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CONTEMPORARY ISSUES IN CORPORATE INCOME TAX IN NIGERIA – A REVIEW OF PRECEPT AND PRACTICE

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ABSTRACT: *This study undertakes a review of contemporary issues in Corporate Income Tax practices in Nigeria against the background of Nigeria's economy being generally characterized by low tax compliance and enforcement. All resident corporate entities are required to pay tax on all incomes or profits made by them from a source within and outside Nigeriato the federal government (CITA, 2007). However, if such corporate entities are resident outside Nigeria, only the income attributable to their operations in Nigeria is taxable. Low tax compliance is a matter of grave concern in many countries especially developing ones like Nigeria because it limits the capacity of their respective governments to raise revenues for development purposes. There is no gainsaying the fact that tax enforcement has become an essential aspect of tax administration in view of the ingenious ways corporate taxpayers undermine the revenue generation process by not remitting what is due to government (Gwangdi and Garba 2015). This study reviews extant provisions on tax reliefs and incentives applicable to corporate entities to facilitate voluntary compliance and recommendations are made on enhancing the successful implementation of theVoluntary Assets and Income Declaration Scheme (VAIDS) and improve the corporate income tax culture in order to enhance the gross domestic product.*

KEYWORDS: Company Income Tax, the Economy, Tax Compliance, and Tax Administration**.**

INTRODUCTION

The Federal Government always formulates and implements policies for taxation and public expenditure. These policies can have major impacts on economic growth and income distribution. In the last four decades, Nigeria has experienced two historic transitions: political transition from military junta towards democracy and an economic transition from government monopoly of some items considered as public goods (e.g. telecommunication) towards free market system. These transitions have required a fundamental change in the role of the federal government, from controlling virtually all major economic assets to providing public goods and facilitating a largely privately owned competitive economy. This has necessitated major downsizing of public expenditure and a complete overhaul of corporate tax policy and administration.

Fiscal policy involves the use of government spending, taxation and borrowing to influence the pattern of economic activities and also the level and growth of aggregate demand, output and employment. Fiscal policy entails government's management of the economy through the manipulation of its income and spending power to achieve certain desired macroeconomic objectives (goals) amongst which is economic growth (Medee and Nembee, 2011). Olawunmi and Tajudeen (2007) opine that fiscal policy has conventionally been associated with the use

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of taxation and public expenditure to influence the level of economic activities. They further said that the implementation of fiscal policy is essentially routed through government's budget.

The budget is, therefore, more than a plan for administering the government sector. It (budget) both reflects and shapes a country's economic life. In fact, the most important aspect of a public budget is its use as a tool in the management of a nation's economy (Omitogun and Ayinla, 2007).

Fiscal policy deals with government deliberate actions in spending money and levying taxes with a view to influencing macro-economic variables in a desired direction. This includes sustainable economic growth, high employment creation and low inflation.This study will only concentrate on the government expenditure side.

In Nigeria, government expenditure has been on the rise owing to the huge receipts from production and sales of crude oil, and the increased demand for public goods like roads, power, education, communication and health. Moreover, there is increasing need to provide both internal and external security for the people and nation. Unfortunately, this rising government expenditure has not translated into meaningful growth as Nigeria ranks among the least developed countries in the world (UNDP report, 2016). The result of government role in economic activities and the achievements in economic performance have been mixed. For instance, the economy will experience growth in real output in some years and decline in others. Meanwhile, the economy is mostly dominated by the public sector except recently that the government is trying to adopt privatization policy. But the overall picture is low scoring for the country's developmental efforts. The objectives of monetary and fiscal policies in Nigeria are wide-ranging, involving Gross Domestic Product growth rate, reduction in the rates of inflation and unemployment, improvement in the balance of payment, accumulation of financial savings and external reserves as well as stability in the national currency (Naira) exchange rate. The guiding principle as well as instrument applied to attain these objectives have until recently been far from adequate. Perhaps, this could be attributed to inconsistency in the formulation and implementation of vibrant policies.

Various empirical studies on the relationship between government expenditure and economic growth arrived at different and even conflicting results. Some studies suggest that increase in government expenditure on socio-economic and physical infrastructure impact on long run growth rate. For instance, government expenditure on health and education raises the productivity of labour and increase the growth of national output. Equally, expenditure on infrastructure such as road, power etc. reduces production costs, increase private sector investment and profitability of firms, thus ensuring increase in economic activities and economic growth (Barro, 1990; Okojie, 1995). On the other hand, observation that growth in government spending, mainly based on non-productive spending is accompanied by a reduction in income growth has given rise to the hypothesis that the greater the size of government intervention the more negative is its impact on economic growth (Glomn and Ravikumar, 1997; Abu and Abdullah, 2010).

Government expenditure is considered an important variable which may determine changes in national income in developing countries like Nigeria. In other words, fiscal policy is a major economic stabilization weapon that involves measure taken to regulate and control the volume, cost and availability as well as direction of money in an economy to achieve some specified macroeconomic policy objective and to counteract undesirable trends in the Nigeria economy (Gbosi, 1998). To stimulate the economic growth by means of fiscal policy, the country must

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adopt more instruments. These according to Ebimobowei (2010) include; the financing of direct investment which the private sector would not provide inadequate quantities; the efficient supply of certain public services which are necessary to ensure the basic condition to display the economic activity long term investment; and the financing of public activities so as to minimize the distortions to come up with the decisions to spend and invest proper in the private sector. These instruments can be gotten through the nature and level of government spending in the economy. Though it can also be achieved either by an increase or a decrease in taxes, government expenditure constitute the bedrock of fiscal policy instrument to stabilize an economy because none of those single instrument can cure all an economy (Ndiyo and Udah, 2003).

THEORETICAL FRAMEWORK

Theory of public expenditure:

The theories of public expenditure can be roughly divided into two economic schools; The Wagner andKeynesian's schools of thought. The fundamental contrast for these theories is the direction of causality.

- **WAGNER'S SCHOOL OF THOUGHT: -** Adolph Wagner (1835-1917) was the first to recognize a positive correlation between government expenditure and economic growth, which is referred to in the literature as Wagner's Law (1883). Wagner (1882) contemplates that economic growth, due to the industrialization process, is accompanied by an increase in the share of public expenditure in GNP. In this view, a long-run elasticity larger than unity is assumed for public spending and economic growth. This is explained by the increasing demand for regulatory and protective functions which are needed to sustain the increasing level of economic wealth. In addition, as countries grow wealthier, the demand for public goods like education, healthcare and cultural services increases. The theory that the need for goods and services provided by the government increases with a country's industrialization because of its economic growth lies within the following three reasons:

  Firstly, as the economy grows the public sector will take over the administrative and protective functions previously performed by the private sector.Secondly, as the economy grows the need for provision of social and cultural goods and services increases as well.Finally, as the economy grows more government intervention is needed to manage and finance natural monopolies and to maintain the well-functioning market forces (Bird, 1971).

- **KEYNESIAN SCHOOL OF THOUGHT: -** The Keynesian view assumes that government expenditure is an instrument of the state in exerting fiscal policy and with this instrument influences economic growth. Several studies (e.g. Gandhi, 1971; Gupta, 1967 and Dritsakis and Adamopoulos, 2004) confirm this theory. The Keynesian view argues that economic growth occurs as a result of rising public sector expenditure. In this context, government expenditure is treated as an independent exogenous variable and could be used as an efficient policy variable to

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influence economic growth. This theory is confirmed by (Ansari et al, 1997) in their extensive study on Indonesia, Malaysia, Singapore, the Philippines and Thailand.

The cost of service theory:

Some economists were of the opinion that if the state charges actual cost of the services rendered from the people. It will satisfy the idea of equity or justice in taxation. The cost of service principle can no doubt be applied to some extent in those cases where the services are rendered at prices which are a bit easy to determine, e.g., postal, railway services, supply of electricity, etc. But most of the expenditure incurred by the state cannot be fixed for each individual because it cannot be exactly determined. For instance, how can we measure the cost of service of the police, armed forces, judiciary, etc., to different individuals? Dalton has also rejected this theory on the ground that there's "no quid pro quo" in a tax.

Benefit (quid pro quo) theory:

According to the benefit theory of taxation developed by Erik Lindahl, tax levels are automatically determined because tax payers pay proportionately for government benefits received by them. In other words, individuals who benefit from public services and infrastructure should pay the taxes. Lindahl tried to solve three problems:

- Extent of state activity
- Allocation of the total expenditure among various goods and services
- Allocation of tax burden

The theory stipulates that taxes should be apportioned to individuals according to the benefits they receive from the government expenditure. According to Little (1956), the benefit theory implies that tax should be assessed as payment for services rendered by the authorities to the individual members of the state. Based on the benefit theory, it means that if tax revenue is used to finance the building of a primary school, a man that has no child should not pay the tax since he will not benefit from it.

Taxation based on the benefit theory will not yield much revenue to the government since, as already stated, many people who can afford to pay heavy tax may end up paying less simply because they do not receive much benefit from the government expenditure.

This principle has been subjected to severe criticisms on the following grounds:

i. If the state maintains a certain connection between the benefit conferred and the benefits served, it will be against the principle of tax as it is compulsory contribution made to the public authorities to meet the expense of the government and for the provision of general infrastructures to all. Tax is also the nexus between state and its citizen and tax revenues are the lifeblood of the social contract. The very act of taxation has profoundly beneficial effects on fostering better and more accountable government (Tax Justice Network (TJN) 2012). This theory assumes that government has another source of funding infrastructure and the burden will now be passed to the citizen. The reserve is the case in taxation.

ii. The second flaw of benefit of the citizen. As a result of this, it is impossible to estimate the benefit enjoyed by a particular individual every year.

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iii. The third flaw is that if we apply the principle in practice, then the poor will have to pay the heaviest taxes because they benefit more from services of the state such as hospitals, schools and so on. This is in conflict with one of the main purpose of taxation which is redistribution of income.

Ability to pay (faculty) theory:

The ability theory presented by Arthur Cecil Pigou also known as Ability-to-pay approach posits the taxes are based on taxpayer's ability to pay: there is no "quid pro quo" meaning "something for something". Taxes paid are seen as sacrifice by taxpayers, which raise the issue of what the sacrifice of each taxpayer should be and how it should be measured. This is the most popular and commonly acceptable principle of equity and justice in taxation. The taxable capacity of every citizen is primary in determining the tax burden to be borne. For instance, if the taxation capacity of Mr. A is greater than that of Mr. B then the former should be asked to pay more than the latter. The next line of argument is how to determine who has ability to pay. The main views advanced are as follows:

- **Ownership of a property:** some economists are of the opinion that ownership of a property is a very good basis of measuring one's ability to pay. This idea is out rightly on the ground that if a person earns a large income but does not spend on buying property, he will then escape. It is unjustifiable. This is the reason why many residents of some states such as Lagos have refused to register on the platform established by government for the residents' data collection.

- **On the basis of expenditure:** it is also asserted by some economists that the ability to pay tax should be judged by expenditure which a person incurs. The greater the expenditure the higher the tax. The view point is unsound and unfair in every aspect as a person with large family support has to spend more than the person having a small family.

- **Income as the basis:** this appear to be very just and fair in that a person with higher income pays more tax than a person with lower income. Modern tax system in the countries of the world has accepted income as the best test for measuring ability to pay off a person.

The ability to pay theory states that every taxpayer should be taxed according to his ability to pay. This implies that those who are better-off should be taxed more heavily than those who are worse-off irrespective of whether or not they benefit more from government expenditure. Hence, people with equal abilities to pay should pay the same amount of tax (horizontal equity), while people with different abilities to pay should pay different amount of tax; people with less ability should pay less tax than those with greater ability (vertical equity).

However, the problem with this theory is how to measure a taxpayer's ability to pay. Is it his income, wealth, consumption or some other criteria that should be used to gauge his ability to pay?

The proportionate principle:

In order to satisfy the idea of justice in taxation, J. S. Mill and some other classical economists have suggested the *principle of proportionate in taxation.* These economists were of the opinion that if taxes are levied in proportion to the income of the individuals, it will extract

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equal sacrifice. The modern economists however differ with this view. They assert that when income increases, the marginal utility of income decreases. The equality of sacrifice can only be achieved if the persons with high incomes are taxed at higher rates and those with low income at lower rates. They favour progressive system of taxation, in all modern tax systems.

Companies Income Tax (CIT) is tax on the profits of incorporated entities in Nigeria. It also includes the tax on the profits of non-resident companies carrying on business in Nigeria. The tax is paid by limited liability companies inclusive of the public limited liability companies. It is therefore commonly referred to as Corporate Tax.

CIT was created by the Companies Income Tax Act (CITA) 1979 and has its root from the Income Tax Management Act of 1961. It is one of the taxes administered and collected by the Federal Inland Revenue Service ('FIRS' or 'the Service'). The tax contributes significantly to the revenue profile of the Service. In 2016, the revenue target for Companies Income Tax is N1.877 trillion representing approximately 40% of the total projected tax revenue of N4.957 trillion for the year.

Empirical Framework

Filing for Companies Income Tax

In filing for Companies Income Tax, audited financial statements are statutorily required. Sections 375 and 377 of Companies and Allied Matters Act (CAMA) 1990 necessitate the engagement of External Auditors to certify the Financial Statements prepared by the Management of an entity. The returns should mandatorily be accompanied by the tax computations and capital allowances computations on qualifying assets of the company. The requirement for filing does not discriminate between small, medium or large taxpayers. To many taxpayers therefore, CIT is a complicated kind of tax, difficult to understand and to comply with.

RETURNS

Every Company is expected to submit information in accordance with the Federal Inland Revenue Service's standard questionnaire to the tax office with the following documents:

i. Photocopy of Certificate of Incorporation with the Original compulsorily sighted.
ii. Signed copy of the Memorandum and Article of Association.
iii. Letter of Authority appointing a firm as Tax Consultants, to deal with the FIRS on its behalf.

Filing of accounts at the tax office

i. Every company must file its annual tax returns with the tax office within 6 months after the end of its financial year in accordance with the provisions of the existing Act (Company Income Tax Act 2014)

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ii. After this date the accounts filed shall be deemed late and will attract a penalty. The penalty for late submission of audited accounts is currently ₦25,000 in the month of default and ₦5,000 for every subsequent month in which the failure continues.

iii. Newly incorporated companies should file taxreturns within eighteen months from the date of incorporation or not later than 6 months after the end of its first accounting period, whichever is earlier.

iv. Extension of time can be granted upon application subject to being made before the expiration of the initial period and showing good cause for inability to meet the initial stipulated period.

Disparity between company income tax and other taxes

The following taxes are commonly mistaken to mean the same as Companies Income Tax. They are covered by distinct legislations, have different tax bases and different taxing rules.

- **Personal Income Tax** on profits/ incomes earned by unincorporated entities generally, including individuals (e.g. sole proprietors, partners in a partnership business, freelance contractors / service providers, employees, etc.), families and communities, incomes due to a trustee or estate and salary earners. These are taxable under the Personal Income Tax Act (PITA).

- **Petroleum Profits Tax** on profits of companies engaged in 'petroleum operations. This is taxable under the Petroleum Profits Tax Act (PPTA). This solely administered by FIRS.

- **Capital Gains Tax** chargeable on disposal of qualifying assets disposed at gains. The tax is payable by both corporate entities and individuals. The tax is therefore administered by FIRS and the State Internal Revenue Services. They are taxable under the Capital Gains Tax Act (CGTA).

- There are many other levies and dues collected by the States and Local Governments which strictly are not taxes but misconstrued as taxes by the taxpayers because they are collected by Revenue officials especially at the Local Government level.

It is in this light that the taxes and levies collectible by the three tiers of government are provided [in line with the 'Schedule of Taxes and Levies (Approved list for collection) Act as amended in 2015]. Only the taxes collectible by the Federal Inland Revenue Service are specifically restated for the purpose of this assignment.

Taxes Collected by the Federal Government through the Federal Inland Revenue Service (FIRS)

1. Companies Income Tax – Companies Income Tax Act, Cap.C.21, LFN 2007 (as amended);

2. Petroleum Profits Tax–Petroleum Profit Tax Act, Cap.P.13, LFN 2004;

3. Personal Income Tax – Personal Income Tax, Cap.P.8 LFN 2004 and Personal Income Tax (Amendment) Act, 2011 in respect of:

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– Members of the Armed Forces of the Federation;

– Members of the Nigerian Police Force;

– Residents of the FCT; and

Staff of the Ministry of Foreign Affairs and non-resident individuals

4. Capital Gains Tax – Capital Gains Tax Act, Cap.C.1, LFN 2004 on corporate bodies and residents of FCT;

5. Value Added Tax – Value Added Tax Act, Cap. V.1, LFN 2004 (as amended);

6. Education Tax – Tertiary Education Trust Fund (Establishment) Act, 2011;

7. Stamp Duties – Stamp Duties Act, Cap. S.8, LFN 2004 (as amended) on bodies corporate and residents of FCT;

8. Withholding Tax: Companies Income Tax Act, Cap.C.21, LFN 2007 (as amended) on Companies, Personal Income Tax, Cap.P.8 LFN 2004 and Personal Income Tax (Amendment) Act, 2011 in respect of FCT residents and non-resident individuals; and

9. National Information Technology Development Levy – National Information Technology Development Levy Act, 2017.

Local Income Taxes

Company Income Tax is payable only to the federal government. State governments collect income taxes of individuals and unincorporated entities, while local governments are only allowed to collect levies and rates but not income tax.

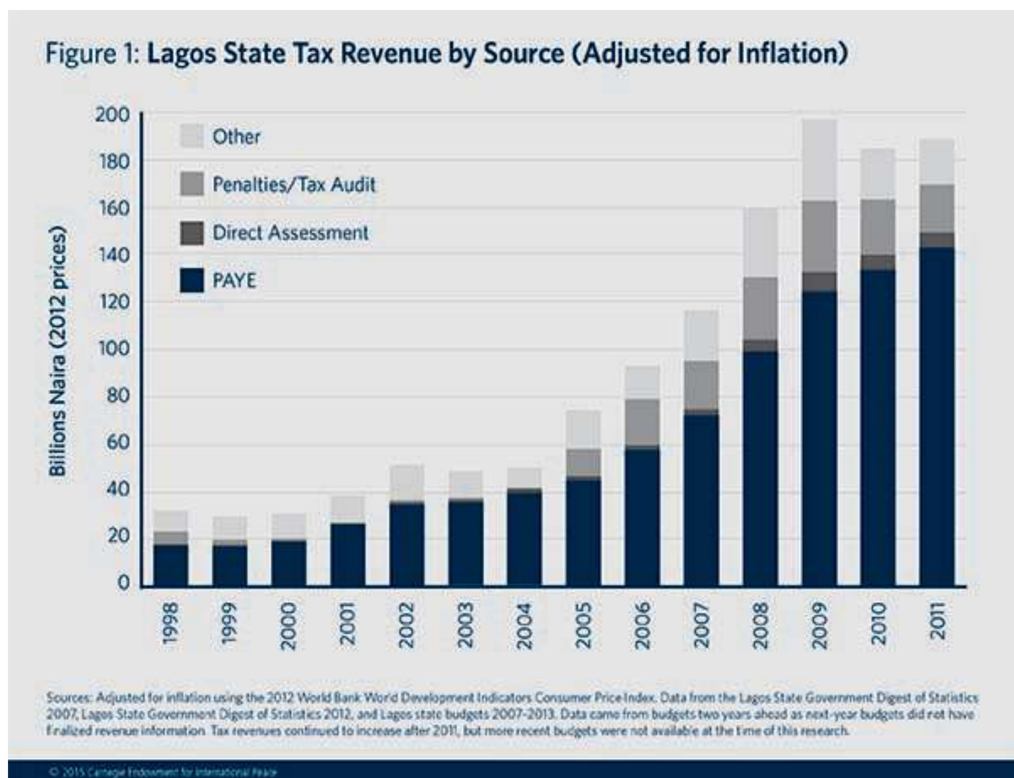

Figure 1: **Lagos State Tax Revenue by Source (Adjusted for Inflation)**

Imposition of Companies Income Tax – Part II Section 9 CITA 2007

Company Income Tax is imposed on the income of all companies operating in the country except those specifically exempted under the Company Income Tax Act. Companies are taxed at a rate of 30%. The income tax is imposed on;

1. The profits of Nigerian companies irrespective of whether or not they are brought into or received in Nigeria being Nigerian company incorporated under Companies and Allied Matters Act 1990.

2. The profit of non-Nigerian companies operating in Nigeria. Non-Nigerian companies are foreign companies as defined by section 54 of the Companies and Allied Matters Act as "any companies or corporation established by or under the law in force in any territory or country outside Nigeria" This means such company is not incorporated under the Companies and Allied Matters Act.

3. Dividend, interest or royalties due to non-Nigerian companies which are assessed at 10% (withholding tax rate) on the net payable to the respective companies. On the tax chargeable, section 9 (1) of the Companies Income Tax Act 2007 provides that Subject to the provisions of this Act, the tax shall, for each year of assessment, be payable at the rate specified in sub-section(1) of section 40 of this Act upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria in respect of-

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

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

(c) Dividends, interests, royalties, discounts, charges or annuities;

(d) Any source of annual profits or gains not falling within the preceding categories;

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

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

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

Penalties and Offences – Part XIII CITA 2007 Sections 92, 94 - 99

The Federal Inland Service (Establishment) Act, 2007 Section 40 – 49 simply defined offences but failed to provide machinery for detection of offenders. A well-functioning body of tax

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investigation is essential for the detection and prosecution of cases of tax fraud. The lack of sufficient capacities in tax administrations reduce the probability of detection that again influences the decision of a taxpayer as to whether to evade or not. Additionally, the legal framework is an important prerequisite for any enforcement activity. For example, the size and nature of penalties that are incurred after evasion have been detected is directly connected to the level of tax compliance

Penalties for violating certain offences have been created by the Company Income Tax Act 2007 Part XIII sections 92, 94 - 99, the breach of which makes a Company liable to stated penalties. The offences and penalties are as follows:

(1) Any person guilty of an offence against this Act or any person who contravenes or fails to comply with any of the provisions of this Act or of any rule made there under for which no other penalty is specifically provided, shall be liable on conviction to a fine of N20,000.00, and without prejudice to section 55 (4) or (5), where such offence is the failure to furnish a statement or information or to keep records required, a further sum of N2,000.00 for each and every day during which such failure continues, and in default of payment to imprisonment for six months, the liability for such further sum to commence from the day following the conviction, or from such day thereafter as the court may order.5

(2) Any person who- (a) fails to comply with the requirements of a notice to pay his tax served on him under this Act; or (b) without sufficient cause fails to attend in answer to a notice or summons served on him under this Act or having attended fails to answer any question lawfully put to him, shall be guilty of an offence against this Act.1 Section 86 of the Companies Income Tax Act 2007 has conferred on the Federal Inland Revenue Service (FIRS) the power to seize and sell defaulting taxpayers' goods, chattels as well as their premises in extreme cases in order to recover the amount of tax owned by such taxpayers. The Act also subsequently provides for penalties for making false statement and returns under section 94 and for offences by authorised and unauthorised persons under section 95.

Generally, however, offenders are liable to pay the original tax payable irrespective of proceedings for imposition of fine, penalty or terms of imprisonment. The provisions of the Act do not also affect independent criminal proceedings under any other law against the offenders. With respect to offences created under sections 93, 94 or 95 of the Act no proceedings may be commenced without the sanction or at the instance of the Board.

Enforcement of Companies Income Tax in Nigeria – Section 97 Part XIII

The provisions on imposition of tax by Company Income Tax Act 2007 is not sufficient while the enforcement of the regulation is the key (Gwangdi and Garba 2015). According to the Federal Inland Revenue Service, about 30 percent of Companies in Nigeria are involved in tax evasion and also 25 percent of registered companies in the country are not paying tax when this is quantified in terms of revenue loss it is worrisome (Gwangdi and Garba 2015). Ajayi Bamidele (2014), the Coordinating Director, Field Operation Group of Federal Inland Revenue Service acknowledged that the challenges of the Service include ensuring strict enforcement of the extant law and capturing the remaining 45 percent of Nigerians who are supposed to pay tax but are not paying tax.

The researcher is of the opinion that the taxation system established under the Company Income Tax Act 2007 is a workable and effective one irrespective of certain inadequacies. In

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practice, however, it has had to contend with the Nigerian factors of strict enforcement problems, corruption and evasion. The Act, in its provisions, has made available to the Federal Inland Revenue Service, a manageable system of tax collection. Regrettably however, the typical Nigerian taxpayer, in an attempt to continue operating in business, would rather short-circuit tax laws in any way feasible. The taxpayer often opts to negotiate with corrupt staff in return for some gratification and pay a minimal sum to the coffers of the government. This is despite the sanctions imposed by the same Act for such conduct. The problem here seems not to be lack of adequate provisions deterring such conduct, but rather the lack of enforcement machinery for the provisions of the Act (Gwangdi and Garba 2015).

Tax Rate – Part VII Section 40 CITA 2007

The rate of Company Income Tax is 30%. This is applied on total profits of the taxpayer. However, minimum tax(**Part V Section 33 CITA 2007**) may be payable by a company making losses depending on the age of the company, industry and equity funding. The Withholding Taxes that were deducted and paid on behalf of the taxpayers are allowed as offset from the computed tax liability. Withholding Taxes in excess of the tax liability is carried forward for future utilization. However, the taxpayer has the option of refund of the excess Withholding Tax on application to the Service(**Part XII Section 81 CITA 2007**).

Alteration to Tax Rate – Part XIV Section 100 CITA 2007

The power to alter any of the Tax Rates is vested on the National Assembly subject to the proposal to that effect by the President by a resolution of each of the Houses Assembly impose, increase, reduce, withdraw or cancel any rate of tax, duty or fee chargeable as specified in section 29 and the Second Schedule of CITA 2007 in accordance with section 59 (2) of the 1999 Constitution.

Incomes Chargeable to Tax – Part II Section 9 Company Income Tax Act LFN 2007

Nigerian companies: Section 13

CIT is payable by all incorporated entities in Nigeria on profits accruing in, derived from, brought into or received in Nigeria. Such profits shall be deemed to accrue in Nigeria wherever they have arisen (worldwide) and whether or not they have been brought into or received in Nigeria. These include profits in respect of any trade or business, rent on use of property, dividends, interest, royalty, discounts, charges, annuities, fees for services rendered and other sources of annual profits or gains.

Non-resident Companies: Part II Section 20, Part VII Section 40 and Part XII Section 80

For non-resident companies engaged in any form of trade or business in Nigeria, the profits shall be deemed to be derived from Nigeria for tax purposes: –

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

b. If it does not have such a fixed base in Nigeria but habitually operates a trade or business through a person in Nigeria authorized to conduct on its behalf or on behalf of some other companies controlled by it or which have a controlling interest in it; or habitually maintains a stock of goods or merchandise in Nigeria from which deliveries are regularly made by a person

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on behalf of the Company to the extent that the profit is attributable to the business or trade or activities carried on through that person.

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

Small Company Rates – Part VII Section 40(6)

For small companies in the manufacturing industry and wholly export-oriented companies with turnover not exceeding NGN 1,000,000 the CIT rate is reduced to 20% in the first five calendar years of operation.

Tertiary Education Trust Fund -

Tertiary Education Trust Fund is imposed on every Nigerian resident company at the rate of 2% of the assessable profit for each year of assessment. The tax is payable within two months of an assessment notice from the FIRS. In practice, many companies pay the tax on a self-assessment basis along with their CIT.

For companies subject to PPT, tertiary education tax is to be treated as an allowable deduction. For other companies, income/profit taxes are not deductible in arriving at taxable income. Non-resident companies and unincorporated entities are exempt from tertiary education trust fund.

Minimum Tax – Part V Section 33

Minimum tax is payable by companies having no taxable profits for the year or where the tax on profits is below the minimum tax. However, companies in the first four calendar years of business, companies engaged in the agriculture business, or companies that have foreign equity capital of at least 25% are exempt from minimum tax.

Minimum tax payable is calculated as follows:

- Where the turnover of the company is NGN 500,000 or below, minimum tax is the highest of:
    - 0.5% of gross profits
    - 0.5% of net assets
    - 0.25% of paid-up capital, or
    - 0.25% of turnover of the company for the year.
- Where the turnover is higher than NGN 500,000, minimum tax is the highest of the calculations listed above plus 0.125% of turnover in excess of NGN 500,000.

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Tax Incentives

GENERAL

Small manufacturing companies are those with less than ₦1 million turnover.

1) They are to pay income tax at 20% for the first 5 years of commencing business.
2) Dividends from small manufacturing companies are exempted from tax for the first 5 years of business operations.
3) No tax is payable on interest charged by banks for manufacturers for export goods.
4) Dividend derived from manufacturing companies in the petrochemical and liquefied natural gas sub-sectors are tax exempt.
5) There are no restrictions on capital allowances claimable by manufacturing companies.

Companies Engaged in Export Trade – Part V Section 35

With effect from 1st January 1995:

i. The profit of any Nigerian Company in respect of goods exported from Nigeria of which the proceed from such exports are repatriated to Nigeria and/or used exclusively for the purchase of raw materials, plant and equipment and spare parts, are exempted from tax.
ii. The profit of companies whose products are used exclusively as inputs for the manufacturing of products for exports is tax exempt.

For this purpose, the exporter must give a certificate of purchase of the input of exportable goods to the seller before the profit can be eligible for tax exemption.

Taxation of Export Free Zone Enterprises - Section 35(3)

All new industrial undertakings include foreign companies and individuals, operating on any Export Processing Zone or free trade zone in Nigeria shall be exempted from tax on their profit, provided that 100% production of such company is for export otherwise tax shall accrue proportionately on the profit of the company.

Tax Relief to Export-Oriented Enterprises – Section 35(3)(4)(5)

The profit or gains of export-oriented undertakings established outside an export free zone shall be fully exempted from companies income tax for three consecutive assessment years, provided that;

i. The undertaking is 100% export oriented.
ii. The undertaking is not formed by splitting up or the reconstruction of a business already in existence.

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iii. It manufactures or produces and exports during the year, and proceeds of goods exported during the year is not less than 75% of its turnover for the year.

iv. The undertaking is not formed by transfer of machinery or plant previously used for any purpose to the new undertaking or where it does, the written down value does not exceed 25% or the total value of the plant and machinery.

v. That the undertaking repatriated at least 75% of the export earnings to Nigeria and places this in the domiciliary account with a bank in Nigeria.

Solid Minerals – Section 36, Second Schedule Table 1 and II

Companies engaged in the mining of solid minerals are entitled to claim Initial and Annual Allowances as below:

Initial Allowance	95%
Annual Allowance	Nil

In addition, they are to enjoy tax-free holiday for the first 3 years of operation.

Replacement of Industrial Plants and Machineries - Second Schedule Table 1 and II

Plant and machinery purchased to replace old ones are to enjoy a once and for all 95% capital allowances in the first year and the remaining 5% is to be retained as the book value until the final disposal of the asset.

Tax Incentives for Hoteliers and Tourism Services

With effect from1996, 25% of income derived from tourism by hotels in convertibles currencies will be exempted from tax, provided such incomes are set aside and put in a reserve fund to be utilized within 5 years in expansion of the construction of new hotels, conference centres and new facilities useful for tourism development. The amount to be allowed as deductible shall not exceed 15% of total profit or 25% of taxable profit, whichever is higher.

Tax Incentives for Research and Development – Sections 25(5), 26, and Fifth Schedule

i. With effect from 1st January 1996, companies and other organizations that engage in Research and Development activities for commercialization are to enjoy 20% Investment Tax Credit (ITC) on their qualifying capital expenditure.

ii. Donations to universities and Research Institution are tax deductible.

Tax Free Interests Earned from Loans to Export – Oriented Companies – Section 35(3)

The existing law provides for certifications by the Nigerian Exports Promotion Council (NEPC) before a company can be classified as manufacturing for export. The classification qualifies the interest on loan granted by a bank to such a company to be exempted from income tax. The amendment seeks to substitute the requirements of the classification with the following conditions;

a) That at least 75% of the manufactured goods must be exported, and

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b) That not less than 75% of the export proceeds are repatriated to Nigeria through Government approved channels.

Tax Free Interest Earned from Loans to Agricultural Business – Section 11(4)

1) Interest payable on foreign loan granted on or after 1st April, 1978 shall be exempted from tax as prescribed in the Third Schedule to this Act.

2) Interest on any loan granted by a bank on or after 1st January, 1997 to a company engaged in:

(a) Agricultural trade or business, or

(b) The fabrication of any local plant and machinery; or

(c) Providing working capital for any cottage industry established by the company shall be exempted from tax, provided the moratorium is not less than eighteen months and the rate of interest on the loan is more than the base lending rate at the time the loan was granted.

Alternative Tax on Distribution – Sections 18, 40, 43 and 77

There is a tax on distribution where a company pays a dividend in excess of its taxable profit. Such a company will be charged tax on the dividend paid as if the dividend is the taxable profit of the company for that year of assessment.

Enforcement of advance Company Income Tax on interim dividends – Section 43

Federal Inland Revenue Service (FIRS) has commenced the strict enforcement of advance CIT on interim dividends. Companies that declare interim dividends are required by the law to be subject to advance CIT at 30% of the interim dividend paid. The advance CIT is creditable against the final CIT computed at the end of the year.

Alternative tax on deemed profit – Part IV Section 30

The law allows the Federal Inland Revenue Service to assess and charge companies to tax on a fair and reasonable percentage of turnovers under the following circumstances:

- When the trade or business produces no assessable profits.
- When the trade or business produces assessable profits that, in the opinion of the Board of the FIRS, are less than might be expected to arise from that trade or business.
- When the true amount of the assessable profits of the company cannot be ascertained.

Voluntary Assets and Income Declaration Scheme (VAIDS)

According to Federal Inland Revenue Service (2017), "VAIDS is a time-limited opportunity for taxpayers to regularize their tax status relating to previous tax periods. In exchange for fully and honestly declaring previously undisclosed assets and income, tax payers will benefit from the forgiveness of overdue interest and penalties, and the assurance that they will not face criminal prosecution for tax offences or be subject to tax investigations. VAIDS ushers in an opportunity to increase the nation's general tax awareness and compliance"

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The Scheme is primarily expected to foster higher voluntary compliance by tax payers. It is also expected to expand Nigeria's tax base and therefore improve the low tax to Gross Domestic Product (GDP) ratio currently about 6%, which is one of the least in the world (compared to India's of 16%, Ghana's of 15.9%, and South Africa's of 27%). Most developed nations have tax to GDP ratios between 32% and 35% (Federal Inland Revenue Service, 2017).It also seeks to curb the use of tax havens for illicit fund flow and tax avoidance.

Oyedele (2017) stated that the objectives of the VAIDS Scheme to include:

i. Increasing Nigeria's tax to GDP ratio from 6% to 15% by 2020.

ii. Broadening the Federal and State tax brackets. Only 214 individuals nationwide pay N20 million or more in tax annually.

iii. Curbing non-compliance with existing tax laws and discouraging use of tax havens.

iv. Discouraging illicit financial flows and tax evasion.

Similarly, some features of the Scheme have been stated to includeits limited amnesty, implying that the Scheme would grant some waivers as a reward for voluntary declaration of assets and payment of tax liabilities.The scope covers all individuals resident in Nigeria and companies operating in Nigeria. However, the primary targets are multinational enterprises and high net worth individuals.

The applicable taxes VAIDSwould be in respect of all taxes payable to all levels of government – Federal, State and Local government taxes including Companies Income Tax, PersonalIncome Tax, Petroleum Profits Tax,Capital Gains Tax, Stamp Duties,Tertiary Education Tax andTechnology Tax.

Any taxpayer whofails to embrace the voluntarydisclosure of the Scheme would beinvestigated and if found culpable would be prosecuted in addition to fullpayment of tax due includingpenalty and interest.

Federal Inland Revenue Service (2017) observed that some of the ways in which taxes are evaded include:

- Manipulating accounting records by keeping two sets of books
- Many states have lacked the machinery to accurately track the true income of their residents
- Use of complex structures in transactions to evade taxes
- Non-registration for VAT, or charging of VAT without remitting to FIRS
- Non-payment of Capital Gains Tax (CGT) on asset disposals.

Consequently, VAIDS is adopted to curb the effect of tax evasion.

Areas of Improvement/Suggestions for Improvement

Tax Incentives is suggested to be extended to Entertainment/Creative Industry and this would encourage foreigners to invest in the industry and subsequently boost the economy of Nigeria.

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Company Income Tax and new National Tax Policy

This Policy provides a framework to ensure, guide and monitor implementation. This covers:

(a) Government to work towards ensuring that there is only one Revenue agency per level of government to streamline revenue administration and improve efficiency of revenue collection.

(b) Establish an Office of Tax Simplification which shall be responsible for ensuring continuous improvement to tax legislation and administration.

(c) Tax authorities to develop Key Performance Indices for Nigeria to attain a top 50 position on the global index of ease of paying taxes by 2020 and consistently improve on the ranking.

(d) National and State Houses of Assembly are encouraged to establish a Taxation Committee to focus on tax matters and collaborate with the Tax Policy Implementation Committee.

(e) To promote tax awareness and a tax culture in Nigeria, the Federal and State tax authorities through the Joint Tax Board shall set aside a uniform day in the year as a National Tax Day.

(f) Tax authorities shall establish administrative framework for amnesty and whistle blowing as part of the strategies for curbing evasion and widening the tax net.

(g) The Independent National Electoral Commission shall by necessary Regulation and Rules mandate political parties to articulate, prepare, provide and make public their tax agenda before and during election campaigns. This will make political parties reflect deeply in an organized fashion on the financial implications of their promises and the options for financing them. This would also help the taxpayers know the preferences of each party on tax matters and take informed decision.

(h) The qualification for the lower income tax rate application to small businesses should be reviewed in line with current economic realities. The income tax rate for small businesses should be further reduced as an incentive to encourage compliance and promote Micro, Small and Medium Enterprises (MSMEs).

(i) There should be a minimum threshold for VAT registration in order to protect micro-businesses.

CONCLUSION

Corporate Income Tax has a positive relationship on the Gross Domestic Product (GDP) of a country. The incidence of taxation could be a burden to the corporate tax payer because it increases the operational expenditure vis- a vis the cost of doing business in Nigeria, thereby reducing the disposable income of an entity.Generally, tax avoidance is a legal act of reducing corporate tax liability, the contemporary logic is that avoidance devices are social evils that must be legislated against and possibly expunged from tax legislations. This is because these schemes or devices erode government revenue by narrowing the tax base. Tax avoidance had

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been identified as one of Nigeria's greatest impediment to government revenue generation through corporate income tax. (Kiabel David 2017). The Executive order via Voluntary Assets and Income Declaration Scheme (VAIDS) is a means of increasing the tax base with its attendant increase in Corporate Income tax.

For there to be effective enforcement and compliance of tax laws in Nigeria, there is the need for a virile tax culture to be instituted in Nigeria and to enforce the laws on corporate income tax. In decent climes where things work, governments are run by tax payers' money, which confers on the citizenry the legitimacy and stake in public governance.

With an exponential dimension in the provision of public goods in Nigeria besides the provision of housing and rural development, these would provide an impetus for the corporate citizen to discharge willingly and regularly their corporate responsibilities by paying their taxes.

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