poschl, (2015). *Is Decentralization Good for Development? Perspectives for Academics and Policymakers*. (Oxford: Oxford University Press, 2015), 92.
- J. A. Agbonika & J. A. A. Agbonika, (2015). Fiscal Federalism and the Challenges of Administration of Personal Income Tax in Nigeria', in J. A. A. Agbonika, *Topical Issues on Nigerian Tax Laws and Related Areas* (Ibadan: *Ababa Press Ltd.*, 2015), 416.
- J. A. A. Anyoade, (1998). *The Federal Character Principle and the Search for National Integration being a chapter in Federalism and Political Restructuring in Nigeria*, A. Kunle, (ed.) Ibadan, 1988, 10.
- O. Donatus, (2019). Strengthening Fiscal Federalism in Nigeria, *The Graphic (Lokoja)*, 76
- P. Thomas, (2018). *Top Incomes in France in the Twentieth Century Inequality and Redistribution, 1901–1998*.
- R. Chun, (March 3, 2019). Retrieved from *Why Americans Don't Cheat on Their Taxes*. The Atlantic.
- R. Ajibola, (2008), *Public Finance: Principles and Practice*, (Lagos: AVL Publishing, 2015), 87.
- R. Bahl & R. Bird, (2008). Sub-national Taxes in Developing Countries: The way forward, *Public Budgeting & Finance*, 2008, 28, 1-25
- S. A. Ateiza, (2008). 'An Assessment of the Nigerian Tax system and Taxing Powers'. Kogi State University Anyigba. *Journal of Commercial and Industrial Law Faculty of Law*, 1(1), 128.
- S. Pollack, (2016). '(PDF). *University of Delaware*.
- S. Pollack, (2014). *The First National Income Tax, 1861-1872* (PDF), University of Delaware
- The National Tax Policy Document*, Chapter 2 at 205.
- UK Retail Price Index inflation figures are based on data from Clark, Gregory (2017). *Measuring Worth*. Retrieved 27th January, 2019.
- W. E. Oates, (1999). An Essay on Fiscal federalism, *Journal of economic Literature*, 98.