

A CRITICAL APPRAISAL OF THE LEGAL FRAMEWORK OF VALUE ADDED TAX (VAT) IN THE NIGERIAN ECONOMY¹

Abstract

Value Added Tax (VAT) is an indirect tax, which is imposed on goods and services at each stage of production, starting from raw materials to final products. Here, the final consumer bears the final burden. The significance of VAT on the economy cannot be overemphasized since it plays an important role in revenue generation through the indirect tax imposed on goods and services. It is noteworthy that indirect taxes may affect the cost of living as such taxes are borne by the consumer of such goods. A case in point was the failed attempt by the Federal government to increase the VAT rate to 10%. Various amendments were introduced by the Finance (Miscellaneous Taxation Provision) Decrees over the years and these were differentiated by adding alphabets such as A, B, C after the amended sections. For instance, in 1996, section 8 of the Decree was amended and section 8A and 8B added to the existing section 8 resulting in sections 8, 8A and 8B. The same applies to sections 10 and 13 which later have sections 10A, 10B and 13A. The various amendments to the VAT Decrees, as amended, were consolidated in the Value Added Tax Act, Cap V-i, Laws of Federation of Nigeria, 2004. Sequel to the consolidation exercise, the provisions of the Act were renumbered by a number to each section serially including the sections which were hitherto differentiated by alphabets which resulted in 47 sections with one schedule which contains a list of goods and services exempted. The Act is to give a guideline on how VAT should be imposed (section 1), goods and services to be taxed (section 2), those to be exempted (section 3), the rate of tax (section 4), administration and registration (sections 7&8) respectively, establishment and composition of VAT technical committee (section 21). This paper attempts an appraisal of the impact of Value Added Tax (VAT). Accordingly, the first section highlights the introduction which includes the background to the paper, the role of VAT as an added system of taxation and the general nature of VAT in Nigeria. Consequent on the previous amendments of VAT, the latest being the Value Added Tax (Amendment) Act of 2007, section two discusses the thrust and evolutionary path of the changes of the legal and administrative framework of VAT, implementation of VAT and assesses the direction of development. Section three looks at the VAT offences and penalties, the VAT tribunal set up to handle VAT cases in Nigeria. Finally, some recommendations suggested includes, to organize seminars and workshops in order to educate people and seek for their co operation, have a proper and comprehensive data base of taxable persons to ensure compliance, enforcement of penalties and disposition of tax cases.

1.0 Introduction

There are different views as to the origin of the Value Added Tax (VAT). However, majority opinion states that the consumption based tax originated in France. VAT is a type of indirect tax levied on goods and services, its ultimate burden rests on the final consumer. If VAT had a birth certificate, the place

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and year of birth would read “France”, “1954” respectively.² The VAT created in France in 1954 was a value-added type of consumption tax on goods, levied at the production stage. In 1968 however, this tax was merged with the existing turnover tax on services and a local tax on retail sales into a single comprehensive levy extending through the retail stage.³

According to Carl S. Shoup, the latest innovation is the Value Added Tax. Since its birth, the spread of VAT across the globe remains unprecedented and unparalleled. Since its inception in 1954, over 140 countries around the world have adopted VAT such as Argentina, Chile, Brazil, Cameroon, Egypt, and Niger. Indeed countries in all the continents have adopt it, Africa inclusive, all the ECOWAS⁴ states, without disregarding the other African countries that have a VAT system.

The idea of introducing Value Added Tax in Nigeria came when the then Federal Minister of Budget and planning Dr. S.P. Okongwu on 26th April, 1991, inaugurated a 20 member study group to review the entire tax system.⁵ The report of the study group initiated the introduction of VAT into Nigeria partly because of the low level of voluntary compliance with our tax laws by the experts and tax practitioners and the need to make a remarkable shift from direct to indirect taxation and minimize government dependence on oil revenue.

In that same year, VAT was proposed and a committee was set up to carry out feasibility studies on its implication as an improvement on the Sales Tax in existence then. The government set up the Modified Value Added Tax (MVAT) committee, to undertake feasibility studies on the implementation of VAT in Nigeria. The committee worked in close collaboration with the Federal Inland Revenue Service (FIRS) until January, 1993 when the Federal Government agreed to introduce the new tax into the country by the middle of the year. It was later shifted to 1st September, 1993 by which time the relevant legislation would have been made and proper ground work done. –

The VAT scheme did not commence until 1st January, 1994, after the promulgation of the Value Added Tax Decree No. 102 of 1993. Before implementation, there was the need for tax education, enlightenment and publicity before and during its implementation. A land-in-time as practiced in Belgium, Italy, Korea, Indonesia, Argentina, Colombia, Mexico, United Kingdom was considered in the case of Nigeria too. The decision to adopt the VAT in Nigeria was taken in January, 1992 and it was implemented in January, 1994. The lead-in- time period of two years created the opportunity to reform the tax paying and tax collection method, the registration for VAT, the training of VAT collectors, the mode of tax refunds, the preparation and distribution of VAT manuals and information bulletin and the time for identifying and reducing the economic dislocation and complaints that may arise from the introduction of VAT.

In many countries there is a growing interest in tax reforms that will shift the tax burden from direct bases (income, savings, wealth etc) on to indirect ones especially consumption of manufactured or natural resources. In other words, consumption is increasingly being favored over income and allied items. Although income tax is much older, indirect taxes such as general sales tax and now VAT have

² See Jeffery Owens, “The move to VAT” 1996/2 *interax* p.45 Cf. Eric Schiff, “Value Added Tax in Europe” 1973 note 1, p.1.

³ Cnossen, *Key Questions in Considering a Value Added Tax for Central and Eastern Countries* (IMF 1991) p.2.

⁴ Economic Community of West African States.

⁵ Federal Inland Revenue Service Information Circular No.9304 of 20th August, 1993.

come to be the staple of tax regime and the most visible feature of tax reforms in the 20th century. The reform of tax system through the introduction of VAT is the major fiscal innovation of the century. VAT has helped government to the tune of eight billion naira (N 8 billion) in the first year. What is particularly interesting about VAT is that it is a tax that is paid without cheating but with sweating, it is a tax we pay without thinking about it.⁶

2.0 DEFINITION OF TERMS, SCOPE AND NATURE OF VALUE ADDED TAX.

It is our intention that this work will be read and understood by all that may be interested either for personally, officially or academic use. Therefore, the need to highlight and define the important terminologies used cannot be overstressed.

The Value Added Tax Decree No 102 of 1993 which is now the Value Added Tax Act, Laws of the Federation, 2004, spelt out the following terms and their meaning as used in the work.

“Taxable person” means a person who independently carries out in any place an economic activity as a producer, wholesale trader, supplier of goods, supplier of services (including mining and other related activities) or person exploiting tangible or intangible property for the purpose of obtaining income there from by way of trade or business; and includes a person and an agency of Government acting in that capacity;

“Tax” means the Value Added Tax imposed and charged under Section 1 of this Act;

“Authorized officer” means an officer who has been authorized by the Board to perform any function under or in pursuance of this Act;

“Board” means the Federal Board of Inland Revenue;

“Business” includes any trade, commerce or manufacture or any concern in the nature of trade, commerce or manufacture;

“Chairman” means the chairman of the Federal Board of Inland Revenue;

“Company” means a company as defined under the Companies and Allied Matters Act and a corporate body that may be formed under any other written law and includes any association, whether incorporated in or outside Nigeria.

“Import” means bringing in or carrying to be brought in goods and services from another country or from an export processing zone;

“Importer” means any person who imports taxable goods;

“Input tax” means tax paid by the taxable person to the supplier for taxable goods and services purchased by or supplied to him;

“Invoice” means any document issued as an evidence of demand for payment;

“Agency of Government” includes a ministry, department, statutory body, public authority and an institution of the Federal, State and Local Government;

“Manufacturer” means any person who engages in the manufacture of goods and includes a person who has manufactured for himself or on his behalf by others, goods made to his specification or design.

“Manufacturing” means the process by which a commodity is finally produced, including assembling, bottling, repacking, mixing, blending, grinding, cutting, bending, twisting and joining or any other similar activity;

“Minister” means the minister responsible for matters relating to finance;

⁶ C.S. Ola, “Income tax law and practice in Nigeria” Revised Edition 1999, Heinemari Educational Books Nigeria Plc, Ibadan, p.584.

- “Output”** means tax that is paid to the registered person through the sale of taxable goods and services;
- “Owner”** means in respect of any goods, aircraft, vessel, vehicle, plant or any other goods, a person, other than an officer acting officially, who holds out himself to be the owner, manufacturer, agent or the person in possession of or beneficially interested in, or having control of or power of disposition over the goods, aircraft, vessel, vehicle, plant or other goods;
- “Registered person”** means any person registered with the Board for the purpose of the tax.
- “Supplies”** mean any transaction, whether it is the sale of goods or the performances of a service for a consideration that is for money or money’s worth;
- “Supply of goods”** means any transaction where the whole property in the goods is transferred or where the agreement expressly contemplates that this will happen and in particular includes the sale and delivery of taxable on hire or leasing and any disposal of taxable goods;
- “Supply of services”** means any service provided for a consideration;
- “Tax period”** means one calendar month commencing from the beginning of the month to the end of that month;
- “Taxable goods and services”** means the goods and services not listed in the first schedule to this Act;
- “Wholesaler”** means a person who obtains his stock predominantly from the manufacturers and sells in bulk to the retailers.

WHAT IS Value Added Tax (VAT)?

The concept of VAT is aptly defined by Ogley, “VAT is tax consumption, it is charged between business throughout the production and distribution chain. However, where the expenditure represents a business expense, a VAT-registered business which accounts for VAT on its own sales can recover the VAT it has been charged. Because VAT is charged on supplies between businesses throughout the production and distribution chain and not just on the ultimate sale of goods and services to a final consumer, it is described as a multistage tax

Even though VAT is charged to businesses on their purchases, VAT incurred in respect of business inputs- “input” VAT- is usually recovered by way of offset against VAT due on sales- “output” VAT- in the periodic VAT return which businesses are required to submit. The right of a business to recover VAT incurred at an earlier stage in the production or distribution chain is fundamental to the structure of the tax because it ensures that VAT is charged only on the ultimate sale price and is not cumulative. Without this right to recover input VAT It would be cumulative and constitute a “cascade” tax.⁷ Simply put, Ogley says, VAT is assessed on the value added to goods and services. It is charged as a percentage of the price of the goods and services which means that the actual tax burden is ascertainable at each stage in the production and distribution chain. VAT is a consumption tax payable on the goods and service consumed by any person, whether government agencies, business organizations or individuals. The target of VAT is consumption of goods and services and unless an item is specifically exempted by law, the consumer is liable to the tax. It can also be defined as a tax on spending/consumption levied at every stage of a transaction but eventually borne by the final consumer of such goods and services. It is levied at the rate of 5% which is the flat rate.

The tax is collected on behalf of the government by business and organizations which have registered with the Federal Inland Revenue Service (FIRS) for VAT purposes. The tax is collected fractionally via

⁷ Adrian Ogley, “Principles of Value Added Tax, “A European Perspective (Interfisc Publishing 1998) p. 1.

a system of deductions whereby persons can deduct from their VAT liability the amount of tax they have paid to other taxable persons, on purchases for their business activities. This mechanism ensures that the tax is neutral regardless of how many transactions are involved. Put differently, VAT is a multi-stage tax, levied only on value added at each stage in the chain of production of goods and services with the provision of a set-off for the tax paid at earlier stages in the chain. The objective is to avoid ‘cascading’, which can have a snowballing effect on prices.

Basically, taxable person will pay tax on goods purchased and collect tax on goods sold. At a specified date, the taxable person make returns to the tax authority of the total tax he has paid and total tax he has received. Together with his returns, he will pay over the difference between the tax he has received and the tax he has paid out. The difference represents the value he has added. The ultimate burden is borne by the final consumer who is not reselling the good or service, and therefore does not receive any tax against which he can deduct the tax he has paid in purchasing the good/service.

It is important to recognize that VAT is not a cascade tax where the total burden varies according to the number of stages involved in any transaction. For VAT purposes it makes no difference to the total tax payable whether there are two or two hundred stages before the retail sale, although the more stages there are the greater the number of persons who may be required to account for VAT.⁸ In essence, it is the output less the input tax⁹ that constitutes the VAT payable (Output Tax-Input Tax=VAT). It is the equivalent of the VAT paid by the final consumer of the product that will be collected by the government.

Although VAT is a multiple stage tax, it has a single effect and does not add more than the specified rate to the consumer price no matter the number of stages at which the tax is paid.¹⁰ This is illustrated below.

If a product moves from raw materials producer (A) to manufacturer (B) at N1,000.00 then to wholesale (C) at Ni,500.00, then to retailer (D) at N2,000.00 and finally to the consumer, who pays N2,500.00 to the retailer, VAT payable to government at 5% rate of VAT on the product is as follows:

Table 1

⁸ Percy F. Hughes and K.R. Tingley (eds) “Taxation” Key to Value Added Tax p.5.

⁹ Output tax is tax on sales, that is the VAT chargeable on taxable supplies made in the course of a business while input tax is tax on purchases which includes VAT on the acquisition by a taxable person of goods (as defined by corporate Administration handbook of the Institute of Chartered Secretaries and Administrators CSA) p.321.

¹⁰ M.T. Abdulrazaq, “Introduction to VAT in Nigeria” p.10.

| Prices | Output tax | Input tax | VAT paid to Government |
|--|------------|-----------|------------------------|
| Raw materials to manufacturer $\text{₦}1000 \times 5\%$ | ₦50 | | ₦50 |
| Manufacturer sale to wholesaler $\text{₦}1500 \times 5\%$ | ₦75 | ₦50 | ₦25 |
| Wholesaler to retailer $\text{₦}2000 \times 5\%$ | ₦100 | ₦75 | ₦25 |
| Retailer to consumer $\text{₦}2500 \times 5\%$ | ₦125 | ₦100 | ₦25 |
| | ₦350 | ₦225 | ₦125 |

Therefore, the total amount of VAT collected by the government equals 5% of the price (N2500) paid by the final consumer, that is, N125.

2.1 WHY ADOPT VAT?

According to Tait, “countries introduce VAT because they are dissatisfied with their existing tax structure.¹¹ Some countries look to VAT not only to replace existing sales taxes but also to increase revenue.¹² For example Nigeria replaced its Federal Sales Tax with the Value Added Tax in 1993 and recorded an increase in government revenue.

The rationale behind replacing the Sales Tax with VAT was informed by a number of factors and considerations;

- a) The base of the Sales Tax in Nigeria as operated under Decree No. 7 of 1986 was narrow. It covered only nine categories of goods plus sales and services in registered hotels, motels and similar establishments. The narrow base of the tax negates the fundamental principle of consumption tax which by nature is expected to cut across all consumables goods and services. VAT base is broader and includes most professional services and banking transactions which are high profit-generating sectors.
- b) Only locally manufactured goods were targeted by the sales Tax Decree of 1986, although this might not have been the intention of the law. VAT is neutral in this regard. Under VAT, a

¹¹ Tait, “Value Added Tax International Practice and Problems” (IMF 1988) p.3.

¹² Tait, *ibid*, p.21

- considerable part of the tax to be realized is from imported goods. This means that under VAT, locally manufactured goods will not be placed at a disadvantage, when compared to imports.
- c) Since VAT is based on the general consumption behavior of the people, the expected high yield from it will boost the revenue collectible-by governments with the minimum resistance from tax payers.

2.2 NATURE OF VALUE ADDED TAX

Value Added Tax is a consumption tax that has been embraced by many countries in the world. Because it is a consumption tax, it is relatively easier to administer and difficult to evade. The yield from VAT is a fairly accurate measurement of the growth of the economy, since purchasing power of the naira increases with economic growth. The introduction of VAT has brought about fairness to all tax payers, because a number of goods and services which were not previously covered by the sales taxes were now covered under the VAT laws. It also helped the traders, industrialists, producers and government as it was a move towards efficient, progressive and healthy competition of the tax system. Other African countries like Nigeria adopted the VAT tax amongst them are Mali with its flat rate 10% and 5%, South Africa with its flat rate at 14%, Benin Republic with its flat rate at 18% and some others involved. VAT is a self assessment tax that is paid when returns are rendered. In-built in the new tax is the refund or credit mechanism which eliminates the cascading effects, that is a feature of the retail sales tax. The input-output tax mechanism in VAT also makes it self- policing, this is because there is need to obtain receipts at each stage of the transaction.¹³

VAT, as the name implies is a tax on value added. However, the indirect subtractive method of taxing value added tends to obscure this fact because tax, liabilities for an accounting period are calculated without ascertaining the underlying value added. The relationship between tax liabilities and value added is further obscured by:

- 1) The use of exemptions and valuation reliefs.
- 2) The fact that changes in stock levels are disregarded and
- 3) The facts that no distinction is made between capital and revenue expenditure.

The interaction of these can give rise to the curious feature that a trader who has added value during an accounting period may nevertheless receive a repayment of tax. The indirect subtractive method acts as a tax on consumer expenditure which is broadly based, largely neutral as regards businesses and largely confined to the consumption of goods and services.¹⁴ These principles are discussed below:

VAT is broadly based tax on consumer expenditure. To be more specific, it is a tax on three classes of transactions made in Nigeria;

- i. **Supplies of goods and services:** VAT is charged on all purchase supply of goods and services made in Nigeria by traders referred to as “taxable persons”.¹⁵ Taxes are charged on the taxable persons and are required to render a return to the Board of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Board may, from time to time, determine.¹⁶

¹³ MN. Umenweke (Ph.D.), “Tax Law and its Implications for foreign investments in Nigeria”, Nolix Educational Publications (Nig), Enugu. 2008, p.153.

¹⁴ M.T. Abdulrazaq M.T., “Offences and Penalties under the Value Added Tax” Decree No. 102 of 1993, MPJFIL, Leaned Publishments Ltd, Lagos. Vol. 2 No 4, 1998, p.128.

¹⁵ Section 46, Value Added Tax Act, LFN 2004.

¹⁶ Section 15 (1) and (2), VAT Act, LFN 2004.

- ii. **Imported goods:** VAT is charged on imported goods to Nigeria. The tax due on goods imported is paid direct to the board at the same time as import duties.¹⁷

Credit Mechanism

VAT is largely removed from business costs and thereby confined to consumer expenditure, by providing taxable persons with a credit mechanism. Subject to a number of exceptions, taxable persons are entitled to recover the VAT they have paid. The tax is known as input tax and represents:

- a) Tax chargeable on goods and services supplied to them by other taxable persons and
- b) Tax paid to the board on goods imported from a third country.

In order to eliminate the cascading effect of taxation at every stage of production, the credit mechanism system is installed to allow VAT paid on imports or purchases of raw materials (input taxes) to be deducted from the VAT charged on sales (output taxes) and therefore, the tax to be paid by a taxable firm is the difference between output tax and input tax. This credit mechanism acts as a safeguard against the negative impact of the tax so that VAT is made neutral to price determination (VAT is not an element in the price). The credit mechanism also helps VAT to promote export drive in view of its neutral characteristic to international trade. In export trade, the total input taxes incurred on production is refundable.

Exports

All exported goods are zero rated, that is, such goods are taxable but at zero percent. This means that no VAT is collected and at the same rate, any input is refundable. To claim credit for input tax, a registered person must hold tax invoice.¹⁸

3.0 ADMINISTRATION OF VAT

VAT system in Nigeria is administered by the Federal Inland Revenue Service (FIRS), a Federal Agency responsible for the administration of Federal taxes with power do all that is necessary and expedient for the assessment and collection of the tax due. This now makes for easy reference for administrators, practitioners and researchers. The FIRS Act has granted array of powers and autonomy to the FIRS to enable it discharge its statutory duties. The FIRS is now able to recruit, discipline and determine the terms and other conditions of service of its staff outside the civil service structure. Since the take off of the new structure, the FIRS have been efficient and effective. The cumbersome and tortuous process of assessment and collection was solved by creation of 77 Integrated Tax Offices (ITOs) as one-stop shop for all tax payments including VAT. This development therefore drew a curtain on the existence and functionality of Local VAT Offices. The board is charged with the function of assessment and collection of the tax and shall account for all amounts so collected in accordance with the provision of the Act.

Although, it is administered and collected by the federal government using the existing tax machinery of the Federal Inland Revenue Services (FIRS) in close co-operative with the Nigeria Customs Service (NCS) and the State Internal Revenue Service (SIRS), the net proceeds from VAT are shared among the Federal, States and Local governments in the ratio 45:35:20.¹⁹ But has been recently reviewed to a distributing formula of 15:50:35. The prospective VAT payer obtains and completes VAT form 002

¹⁷ Section 15 (1) and (2), VAT Act, LFN 2004.

¹⁸ FIRS, Information Circular No. 9304.

¹⁹ Olaoye Clement Olatunyl, "A Review of Value Added Tax (VAT) Administration in Nigeria", 2009, Medwell Journals, Vol. 3 Issue: 4, Scientific Research Publishing Company, p.61-68.

and returns to the nearest VAT office. Once, registered the VAT proceeds is expected on monthly basis to be paid to the VAT office. Every taxable person is to remit to the relevant local VAT office the net. Remittances are supposed to be made together with the VAT returns. The VAT carries a single rate of 5% on taxable goods and services. Zero rates are assumed for export while there are goods and services exempted from tax.

3.1 The VAT Legislation and its Legal Framework

This tax was introduced in Nigeria by the Value Added Tax Act of 1993, its aim is to broaden the nation's revenue base thereby making it less dependent on oil exports. The basic framework of VAT Decree No.102 of 1993, came into effect on 1st December, 1993. Various amendments were made to the VAT Decree which was row consolidated in the Value Added Tax, Cap V-I, LAWS of the federation of Nigeria, 2004. Many of the detailed provisions are set out in sections and parts. The Minister of Finance is given wide powers to make orders, usually of a policy nature and the FIBR are given similarly wide powers to make regulations usually on matters of an administrative nature. The power to make rules of procedure in relation to recovery proceedings in VAT Tribunal is vested in the Minister of Finance. Section 1 of the Act imposes the payment of the tax, while section 4 provides that the flat rate of VAT is 5%. Section 8(1) requires that, every taxable person shall, within six months of the commencement of business, whichever is earlier, register with the board for the purpose of tax. Section 8(2) of VAT Act stipulates punishment for failure to register with the Federal Board of Internal Revenue within the time specified in subsection 1 of this section shall be liable to pay as penalty, an amount of

- a) N10,000 for the first month in which the failure occurs; and
- b) N5,000 for each subsequent month in which the failure continues.

By virtue of the provisions of sections 8, 9 and 10 of the VAT Act, every taxable person (including resident and non-resident persons carrying on business in Nigeria) is required to register with the Federal Board of Inland Revenue.

Section 46 of the VAT Act, defined taxable goods and services to mean, "The goods and services not listed in the first schedule to the VAT Act". Part 1 of the first schedule to the VAT Act lists goods and services which are exempted from the imposition of Value Added Tax. Part 1 of the first schedule provides;

1. All medical and pharmaceutical products
2. Basic food items
3. Books and educational materials
4. Baby products
5. Fertilizer locally produced agricultural and veterinary medicine, farming machinery and farming transportation equipment.
6. All exports
7. Plants and machinery imported for use in the Export Processing Zone.
8. Plant, machinery and equipment purchased for utilization of gas in down-stream petroleum operations.
9. Tractors, ploughs and agricultural equipment and implements purchased for agricultural purposes.
10. Proceeds from the disposal of Short Term Federal Government of Nigeria Securities and Bonds.
11. Proceeds from the disposal of short-term State, Local Government and Corporate Bonds (including supra-national Bonds).

Part II of the first schedule lists services which are exempted from the imposition of Value Added Tax.

1. Medical services

2. Services rendered by community Banks, Peoples Bank and Mortgage Institutions
3. Plays and performances conducted by educational institutions as part of learning.
4. All exported services.

3.2 Taxable goods and service

VAT applies to manufactured goods, imports and as well as professional and banking services except those bank services that are included in the first schedule to the VAT Act.

These are some of the goods that taxable:

- 1) All goods manufactured or assembled in Nigeria.
- 2) All goods imported in Nigeria.
- 3) All second hand goods
- 4) Household furniture and equipment
- 5) Petroleum and all petroleum products
- 6) Jewels and Jeweiries
- 7) Textiles, clothing, carpets and rugs.
- 8) Cigarette and tobacco
- 9) Perfumes and cosmetics (including toiletries)
- 10) Soaps and detergents
- 11) Beer, wine, spirit, soft drink and bottled water
- 12) Electrical materials of all kind
- 13) Office furniture and equipment
- 14) Sport materials and equipments
- 15) Mining and minerals
- 16) All aircraft, aircraft bodies and their spare parts.
- 17) All vehicles and their spare parts.
- 18) All motorcycles and their spare parts
- 19) All building materials and equipments.
- 20) Such other goods that may be determined by the board from time to time as taxable goods.

Some services that are taxable are as follows: -

- 1) All services rendered by the financial institution excluding people, community and mortgage banks.
- 2) Accounting services including any type of auditing, book keeping or related services.
- 3) Legal services including services supplied therewith.
- 4) Computer services including the provision of bureau facilities, 'system analysis, design, software, site development and training.
- 5) Supply services by an architect.
- 6) Services supplied by brokers.
- 7) Services supplied by security companies and enterprises.
- 8) Courier services
- 9) Repairs, alterations, processing or any other services provided in connection with the designated good by designed dealer.
- 10) Air travels and company hire.
- 11) Entertainment services including plays, performances, crime shows and music concert, conducted by educational institution as part of learning.
- 12) Telecommunication equipment, installment and maintenance services.

- 13) Visual recording, hiring of video tapes and audio tapes, rewriting of video tapes and audio tapes and similar services.
- 14) Such other services that may be determine by the board from time to time as taxable services.

Since presently the flat rate of VAT is 5%²⁰ on the value of all taxable goods and services, section 5 and 6 of Vat Act states how value of taxable goods and service shall be determined. This is as follows;

- 1) For the purpose of the Act, the value of taxable goods and service shall be determined:
 - a) If the supply is for a money consideration, its value shall be deemed to be an amount with which the addition of the tax chargeable is equal to the consideration.
 - b) If the supply is for a consideration not consisting of money, the value of the supply shall be deemed to be its market value.
- 2) Where the supply of taxable goods or services is not the only matter to which a consideration in money relates, the supply shall be deemed to be such part of the consideration as is properly attributed to it.²¹ In respect of imported goods, the value of imported taxable goods for the purposes of the Act shall be the amount which is equal to the price of the goods so imported and shall include:
 - a) All taxes, duties and other charges levied either outside or by reason of importation into Nigeria, other than the tax imposed by the Act.
 - b) All costs by way of commission, parking, transport and insurance up to the port or place of importation.²²

The impact of the afore going provision which is contained in section 6 of the VAT Act is that after payment of taxes and duties in respect of imported goods, the final consumer will still be required to pay Value Added Tax based upon the computation of the entire value of the goods. While estimating the value, account is taken of the taxes and duties paid for the said goods. Upon registration, The Federal Inland Revenue Service (FIRS), the operational arm of the FBIR, issues the taxable person with a Certificate of Registration Number, which serves as an authority to charge and collect VAT on behalf of the FIRS.²³ The VAT registration number must be quoted on all invoices raised to customers. The tax is collected on behalf of the government by registered businesses and organizations which have registered with the FIRS for VAT purposes. All businesses and organization are to register for VAT in the local VAT offices nearest to their offices or operating bases. Branches of such businesses and organization are to register independently in their own areas of operation.

A business or organization which has registered for VAT is classified as “registered person” and is required to keep records and books of all transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of tax due under the Act.²⁴ Failure of a registered person to keep proper records and accounts attracts a penalty of N2000 for every month which this failure continues.²⁵ Where a taxable person fails to render returns or renders incomplete or inaccurate returns, the board shall access to the best of its judgment the amount of tax due on the taxable goods and service purchased or supplied by the taxable person.²⁶ In *Nigeria*

²⁰ Section 4 VAT Act, LFN 2004.

²¹ Section 5(2) VAT Act, LFN 2004.

²² Section 6 VAT Act, LFN 2004.

²³ Non-registration, as required by Section 8(1) VAT Act, LFN 2004.

²⁴ Section 11 VAT Act, LFN 2004.

²⁵ Section 33 VAT Act, LFN 2004.

²⁶ Section 18 VAT Act, LFN 2004.

Breweries Plc vs Lagos State Inland Revenue Board,²⁷ the Court of Appeal held that even though the Revenue Officer can legally make best of judgment assessment, but that the best of judgment assessment should not be dishonest, vindictive or capricious. He is expected to make what he honestly believes to be fair estimate of proper figure of assessment.²⁸ Also in *Mobil Oil Nigeria vs Federal Board of Inland Revenue*,²⁹ the Supreme Court re-emphasized the right of the Board of Inland Revenue (now FIRS) to assess where appropriate, a fair and reasonable percentage of turnover. A registered person will pay 5% on goods and services purchased but can claim credit for this tax called input tax when sold. 5% VAT called output is included in the price of all goods and services supplied by the registered persons.³⁰ The person has to make regular VAT returns and either pays to, or receives from the FIRS, the difference of the input and output tax. To claim a credit for input tax, a registered person must hold a “tax invoice”.

3.3 Computation of Tax Due

A taxable person is obligated to render to FBIR on or before the 30th day of the month following that in which the purchase or supply was made, a return of all taxable goods and services purchased or supplied by him during the preceding month in such manner as the Board may from time to time determine.³¹ Note the period for filing return was reduced from 30 days to 21 days by virtue of the 2007 Amendment Act. If in a particular month, the output VAT exceeds the input VAT the excess tax is remitted to the FBIR.³² If a taxable person does not remit the excess output tax at the time specified in Section 15, a sum equal to 5% per annum (plus interest at the commercial rate) of the amount of tax remittable be added to the tax and the provision of the Act relating to the collection and recovery of unremitted tax, penalty and interest shall apply.³³ The board should notify the taxable person or his agent of tax due together with the penalty and interest and if payment is not made within thirty days of such notification, the Board may proceed to enforce payment as provided in Section 20 of the Act.³⁴ Proper and adequate notice shall be given to the tax payer of his tax due, if not, the entire assessment process will be rendered a nullity.³⁵

In *Lanto vs Wowo*,³⁶ the court held that in determining whether taxes are paid as at when due, the notice of assessment must be served on the taxpayer. In other words, a person cannot be held not to have paid his taxes as at when due, if Notice of Assessment has not been served on him. A similar decision was held in *Ikuomala vs Ige*.³⁷ Any tax, penalty or interest which remains unpaid after the period specified for payment may be recovered by the Board through proceedings in the Tax Appeal Tribunal. If on the other hand, the input VAT exceeds the output VAT, the taxpayer is entitled to a refund of the excess tax from the FBIR on the production of such documents as the FBIR may require from time to time.³⁸ In practice however, the VAT refund mechanism is non-existent despite the enabling provision to that

²⁷ (2001) FWLR (pt 72), 1974.

²⁸ M.N. Umenweke, “Checking the incidence of Tax avoidance and Tax Evasion. A Legal view point” Jan/April 2004 MPJFIL Vol. 8 Nos 1-2, 308.

²⁹ (1997)3SC53.

³⁰ Section 12 VAT Act, LFN 2004.

³¹ Section 15 VAT Act, LFN 2004.

³² Section 16(1) (a) VAT Act, LFN 2004.

³³ Section 19 (1) VAT Act, LFN 2004.

³⁴ Section 19 (2) VAT Act, LFN 2004.

³⁵ *Fashogon vs Layade* (1999) 11 NWLR (pt. 628) 543 at 551-552, (2000) 1 NRLR 143.

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³⁷ 36(1992)4 NWLR (pt 236) 511.

³⁸ Section 16(1) (b) VAT Act, LFN 2004.

effect.³⁹ The only practical option that a taxable person, who is in a net refund position may have, will be to recover the excess input tax from any excess output tax of a subsequent period.⁴⁰ This is acceptable to the FBIR. However, a taxable person who is in a perpetual refund position will indeed be in an unfortunate situation, since it is unlikely that he will receive any cash refund from the FIBR.⁴¹

In 1998, the VAT Act was amended by delimiting the scope of allowable and unallowable input vide Section 6 of the Finance (Miscellaneous Taxation provisions) Act No 18 1998 which introduced 13(A) (now section 17 VAT Act, LFN, 2004) states as follows:

- 1) “For purpose of section 13 (1) of this act, the input tax to be allowed as a deduction from output tax shall be limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product on which the output tax is charged.
- 2) Input Tax:
 - a) On any business, service and general administration of any business which otherwise can be expended through the income statement (profit and loss accounts); and
 - b) On any capital item and asset which is to be capitalized along with cost of the capital item and asset; shall not be allowed as a deduction from output tax”.

For avoidance of doubt, an input tax will only be allowed under section 17 when it is on:

- i) Goods purchased or imported directly for resale; or
- ii) Goods which form stock-in-trade; or
- iii) Goods used for the direct production (raw materials of any good).

The above provisions, thus limit allowable input tax on goods purchased or imported directly for resale or and goods which form stock in trade. Input VAT on overhead, services and fixed assets are not allowed. By allowing input, VAT to be expensed through the profit and loss account only provides a taxable person with a 30% relief. Taxable person in such situations, therefore, bear some hidden VAT contrary to the principle that the final consumers bear the entire VAT burden.

3.4 Recovery of Tax

Originally, section 16 of the VAT Decree vested jurisdiction in the Federal High Court for the recovery of any tax, penalty or interest which remains unpaid after the period stipulated for payment. The Federal High Court is one of the Superior Courts established under the constitution. Section 25 1(a) of the 1999 constitution vests the Federal High Court with exclusive jurisdiction to hear and determine cases and matters relating to the revenue of the Federal Government in which the Federal Government or any of its organ or agency is a party.

In 1996, the Value Added Tax Tribunal was established. Section 16 of the Decree (now section 20 of the VAT Act) provides thus:

20(1) “Any tax, penalty or interest which remains unpaid after the period specified for payment may be recovered by the FIRS through proceedings in the Value Added Tax Tribunal.

³⁹ Okeke Osita Linus, “The VAT Decree and the Nigerian Constitution

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⁴¹ B. Okeke, “towards an Effective Tax Collection System in Nigeria, The Role of value added tax”, paper presented at aTwo-day. Intensive Tax Seminar organised by K.A. Amusa & Co. (in collaboration with Mobolayi Johnson & Co.) on August 18-19, 1999 at Airport Hotel Ikeja, Lagos, p.7.

- (2) A taxable person who is aggrieved by an assessment made on the person may appeal to the Value Added Tax Tribunal.
- (3) Appeal from the Value Added Tax Tribunal shall be made to the Federal Court of Appeal”.

Although the above provisions derogated from Section 251 (a) of the constitution which vested jurisdiction in the Federal High Court, the power of the Military Government to over reach the provisions of the constitution pursuant to the constitution (Suspension and Modification) Decree No 1 of 1984 was not in doubt. Hence, the jurisdiction of the VAT tribunal prevailed over that of the Federal High Court during the period of the Military rule.

Sequel to the commencement of civilian rule under the 1999 constitution, some taxpayers leveraged on the supremacy of the constitution to challenge the jurisdiction of the VAT tribunal to entertain action by the FIRS for recovery of taxes due. The court of Appeal held in *Stabilini Visinoni Limited*⁴² vs *FBIR* and *Cadbury (Nig.) Plc vs FBIR*⁴³ that the establishment of VAT tribunal violated the provisions of section 251(1) (a) of the 1999 constitution which vests exclusive jurisdiction on the Federal High Court on causes or matters relating to Federal taxation and revenue of the Federal Government and therefore is to the extent of its existence null and void.

With this new development the Tax appeal Tribunal has been established under the fifth schedule to the FIRS (Establishment) Act with power to settle disputes arising from the operations of all the Federal tax Statutes listed in the First Schedule to the Federal Inland Revenue Service (Establishment) Act, 2007, which includes the Value Added Tax Act thus abolishing the jurisdiction of Value Added Tax Tribunal. The FIRS (Establishment) Act, 2007 has cured the mischief which caused the Court of Appeal to invalidate the jurisdiction of the VAT Tribunal by providing that appeal shall go from the decisions, of the Tax Appeal Tribunal to the Federal High Court. The Tax Appeal Tribunal was created and has since commenced sitting amidst controversies. The Tax Appeal Tribunals are located in Abuja, Lagos, Ibadan, Benin, Enugu, Kaduna, Jos and Bauchi. Note that in the case of *Nigerian National Petroleum Corporation vs Tax Appeal Tribunal, Suit No. FHCIL/CS/630/20 13, Justice I.N. Buba* upheld the creation and establishment of the Tax Appeal Tribunal.

3.5 Value Added Tax Technical Committee.⁴⁴

Sections 21, 22, 23 and 24 of the VAT Act provides for the establishment of the VAT Act provides for the establishment of the VAT Technical Committee, their functions, procedures and staffing.

Section 21 VAT Act states as follows “there is hereby established a committee to be known as the Value Added Tax Technical Committee) which shall comprise:

- a) A chairman who shall be the chairman of the Federal Board of Inland Revenue;
- b) All directions in the Federal Inland Revenue Service;
- c) The Legal adviser to the Federal Inland Revenue Services;
- d) A director in the Nigerian Customs Service; and -
- e) hree representatives of the State Governments who shall be members of the Joint Tax Board.

Section 22 states the functions of the Technical committee which shall be to:

⁴² (2009) 13 NWLR (pt 1157) p. 200.

⁴³ (2009) 2 NWLR (pt 1179) p. 561.

⁴⁴ Part IV, VATA Act, LFN 2004

- a) “Consider all the tax matters that require professional and technical expertise and make recommendations to the Board;
- b) Advice the Board on the duties specified in section 7 of this Act; and
- c) Attend to such other matters as the Board may, from time to time, refer to it”.

Section 23 provides “subject to such directions as the Board may, from time to time, give the technical committee shall determine its quorum and otherwise regulate its own procedure. Section 24 states that “the Federal Inland Revenue Service may post to the Technical Committee such staff as the Technical Committee may require for the discharge of its functions?”

4.0 VAT offences and Penalties

Various offences were created under the VAT Act with severe penalties for defaulters and to enable minimization of tax evasion. These offences and penalties are contained in part v.

They are as follows:

- 1) A person who gives false information on any matter or particular considered to be material. Penalty for furnishing of false document or statement is a fine of twice the amount under-declared⁴⁵.
- 2) A person who participates in or takes any steps to evade tax is liable on Conviction to a fine of N30,000 or two times the amount of the tax being evaded whichever is greater, or imprisonment for a term not exceeding 3 years.⁴⁶
- 3) A person who fails to make attribution or having done so fails to notify the board is liable to a fine of N5000.⁴⁷
- 4) A person who fails to notify the Board of any change of address within one month of such change is liable to pay a fine of N5000.⁴⁸
- 5) A person who fails to issue tax invoice for goods sold or services rendered is liable on conviction to a fine of 50% of the cost of the goods or service for which the invoice was not issued.⁴⁹
- 6) A person who resists, hinders, obstructs or attempts to hide, resist or obstruct an authorized officer from performing his duty on inspection, is liable on conviction to a fine of N10,000 or imprisonment for a term of 6 months or to both fine and imprisonment.⁵⁰
- 7) Issuing of tax invoice by an unauthorized person is an offence and such unauthorized person is liable on conviction to a fine of N10,000 or imprisonment for a term of 6months.⁵¹
- 8) A taxable person who fails to register is liable on conviction to a fine of N50,000 and the premises of the taxable person can be sealed up where he knowingly or intentionally fails to register for VAT after one month of being convicted for the offence of non-registration.⁵²
- 9) Failure to keep proper records and accounts of business transaction, to allow for the correct ascertainment of tax and filing of return is liable to pay a penalty of N2,000 for every month that such offence is committed.⁵³

⁴⁵ Section 25(a) & (b) Vat Act, LFN 2004.

⁴⁶ Section 26 (a) & (b) VAT Act, LFN 2004.

⁴⁷ Section 27 (a) & (b) VAT Act, LFN 2004.

⁴⁸ Section 28 VAT Act, LFN 2004.

⁴⁹ Section 29 VAT Act, LFN 2004.

⁵⁰ Section 30 (a)-(d) VAT Act, LFN 2004.

⁵¹ Section 31 (a) & (b) VAT Act, LFN 2004.

⁵² Section 32 VAT Act, LFN 2004.

⁵³ Section 33 VAT Act, LFN 2004.

- 10) A taxable person who fails to collect tax is liable to pay a fine of 150% of the amount not collected, plus 5% interest above the Central Bank of Nigeria rediscount rate.⁵⁴
- 11) Failure to submit return to the Board by taxable person is liable to a fine of N5,000 for every month of such default.⁵⁵
- 12) A person aiding and abetting the commission of any offence is liable on conviction to a fine of N50,000 imprisonment for a term of five years.⁵⁶
- 13) Where an offence is committed by a body corporate every director, manager or secretary and in the case of partnership, every partner and every person concerned in the management of the affairs of the body corporate is severally guilty and liable on conviction.

4.1 Advantages of VAT in Nigeria

The introduction of VAT has a number of benefits or advantages that goes with it. Among these includes

1. Uniform rates of VAT, will boost trade activities and will create a favorable atmosphere for the country's economic experience.
2. It will generate greater revenue for the government than the sales tax and at the same time reduce over dependence on oil revenue.
3. The introduction of VAT will widen the tax base with its in-built capacity to raise more tax revenue.
4. All goods and services taxes will be administered in accordance with the Act.
5. The introduction of VAT will to a reasonable extent reduce tax evasions.
6. VAT can be used as a tool of government fiscal policy, by exempting some class of goods and services to achieve specific economic objectives.
7. VAT is relatively more efficient than the former sales tax. It has replaced inefficient, distorting or badly administered taxes, such as taxes on capital goods, exports or imports.
8. Another advantage of the Value Added Tax is its neutrality; this means a situation where a tax has no influence on the behavior of both the consumers and the producers.
9. VAT, will therefore help traders, industrialists and also the government. It is indeed a move towards efficiency, healthy competition and fairness in the tax system.

4.2 Disadvantages of VAT in Nigeria

There are few disadvantages that go with the introduction of VAT. There is need to point out the fact that VAT is still a welcome tax system, inspite of these few disadvantages which includes;

1. VAT is regressive in nature. It means that since VAT has a uniform rate of 5% on both luxury goods and services, it means that the higher the income, the less the percentage spent on consumption and consequently the less the percentage paid on consumption tax.
2. The impositions of VAT have increased the prices of most goods and services in the country. For instance a hotel room that goes for N5000 per night is increased to N5 150 to the advantage of the owners, who in most cases does not remit the VAT.
3. Some argued that the imposition of VAT on raw materials imported into the country will amount to an additional burden on the cost of production.
4. It was also argued that VAT will lead to one time increase in price inflation, high administrative cost because of the expanded base of the tax and there is the tendency for the tax officials to rely on the self policing nature of the tax to do his work for him.

⁵⁴ Section 34 VAT Act, LFN 2004.

⁵⁵ Section 35 VAT Act, LFN 2004.

⁵⁶ Section 36 VAT Act, LFN 2004.

Conclusion

The legal framework for VAT in Nigeria is quite simple and easy to understand. The simplicity of the VAT Act is commendable considering that VAT is not only the concern of lawyers and accountants but should be of immense importance to businessmen/businesswomen who are obligated to register and collect VAT as agent of government and the general public who paid this tax.

The VAT law and its administration have witnessed some significant growth as well as hiccups since its inception in 1993. It is evident in the work that some changes have taken place in order to improve the relevance of Value Added Tax and ensure proper administration in the economy. For instance, expanding the number of registered persons, restricting the request for refund and curbing tax evasion through issuance of tax invoice. The VAT administration has also been streamlined with that of other Federal taxes under the Federal Inland Revenue Service (Establishment) Act, 2007. Example, the Local VAT Offices (LVOS) was separated from income tax offices which now form part of the Integrated Tax Office (ITO). Also, the dichotomy in the jurisdiction of the Value Added Tax Tribunal and Court of Appeal to handle tax matters as established under the VAT Act which has been abolished thereby bring all matters in respect of Federal taxes to now lie with the Tax Appeal Tribunal and all appeals to lie to the Federal High Court.

Notwithstanding, all of these changes, there are a number of hiccups which are of immense concern to taxpayers which are yet to be reviewed. For instance, the need to make the scope of VAT more definite rather than open-ended, redefine input VAT in a manner that will ensure that businesses do not bear any burden of VAT by making it possible for them to net off their input VAT. It may also be expedient to exempt the retail stage in the informal sector of the economy until the commercial activities at this level becomes fairly well regulated and streamline the gap between law and practice. There is also an on-going case in Supreme Court challenging the competence of Federal Government to continue to administer VAT under the 1999 constitution. The outcome of the case will bring about changes in the VAT administration as if the case is decided in favor of the Federal Government, there is hope of changes and implementation of such changes to address several concerns while if the case is decided in favor of the other party (plaintiff), it will draw the curtain on VAT in Nigeria and give birth to the State Sales Tax or State Modified VAT. Whatever it may turn out to be we hope that it will be a gold mine for the Nigerian Economy and that the under mentioned recommendations can be incorporate in order to appropriately ameliorate the burden of manufacturers and final consumers.

Recommendations

1. From the above study, it is expected that a tax system such as VAT, would yield maximum revenue with a minimum cost through efficient tax administration. This however depends on the quality of the machines for tax administration which include the manpower devoted to tax assessment and collection, the acceptability of VAT tax amongst taxpayers. When taxpayers come to understand VAT and its benefits to the economy, compliance would be better and therefore compliance cost would be less. When there is voluntary compliance, VAT administration would be easier and there will be greater revenue yield.
2. The government should devise a means of retrieving the proceeds of VAT from companies and other agents of collection.
3. The list of VAT exempted items should be unambiguous. It should be clear and properly articulated to ensure no confusion and that luxury goods are taxed while all locally manufactured goods are exempted to boost growth.
4. Ensure that each penalty prescribed for any of the tax offences are properly enforced.

5. There is also need to embark on business census in order to have a well informed data. base.
6. Fast disposition of tax cases will help tax administration. It may be advisable to designate certain magistrate courts in each geo-political zone to handle specific state revenue matters.
7. Seminars and workshops are necessary in order to educate the public. Note the seminars and workshops should be organized in such a way that it will be open and affordable to all.
8. For a tax system to be good, tax laws which include the VAT law must satisfy basic principles:
 - a) The language must be clear and simple so an average person can understand it.
 - b) Every word used must convey its ordinary and everyday meaning in order to enable the taxpayer know how and where he stands in relations to tax authorities and collectors.
 - c) All existing VAT laws should be made available to the general public.