

ESTABLISHING A TAX SYSTEM FOR THE FEDERAL CAPITAL TERRITORY - PROSPECTS AND CONSTITUTIONAL CHALLENGES*

By

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Introduction

The Capital of the Federal Republic of Nigeria and the seat of the Government of the Federation were officially relocated from Lagos¹ to a (new) Federal Capital Territory,² (FCT) in 1976.³ Since then, the FCT has gradually been transformed from what was once sarcastically described as a "malarious wilderness infested with river blindness,⁴ into perhaps the most beautiful city in Nigeria.⁵ Though most of the academic legal writings on the FCT have focused on its political aspects,⁶ on the fiscal aspect especially how to finance the FCT on a sustainable basis as even earlier works on Division of taxing powers in Nigeria largely leave the FCT untreated.⁷ Despite the fact that the project required colossal expenditure,

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¹Lagos was the Capital and the seat of the Federal Government of Nigeria until the establishment of Abuja in 1976 by the Federal Military Government of Late General Murtala Mohammed. See the Territory Act, No.6 of 1976, Cap F6 LFN 2004.

² Section 298 of the Constitution of the Federal Republic of Nigeria, 1999 provides that "The Federal Capital Territory, Abuja, shall be the Capital of the Federation and the seat of the Government of the Federation". The totality of the boundary for the Federal Capital Territory as described in Part II of the First Schedule to the Constitution of the Federal Republic of Nigeria 1999 ("1999 Constitution") is known as Abuja. See I.O. Akande, *Introduction to the Constitution of the Federal Republic of Nigeria* 1979, Sweet & Maxwell, London, 1982, p.263.

³The Federal Capital Territory (FCT) was created by the Federal Government of Nigeria based on the recommendation of an eight-man panel headed by late Justice Akinola Aguda. The Federal Government by virtue of Government Notice in Official Gazette No. 55 Vol. 66 of 1979 (Extra-ordinary) created the Federal Capital Territory (FCT) and assigned it the following functions and responsibilities. Although the FCT was officially created in 1976, the actual relocation of the seat of Government was done until sometime in 1983. See <http://www.fct.gov.ng/About+FCT> accessed on 23'd January 2007.

⁴I. A. Ayua, "The Mayoral Status of Abuja - Implications for National Integration", in the Proceedings of the Eight Working Sessions of the National Conference on 1988 Draft

⁵The vision of the FCT is to build a first class Capital City and Territory comparable to the best Capital City and Territory in the World. See <http://www.fct.gov.ng/FCDA> accessed on 23rd January 2007.

⁶E.G. Bello, "The Status and Administrative Machinery of Abuja" and A.H. Yadudu, "The Status and Administrative Machinery of Abuja" in Proceedings of the Eight Working Sessions of the National Conference on 1988 Draft Constitution, op. cit., p.35 & p.44, J.O. Akande, *Introduction to the Constitution of the Federal Republic of Nigeria* 1979, Sweet & Maxwell, London, 1982. See her commentary to section 263, B.O. Nwabueze, *Federation Under Presidential Constitution*, Sweet & Maxwell, London, 1983, pp. 33-34. I.O. Akande, *The Constitutional Relevance of the Provision for the Seat of Government*, Nigerian Institute of Advanced Legal Studies, 1983.

⁷See M.T. Okorodudu, "Analysis of State Taxing Powers" ed. O. Akanle, (NIALS) 1991, p.47, G.I. Emiko, "An Analysis of Federal State Taxing Powers, ed. O. Akanle, op. cit. p. 12 and O. Akanle, *The Power to Tax and Federalism in Nigeria-Legal and Constitutional Perspectives on the Sources of Government Revenue*, (Centre for Business and Investment Studies) 1988, p. 1. A.O. Sanni, "Division of Taxing Powers under the 1999 Constitution", ed. M. T. Abdulrazaq, *CITN Nigerian Tax Guide and Statutes*, CITN, 2002, p.653.

Aguda, who served as the Chairman of the Committee on the relocation of the Federal Capital had this to say:

"Some people have complained about the cost of constructing a new federal capital. It was not part of the duty of the Committee (as you would see from the terms of reference) to work this out⁸....."

Constitution organized by NIALS between 28th - 30th June, 1988. P.I. Ayua had used the phrase 'malarious wilderness' to describe the initial cold and cynical attitude of some people to the FCT. The learned writer however did not share that view. Rather, he expressed his optimism that "although the Territory lacks an economic base at 'the moment, it is expected that Abuja in no distant future will attract, an influx of business and population. "

..... We have no access to the amount of finance at the disposal of the Federal Military Government and we have neither had the facilities nor the time to do any costing of a relocation of the Federal Capital. All we wish to stress is that although we have sympathy for the arguments of those who oppose the relocation of the Federal Capital on the ground that such an exercise would involve the expenditure of huge sums of money, we are firmly convinced that such expenditure is of utmost necessity. By undertaking it now, we shall be preventing the expenditure of much larger sums of money in the future. We firmly believe that, if not now, but certainly in the future, the capital of the Federation of Nigeria will be located away from Lagos and at a greater cost".⁹

An examination of the present system of financing the FCT would reveal fundamental structural weaknesses in its fiscal arrangement. The FCT is mainly being financed through the Federal Government's allocation.¹⁰ Unlike the States of the Federation,¹¹ the FCT does not have a Consolidated Revenue Fund and a tax collection agency of its own.¹² Taxes such as the Companies Income Tax, the Personal Income Tax, the Stamp Duties and the Capital Gains Tax within the FCT are collected by the

⁸ The terms of reference of the Committee on the relocation of the Federal Capital were to:

(1) examine the dual role of Lagos as a Federal and State Capital, and advise on the desirability or otherwise of Lagos retaining that role; (2) in the event of the Committee finding that Lagos is unsuitable for such a role, to recommend which of the two Governments (Federal or State) should move to a new Capital; (3) in the event of the Committee finding that the Federal Capital should move out of Lagos, to recommend suitable alternative locations having regard to the need for easy accessibility to and from every part of the Federation; (4) to examine all other relevant factors which will assist the Federal Military Government in arriving at the right decisions; (5) to submit its recommendations to the Federal Military Government not later than 31st December, 1975. The Report of the Committee had never been made public. See T.A. Aguda, *Flashback, Spectrum*, 1989, p.xxiv& p.93.

⁹ See *Ibid*, op. cit., p.93,

¹⁰ The Federal Government makes budgetary allocation to the FCT every year along allocations to others Ministries and parastatals.

¹¹ The FCT is being compared with the States because Section 299 of the 1999 Constitution shall apply to the FCT as if it were a State.

¹² Sections 80(1) and 120(1) of the 1999 Constitution established a Consolidated Revenue Fund for the Federation and the States respectively.

Federal Board of Inland Revenue (FBIR)¹³ and paid into the Consolidated Revenue Fund¹⁴ of the Federal Government.¹⁵ The main source of revenue for the FCT is a grant of one percent of the revenue from the Federation Account¹⁶ from the Federal Government.¹⁷

The above scenario is indicative of the fact that Nigeria is yet to establish a viable legal framework for financing the Federal Capital Territory. In addressing this problem, an Executive Bill has been forwarded to the National Assembly for the establishment of a Board of Internal Revenue for the FCT.¹⁸ Remarkably, the Bill was stoutly opposed by the FBIR, revenue of the Federal Government, on the basis that it is unconstitutional.

Against this background, this Chapter examines how the present federal tax system works in the FCT with a view to highlighting the unfavourable position of the FCT in the existing fiscal arrangement in Nigeria. It advocates the establishment of separate tax system and not just a Board for the FCT. It is proposed that the FCT should enjoy and exercise as much taxing powers as a State. That is, the FCT should be able to raise taxes for its independent account in order to establish a vibrant revenue base for the provisions of the much-needed social infrastructure within its territory. Also, the work examines the constitutionality or otherwise of establishing a separate Board for the FCT within the framework of the 1999 Constitution and how to deal with the constitutional hindrance(s) to the realization of these objectives, if any.

Significance of Taxation

Government exists, among other things, to provide public services that are necessary for the social and economic well-being of the people.¹⁹ Such services include maintenance of law and order, security of life

¹³Section 85A of the Personal Income Tax Act, No. 104, 1993, Cap P8 Laws of Federal Republic of Nigeria, 2004 (Hereinafter referred to as LFN) establishes a Board of Internal Revenue for each State.

¹⁴The Federal Board of Inland Revenue was established by section 1 of the Companies Income Tax Act, No 28 of 1979, Cap C21 LFN, 2004

¹⁵It should be noted that there is no express provision in the Constitution authorizing the payment of taxes collected by the FBIR in respect of the Companies Income Tax, the Personal Income Tax, the Stamp Duties and the Capital Gains Tax into the Consolidated Revenue Fund of the Federation. Rather, section 163(b) of the Constitution provides that revenue from such taxes "shall be paid to each State at such time as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty derived from that State". See section 163(b). It is remarkable that this constitutional aberration has gone unchallenged by the States so far.

¹⁶The Federation Account is a special account into which all revenues collected by the Government of the Federation except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigerian Police Force, the Ministry or Department of government charged with responsibility for foreign affairs. See Section 162(1) of the 1999 Constitution.

¹⁷For instance, a sum of N35b was allocated to the FCT in the 2007 Budget.

¹⁸See a Bill for An Act for the Establishment of the Federal Capital Territory Board on Internal Revenue and For Matters Connected Therewith, 2005, HB 27, C421 and a Bill for An Act for the Establishment of the Federal Capital Territory Board on Internal Revenue and For Matters Connected Therewith, 2005, S.B 10.

¹⁹The Federal Capital Development Authority (FCDA) an agency of the Federal Government is specifically charged with the responsibility of providing municipal services, establishment of infra structural services, the co-ordination of the activities of all the Ministries, departments and agencies of the Government of the Federation within the Federal Capital Territory, among other things. See Section 4 of the *Federal Capital Act*, No 6 of 1976, Cap F6, LFN, 2004.

and property, provisions of good roads, health care system, electricity, housing, education etc.²⁰ Taxation is the process through government raises revenue from the hands of the private persons, individuals and organisations to finance the public sector.²¹

A tax is a compulsory levy imposed on a subject or upon his property by the government having authority over him for the provisions of social services and infrastructures for public good.²² It is now well- established that taxation is the oldest and the best method of financing the public sector mainly because it provides a steady, continuous and reliable source of income for the government.²³ Furthermore, a well-structured tax system could be used to achieve other social and economic objectives of the government.²⁴ Therefore, while it is open to a government to employ other methods of raising revenue or a combination of them, it is not expedient to rely mainly on non-tax revenue.²⁵

In our view, financing the FCT mainly through the Federal Government's grant is fraught with three main dangers. First, the grant may be unstable depending on the revenue of the Federal Government and its priorities.²⁶

²⁰The extent to which these functions are provided will depend, among other things, on the political and economic ideology of each State. Nigeria operates a mixed economy. See Chapter 2 of the 1999 Constitution which enumerates the duties and responsibilities of government as Fundamental objectives and Directive Principle of States Policy. See O. Akanle, *Nigeria Income Tax Law and Practice*, Centre for Business and Investment Studies Limited, Nigeria, (1991),p. 4.

²¹Taxation has also been defined as a universally accepted contrivance for financing government services whether in peace or war, depression or prosperity. It is the process by which a government transfers resources (almost always money) from private to public sector. M.J. Graetz& D.H. Schenk, *Federal Income Taxation, Principles and Policies*, 4th ed., FemdofPress, N. Y., (2001), p.1

²²See O. Akanle, *op. cit.* pp 4-5 and J.K. Naiyeju, *The Value Added Tax- The Facts of a Positive Tax in Nigeria*, Kupag Public Affairs (1996) p. 9.

²³ There are number of ways for a government to obtain the economic resources it needs. It can seize material or manpower if it is a conquering nation or a nation drafting its youth to war. It can borrow. It can inflate the currency by printing currency or manipulating the banking system. None of these is suitable as a permanent means of financing a government based upon the rule of law and consent of the governed. See G.W. Fisher, "The Real Property Tax", *Handbook on Taxation*, ed. W. Bartley Hildreth& 1.A. Richardson, Marcel Dekker Inc., N.Y., 1999,p. 101.

²⁴Taxation can be used to achieve economic objectives such as the stimulation of economic growth. For instance, if government desires to encourage the production of local goods for export, it could remove or reduce the export duties on the basic raw materials of locally produced goods in order to boost capacity utilization of local industries. Taxation can also be used to achieve other economic aims such as the control of inflation, stable exchange rate etc. An increased taxation by government withdraws money from the economy. This should ordinarily keep inflation low, but may also slow down the pace of economic activities. On the other hand, reduction of taxation would lead to an increase in money supply in the economy. It also increases or stimulates economic activities and investments. See C. Igwe, "Taxation in Nigeria, The problem of Tax Avoidance and Tax Evasion - A Legal Appraisal" (Unpublished) 1993, p. 44.

²⁵President Olusegun Obasanjo stated recently while presenting the 2007 Budget to the National Assembly on Wednesday, October 112006, that: "Oil revenue, representing 84% of total estimated revenue is uncomfortably too high. I have addressed the leadership of the National Assembly on the issue of VAT. We will need to continue to grow the non-oil revenue. Revenue from one commodity or product should not be more than 50% of our total revenue for now to ensure security and stability". See the 2007 Budget Speech. Op cit, Note 17.

²⁶For instance, a sum ofN30 billion naira was allocated to the FCT in the 2006 Budget while a sum ofN35 billion naira in the 2007 Budget. See the 2007 Budget speeches, *Ibid.*

What is more, the allocation may not be released on time.²⁷ Second, a reliance on grant means that the FCT will be unable to determine the level of services it wants to provide for its residents and then raise revenue through taxation to provide the services. Third, the Federal Government's allocation of one percent of the revenue in the Federation Account to the FCT was recently declared to be unconstitutional and *null and void* in *Attorney General of the Federation v. Attorney General of Abia & 35 Ors.* (No. 2).²⁸ The allocation was voided on the ground that the FCT and its area councils were not entitled to share in the revenue from the Federation Account not being a State and local Government councils as envisaged under section 162(1) of the Constitution.²⁹ According to Ogundare J.S.C. (as he then was):

"Subsection 3 of section 162 of the 1999 Constitution provides for the beneficiaries among whom the Federation Account is to be distributed. The sub-section reads:

162(3) any amount standing to the credit of the Federation Account shall be distributed among the Federal and State Governments and the Local Government Councils in each State on such terms and in such manner as may be prescribed by the National Assembly.

The Federal Capital Territory is neither a State nor a local government in a State. It therefore cannot qualify for distribution of the Federation Account. Nor are the Councils in the Federal Capital Territory as they are not governments "in a state" as provided in subsection (3) above".³⁰

Against this background of depressing fiscal position, it may be worthwhile to give serious to the policy option of financing the FCT through taxation. Reflecting on the role and significance of taxation in nation-building, The United States Supreme Court in *Nichols v. Ames* graphically captured the essence of taxation in the following words: It is the one great power upon which the whole national fabric is based. It is as necessary to the existence and prosperity of a nation as is the air he breathes to the natural man. It is not only the power to destroy; it is also the power to keep alive.³¹

Benjamin Franklin made perhaps, the most popular statement on the necessity, indispensability and inevitability of taxation as follows:

"Our Constitution is in actual operation. Everything appears to promise that it will last. But in this world nothing is certain but death and taxes".³²

²⁷The fact that moneys have been appropriated for particular purposes in an Appropriation Act do not *ipso facto* is only one step in the budget process. There are still administrative steps to be taken before the moneys are disbursed. The President directs the Minister of Finance to issue Warrant of Expenditure to the Accountant-General. A Warrant of Expenditure is the instrument through which the Accountant-General receives instruction to disburse funds to government Ministries and Departments. The Accountant-General cannot authorise the release of funds to the Ministries unless he is authorised to do so by the Minister of Finance who is responsible for all the financial businesses of the federal government to the President.

²⁸[2002] 6 NWLR(Pt.764) 542.

²⁹ See Section 162(1) of the 1999 Constitution.

³⁰*Supra*, at p.610.

³¹173US509(1899)515.

³²See the *United States Constitution and Fascinating Facts About it, 7 ed.*, Oak Publishing Company, II., P.11.

Tax Agency or Tax System?

A tax agency is a body charged with the responsibility of collecting taxes on behalf of the government and accounting for the taxes collected.³³

Such an agency is usually established by statute as a corporate entity with power to sue and be sued.³⁴ A "tax system" in the context of this paper refers to an organised set of policy, law and administration for revenue generation through taxation. It includes the imposition of taxes and the establishment and sustenance of the various taxes and institutions that are involved in tax administration and enforcement. A tax system is therefore more embracing than a tax agency which is just an aspect of a tax system.

It is the position of this writer that any meaningful attempt to solve the fiscal problems of the FCT should begin with the formulation of a clear-cut tax policy on its entire tax system and administration. In this regard, we may draw inspiration from the practice in United States after the Capital of the country was relocated from Philadelphia in Pennsylvania State to a newly created Federal Territory called the District of Columbia (D.C.). D.C. is a special district, established by Article 1, section 8 of the United States Constitution,³⁵ with general responsibilities vested in the Congress. The *D. C. Self-Government and Governmental Act Reorganization Act*³⁶ established a government for the D.C. consisting of an elected Mayor and an elected thirteen-member Council. The Act vests enormous legislative powers on the Council. The Council may enact laws on "all rightful subjects of legislation within the District. There are only two express limitations on the legislative and taxing powers of the Council. It is prohibited from imposing tax on the earnings of non-residents and making laws changing building heights limit within DC without Congressional approval.

Legal Framework for the Tax System in the FCT

It is noteworthy that the FCT was not designed to be a tax haven³⁷ despite the fact that many public servants were initially reluctant to relocate to the place from Lagos.³⁸ Section 13 of the *Federal Capital Territory Act*³⁹, made the under listed pre-existing Federal Statutes applicable in the FCT:⁴⁰

- (i) Personal Income Tax (Lagos) Act 1961;

³³Section 1 Companies Income Tax Act (CITA);No. 28 of1979, Cap C21, LFN, 2004 and Section 85'A of the Personal Income Tax Act (PITA), No. 104 OF 1993, Cap P8, LFN, 2004.

³⁴ See Sections 1 (1), 2 (1) of CITA and Sections 85A (1) and 85B(1) PITA respectively.

³⁵See Section 1 (8) of the United States Constitution.

³⁶Also known as the "Home Rule"

³⁷37 No.6 of1976, Cap F6, LFN 2004.

³⁸Many public servants were constrained to either resign or retire from the public service because they were reluctant to relocate from Lagos to the FCT.

³⁹*Loc. Cit.*

⁴⁰Section 13(1) of the *Federal Capital Territory Act* provides: "In addition to any law having effect, or made applicable throughout the Federation, the laws set out in the Second Schedule to this Act shall as from the 9 May, 1984 apply in the Federal Capital Territory. (2) Where any of the laws set out in the schedule had the effect in the former Federal Capital Territory of Lagos and any such law, whether by reasons of the relation of States in Nigeria or otherwise howsoever, had become obsolete such law shall by virtue of this Act be revived and shall apply in the Federal Capital Territory as provided in subsection (1) above.

- (ii) Capital Gains Tax Act,
- (iii) Stamp Duties Act
- (iv) Entertainment Tax Act;
- (v) Produce Sales Tax Law;⁴¹

Since the establishment and relocation to the FCT, the Entertainment Tax and the Produce Sales Tax had never been administered due to lack of appropriate legislative and administrative framework.⁴² Currently, the main taxes being administered in the FCT by the FBIR are:

- (i) Personal income tax in respect of:
 - (a) members of the Armed Forces of the Federation;
 - (b) members of the Nigeria Police Force;
 - (c) Residents of the Federal Capital Territory, FCT; and
 - (d) Staff of the Ministry of Foreign Affairs and non-resident individuals.
- (ii) Capital gains tax;
- (iii) Stamp duties
- (iv) Companies income tax;
- (v) Petroleum profits tax;
- (vi) Value added tax and
- (vii) Education tax.

Although these taxes are collected by a Federal agency, the FBIR, the revenues from the various taxes are treated differently. For example, while the revenues from some of the taxes are paid into the Federation Account,⁴³ some are paid into the Consolidated Revenue Fund of the Federation⁴⁴ and some are paid into special accounts⁴⁵ and distributed among the three tiers of government including the FCT and its area councils. A brief explanation of how these taxes operate within the FCT will be given with a view to revealing the relative disadvantaged position of the FCT in the existing fiscal arrangement.

⁴¹The Second Schedule to the Act contained a list of ninety-three laws only five of which are tax-related.

⁴²The provisions of Section 13(4) of *the Federal Capital Territory Act* that "The President may by order published in the Federal Gazette make such changes in the text of the laws set out in the Second Schedule to this Act as would bring those laws into conformity with the provisions of this Act" was never activated.

⁴³ For example, the Companies Income Tax and the Petroleum profits Tax.

⁴⁴For example, the Personal Income Tax, the Capital Gains Tax and the Stamp Duties.

⁴⁵For example, the Education Tax and the Value Added Tax.

Personal Income Tax

The Personal Income Tax is imposed on the aggregate income of individuals, families, communities and trustees and from a source inside or outside Nigeria.⁴⁶ In effect, the global income of an individual who is resident or deemed to be resident in Nigeria is liable to tax under the Personal Income Tax Act.

While the Personal Income Tax is imposed under a Federal Statute, the States are charged with the duty of collection of the Personal Income Tax of the individuals who are resident within their territories. The Personal Income Tax collected by the States is wholly retained by each State and forms part of its Consolidated Revenue Fund pursuant to sections 120(1) and 163 (a) of the 1999 Constitution.⁴⁷ However, the Federal Government still retains the power to collect the Personal Income Tax from the following categories of people:

- (i) persons employed in the Nigerian Army, the Nigerian Navy, the Nigerian Air force, the Nigerian Police Force other than in a civilian capacity;
- (ii) officers of the Nigerian foreign service,
- (iii) every resident of the Federal Capital Territory, FCT and
- (iv) A person resident outside Nigeria who derives income or profits from Nigeria.⁴⁸

The 1999 Constitution expressly provides that that the Personal Income Tax collected by the Federal Government shall not be paid into the Federation Account.⁴⁹ Rather, the tax "shall be paid to each State at such times as the National Assembly may prescribe, a sum equal to the proportion of the net proceeds of such tax or duty that are derived from the State".⁵⁰ Based on this provision, it means that the Federal Government cannot exclusively retain and spend the revenue collected from the Personal Income Tax.

However, since 1979 when taxation of income became a federal matter in Nigeria pursuant to the provisions of the 1999 Constitution,⁵¹ the National Assembly is yet to enact any law to prescribe the basis of distribution of the Personal Income Tax collected by the Federal Government. In practice, the

⁴⁶See Section 3(1) PITA.

⁴⁷See Sections 120(1) and 163 (a) of the 1999 Constitution

⁴⁸Section 2 (1) (a) & (b) PITA.

⁴⁹Section 162(1) CFRN provides "The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds of the personal income tax of the personnel of the armed forces of the Federation, the Nigerian Police Force, the Ministry or Department of government charged with responsibility for foreign Affairs and the residents of the Federal Capital Territory, Abuja".

⁵⁰See section 163 (a) CFRN, 1999. The question now is what is the meaning of "derivation" within the context of the provision? Is it where an individual is resident or where the income is originated? It has been opined that derivation-is used in this context to connote source, that is, the income, upon which the tax is based.

⁵¹Under the 1954 Constitution which established a federal system of government, taxation of Personal Income was made a residual matter. The Eastern Region in 1956 was the first to exercise its taxing power by enacting the *Finance Law No.4 1956*. The Western Region also enacted its own Income Tax Law in 1957 whereas the Northern Region did not enact its Personal Tax Law until 1962. See O. Akanle, *op. cit.*, p 53

entire Personal Income Tax collected by the FBIR is paid into the Consolidated Revenue Fund of the Federal Government (including the portion that ought to be distributed to the States). The implication therefore is that the Federal Government has been retaining for its exclusive use the entire Personal Income Tax collected by the FBIR in violation of the clear provisions of section 163 (b) of the 1999 Constitution. This is because the FCT is an integral part of the Federal Government.⁵²

If there had been a separate tax authority for the FCT, the Personal Income Tax of the residents of the FCT would have been collected by it for its independent use. This would have positively impacted on the cash-flow of the FCT since it will no longer have to wait for allocation and disbursement by the Federal Government before it could spend the money.

Capital Gains Tax

The Capital Gains Tax (CGT) is imposed at the rate of ten per cent on the total amount of chargeable gains arising to any person in a year of assessment after making such deductions as may be allowed in the computation of such gains.⁵³ Taxable persons under the CGTA include any company, individual, families, communities and trustees.⁵⁴ The CGT is a federal tax and therefore applies throughout Nigeria including the FCT.⁵⁵

The administration of the CGT is also split between the Federal and State Governments. The States are charged with the collection of the CGT of those who are resident in their territories.⁵⁶ The revenue collected by the States from the CGT forms part of their Consolidated Revenue Fund pursuant to sections 120 and 163 (a) of the 1999 Constitution.⁵⁷ The Federal Government is charged with the collection of the CGT of companies and those whose personal income are subject to the jurisdiction of FBIR including the residents of FCT.⁵⁸ The net proceeds of the CGT collected by the Federal Government are required to be distributed among the States "on the basis of derivation at such times as the National Assembly may prescribe".⁵⁹

As a matter of fact, the constitutional frameworks for the administration of the CGT and Personal Income Tax are basically the same except that there is no express provision in the constitution to the effect that the CGT collected by the Federal Government should not be paid into the Federation

⁵²The Minister of the FCT is appointed by the President to represent the President in the day to day administration of the FCT. See Section 302 of the 1999 Constitution.

⁵³See Section 2(2) CGTA.

⁵⁴Section 1 (3) CGTA provides that "In this Act unless the context otherwise requires, any reference to a person shall include a reference to any person to whom the Personal Income Tax Act applies.

⁵⁵Initially in 1967 when the CGT was introduced in Nigeria, it was applicable to "Nigerian companies and any individual or body of individual resident within the Federal Capital Territory of Lagos". The taxable person is now defined by the CGTA as "any company or other body corporate established by or under any law in force in Nigeria or elsewhere" and any individual or body of individuals or any corporation sole, trustee, executor, partnership, to whom the gains accrue". See Sections 1(3) and 45(2) CGTA.

⁵⁶ See Section 43(1) CGTA

⁵⁷See Sections 120 and 163 (a) of the 1999 Constitution

⁵⁸See Section 43(1) CGTA

⁵⁹See Section 163 (b) of the 1999 Constitution

Account. Against this background, our comments on the PIT apply to the CGT *mutatis mutandis*. The National Assembly is also yet to make any law to prescribe the basis of distribution of CGT collected by the Federal Government. In *A. G. Ogun State v. A. G. Federation*⁶⁰ an attempt by five States to compel the Federal Government to pay to them their own portion of the revenue collected by the FBIR from the Capital Gains Tax and Stamp Duties was unsuccessful at the Supreme Court. The Supreme Court held, *inter alia*:

"However, there is in existence the Capital Gains Act (sic!)⁶¹ and the Stamp Duties Act which are existing laws under section 315 of the 1999 Constitution, but which do not contain provisions pursuant to section 163 and the National Assembly has not prescribed how the net proceeds of such tax or duty has are to be distributed among the States on the basis of derivation. Therefore, it follows that there is no basis on which Capital Gains Tax and Stamp Duties collected by the Government of the Federation could for the time being be paid to the States or into the Federation Account as being claimed by the plaintiffs. It is, in fact, clear by the provisions of section 163 in question that Capital Gains Tax and Stamp Duties are supposed to be paid, when applicable, to the States from which they are derived".⁶²

Therefore, no distribution has ever been made to the States pursuant to this provision of section 163 (b) of the Constitution due mainly to the legislative inertia of the National Assembly. If the necessary law(s) had been enacted, the revenue from the distribution envisaged would have eased the financial burden of the States and the FCT to some extent.

Stamp Duties

Generally, stamp duty is a tax raised by requiring government's stamps to be affixed to designated documents.⁶³ The tax is calculated based on the value of the property that forms the basis of the instrument.⁶⁴ Stamp Duties is a federal tax imposed under the Stamp Duties Act⁶⁵ (SDA). The SDA is therefore applicable throughout Nigeria including the FCT.⁶⁶

The SDA also splits the collection of Stamp Duties between the Federal and States Governments. Section 4 of the SDA vests the States with power to collect Stamp Duties in respect of instruments executed between persons or individuals⁶⁷ and reserves to the Federal Government the power to collect Stamp Duties upon instruments executed between a company and an individual.⁶⁸ A Federal Stamp Duties

⁶⁰*A. G. Ogun State v A. G. Federation* [2002] 18 NWLR (Pt. 798), p.232, [2003] 3 WRN 100.

⁶¹ There is no Capital Gains Act. The correct title of the Act is the Capital Gains Tax Act.

⁶²*Ibid* at pp 293-4, para A-C, pp. 146-147, lines 30-15.

⁶³See *Black's Law Dictionary*, ed. B.A Garner, Thompson West, 8th edition., P.1441

⁶⁴http://www.stampoutstampduty.com.au/about_what_is_stampduty.htm Accessed on 25th September 2003.

⁶⁵No 5 of 1939, Cap S8 LFN 2004.

⁶⁶The Act charges the same duties on various instruments and grants the same exemptions throughout Nigeria.

⁶⁷Section 4(2) SDA

⁶⁸Section 4(1) SDA

Office is charged with the responsibility of collecting Stamp Duties in respect of instruments executed between companies or involving companies and individuals.⁶⁹

The revenue from Stamp Duties is paid into the Federation Account pursuant to Section 162(1) of the 1999 Constitution. Therefore, the FCT does not share or benefit directly from the revenue collected by the Federal Government like its States' counterparts.

However, in its effort to generate revenue internally, the FCT had established a Stamp Duties Office within the Ministry of Federal Capital Territory for the collection of duties in respect of land located within the FCT. For example, mortgages, charges and debentures in

respect of lands situate within the FCT are required to be stamped at the Federal Capital Development Authority (FCDA) as a precondition for registration with the FCDA. This development has led to an incidence of double taxation in the FCT. This is because the Corporate Affairs Commission (CAC)⁷⁰ has been disregarding the stamping done at the FCDA and insists on 'proper' stamping with the Federal Commissioner for Stamp Duties as a pre-condition for registration with the CAC. This practice has continued unabated while no taxpayer has challenged the unlawful action of the FCDA in the law court.

Companies Income Tax

The Companies Income Tax (CIT) is imposed upon the profits or gains of any companies⁷¹ accruing in, derived from, brought into, or received in Nigeria. The CIT is within the exclusive jurisdiction of the Federal Government.⁷² The provisions of the CIT are administered by the FIRB irrespective of where the companies are located or carrying on their operations within or outside Nigeria once they fall within the tax net. The revenue from the CIT goes into the Federation Account which is eventually shared among the three levels of government excluding the FCT and its area councils. The implication, therefore, is that while each State benefits from the proceeds of CIT the FCT does not receive anything directly in its own right even when the companies located within the FCT make contribution to the proportion of the CIT revenue in the Federation Account.

Petroleum Profits Tax

The Petroleum Profits Tax (PPT) is the highest revenue yielding tax in Nigeria.⁷³ The PPT is imposed on the gains or profits of any company engaged in petroleum operations.⁷⁴ The PPT is within the exclusive

⁶⁹Section 6 of SDA provides that "The relevant Civil Service Commission may appoint one or more officers who shall be Commissioner of stamp duties and shall have the care and management of this Act.

⁷⁰A registered security has priority over a floating charge. Section 179 of *Companies and Allied Matters Act No 1, 1990, Cap C20 LFN 2004* provides that "a fixed charge on any property shall have priority over a floating charge affecting that property, unless the terms on which the floating charge was granted prohibited the company from granting any later charge having priority over the floating charge and the person in whose favour such later charge was granted had actual notice of such prohibition at the time when the charge was granted to him.

⁷¹Except those engaged in "petroleum operations" within the meaning of Section 2 Petroleum Profits Tax Act. See Section 19(h) CITA.

⁷²See item 59 of the Exclusive Legislative List of the 1999 Constitution and Section 2 (1) CITA.

⁷³Oil Revenue represents 84% of total estimated revenue while Non-Oil Revenue represents 16%. Out of the non-oil revenue, the Petroleum Profits Tax is estimated at N1.1 trillion or (35%); Companies' Income Tax is expected to

jurisdiction of the Federal Government and administered by the FBIR.⁷⁵The revenue from the PPT also goes into the Federation Account and shared among the three levels of government excluding the FCT and its area councils. As in the case of CIT, while each State benefits from the proceeds of PIT, the FCT does not benefit directly in its own right.

Value Added Tax

The Value Added Tax (VAT) is imposed on the supply of all goods and services other than those exempted in the Schedule 1 of the Value Added Tax Act (VATA).⁷⁶ VAT is a consumption tax on all taxable goods and services payable by any consumers including companies, individuals, organizations, government agencies, trustees, families and other persons or bodies of persons. VAT is gradually emerging as a significant source of revenue to the States and local government councils in Nigeria.⁷⁷ VAT is administered by the FBIR throughout the Federation including the FCT.⁷⁸

However, the revenue from VAT is paid into a special account which is distributed among the Federal Government, State Governments, the FCT and the local government councils in the ratio of 15%: 55% and 30% respectively.⁷⁹ Section 36 of the VAT Act specifically provides that the FCT is entitled to share in the VAT revenue along with the State thus:

"Notwithstanding any formula that may be prescribed by any other law, the revenue accruing by the virtue of the operation of this Act shall be distributed as follows, that is-

- (A) 15% to the Federal Government;
- (b) 50% to the State Governments and the Federal Capital Territory; and
- (c) 35% to Local Governments.⁸⁰

account for N299 billion (28%); Value Added Tax should contribute N530 billion (50%); Customs & Excise Duties will account for N230 billion (22%). See the 2007 Budget Speech. See note 26

⁷⁴Section 2 of the PPTA defines petroleum operation as "winning or obtaining and transportation of petroleum or chargeable oil in Nigeria or by on behalf of a company for its own account by any drilling, mining, extracting or other like operations or process, not including refining at a refinery in the course of business carried on by the company engaged in such operations, and all operations incidental thereto and any sale of or any disposal of chargeable oil by or on behalf of the company"

⁷⁵ See Section 3(a) PPTA

⁷⁶Act No 102 of 1993, Cap V 1, LFN, 2004.

⁷⁷The Federal Government has proposed in the VAT (Amendment) Bill----- to increase the VAT rate from 5% to 10%. The proposal was however rejected by the National Assembly during the debate of the Bill. Nevertheless the Federal Government has continued to base its estimated income from VAT on the proposed 10%. For example, the Federal Government hopes to generate a sum of N530 billion from VAT as against N225 billion in 2006. See the 2007 Budget Speech.

⁷⁸The VAT Directorate is one of the six Directorates of the FBIR. Local VAT offices have also been established in all the state capitals and some major towns in the states. Each of the LVO'S is under the supervision and control of the Zonal Office in the area.

⁷⁹See Section 36 VAT Act.

⁸⁰*ibid.*

The inclusion of the FCT in the formula for the sharing of revenue from VAT is remarkable because the Sales Tax which is the precursor of VAT is historically within the taxing powers of the States.⁸¹ The inclusion of the FCT as a beneficiary of VAT revenue strengthens our position that the FCT should generally be treated as State for tax purposes.⁸² However, the phrase "area councils" is conspicuously omitted in the sharing formula. Going by the principle of statutory interpretation, this can be said to be a clear manifestation of intention not to include the area councils within the FCT in the sharing of the VAT revenue. The possible reason for the omission of the area councils in the sharing arrangement is not clear. If all the 44 local government councils in Kano State could directly benefit from VAT, there is no reason in our view why the 6 area councils in the FCT cannot equally benefit.⁸³ The implication of this omission, however, is that the FCT and its area councils are worse off when compared to their States' and local governments' counterparts under the current VAT sharing formula. It is submitted that the treatment of the area councils of the FCT under the sharing arrangement is discriminatory, unjustifiable and unacceptable. It is advocated that the provisions of Section 36 of the VAT Act should urgently be amended to include the area councils in the sharing formula.

Education Tax

Education Tax is an annual tax charged at the rate of 2% on the "assessable profits"⁸⁴ of a company registered in Nigeria".⁸⁵ The tax is imposed on only Nigerian companies including those engaged in petroleum operations.⁸⁶ Thus, individuals, firms and foreign companies who derive income from Nigeria are not liable to pay education tax. The Education Tax is a Federal tax collected by the FBIR.⁸⁷ The assessment for the Education Tax is undertaken simultaneously with that of the Companies Income Tax

⁸¹The idea of introducing VAT in Nigeria came from the Report of the Study Group set up by the Federal Government in 1991 to review the tax system of the Federation. VAT was proposed as a replacement of the existing Sales Tax that has been in operation as a State tax administered under a federal enactment. The rationale behind replacing Sales Tax with VAT is informed by a number of factors and considerations, notably the narrow base of Sales Tax, its weak and inefficient administration resulting in poor revenue yield to the States. After an extensive deliberation and consultation VAT was introduced on 24th August 1993 as a federal tax in Nigeria by the *Value Added Tax Act*.

⁸²See p 5 *infra*

⁸³See Nigeria comprises of 768 local government areas and 6 area councils. See Section 3(6) and Parts 1 & 2 of the Second Column of First Schedule to the 1999 Constitution.

⁸⁴"Assessable profits" is the profits arrived at before the deduction of losses and capital allowances in the adjustment of profits. The Education Tax is imposed on assessable profits to avoid a situation where companies who are making losses would escape payment of education tax. Kanyip has however observed that "The use of the term 'assessable profits' in section 1(2) ETA can be confusing and misleading. For instance, under the PPTA, the term has a technical meaning which is "adjusted profit minus losses allowed by the Act". "Adjusted profits" are profit less expenses wholly, exclusively and necessarily incurred in earning the profits". See B.B. Kanyip, *Education Tax, CITN Tax Guide Statutes*, op. cit., 365.

⁸⁵See section 1 of Education Tax Act, No 7 of 1993, Cap E 2004, (ETA)

⁸⁶See Section 1 (2) ETA

⁸⁷See Section 2(1) ETA.

and Petroleum Profits Tax.⁸⁸ Hence, there is a thin line between Companies Income Tax and Petroleum Profits Tax on one hand and the Education Tax on the other hand.

The revenue from the Education tax is paid into a special Fund⁸⁹ administered by a Board of Trustee.⁹⁰ The Fund is disbursed to the "Federal, State and Local Governments" educational institutions including primary and secondary school for any matter ancillary thereto". Section 5(4) of the Education Tax Act provides that:

"5(4) The Board of Trustees shall administer; manage and disburse the tax imposed by this Act on the basis of -

(a) equality among the six geo political zones of the Federation;

(b) equality among the States within a zone;

(c) Equality among the local government or area councils within a State or the FCT respectively" .⁹¹

The inclusion of the area councils within the FCT as part of the beneficiaries of the revenue from the ETF reinforces our position that there is no basis for not treating the area councils on the same footing with the local government councils in terms of sharing of tax revenue. However, the FCT is conspicuously omitted in the sharing formula for the Education Tax for the States for inexplicable reason. Perhaps, the omission may be due to the political dilemma of determining which of the six geo political zones the FCT belongs to.⁹² Such a dilemma could have been avoided, in our view, by making a direct reference to the FCT in its own right as done by Section 36 of VAT Act.⁹³ For instance, section 4(a) ETA could have been worded as "Equality among the six geo political zone and the Federal Capital Territory". This would have made for a measure of consistency in the tax treatment of the FCT. As it were, the FCT is entitled to share from the VAT revenue while it is not entitled to share from the Education Tax fund. If the FCT could share in the VAT revenue, there is no rational basis why it 'should not be able to do likewise in respect of the Education Tax Fund.

Tenement rate

⁸⁸The FBIR is obliged to assess and collect Education Tax from a company when assessing the company for Companies Income Tax or Petroleum Profits Tax for an accounting period of the company. Furthermore, the provisions of the Companies Income Tax Act and Petroleum Profits Tax apply in the assessment of Education Tax. See Section 2(1) (a) & (b) ETA.

⁸⁹See Section 3(1) ETA

⁹⁰ See Section 4(1) ETA

⁹¹See Section 5(4) ETA.

⁹²When the FCT was created, there was the concern that it might be "annexed as the 13th States of the North at the time when Nigeria consisted of 19 States. See I.A. Ayua, *op. cit.*, p.8.

⁹³Section 36 VAT Act avoids the reference to geo political zone but rather employs the phrases "states" and "local government councils".

Tenement is a tax imposed on building on land and all other immovable properties which are permanently attached to land. The definition of tenement does not extend to vacant land.⁹⁴ Tenement rate is usually imposed as a percentage of the value of the property. Tenement rate is traditionally regarded as a local government tax.⁹⁵ However, the legal framework for the imposition and administration of tenement rate is required to be provided in a Law enacted by the State House of Assembly.⁹⁶

In other words, the imposition of tenement rate is done under a State law which also prescribes the rate and the mode of assessment. Therefore, the local government councils are bereft of any power to collect tenement rate in the absence of a State Law establishing the statutory framework within which such administration shall be done.⁹⁷

It is pertinent to consider the implications of this constitutional arrangement for the prospect of collecting tenement rate in the FCT. The FCT comprises of six area councils whose administrative and political structures are required to be prescribed by an Act of the National Assembly.⁹⁸ It is therefore submitted that in the absence of an Act of the National Assembly imposing a Tenement Rate within the FCT, neither the FCT nor its area councils could validly assess and collect tenements within the FCT.

The absence of Tenement Rate in the FCT can be said to have literally created a sort of 'tax haven' for the owners of properties in the FCT. This is because; while Tenement Rates are being collected in the local government councils of the neighbouring States,⁹⁹ the properties within the FCT are technically on tax holiday. Apparently not satisfied with the state of affairs, the Ministry of the FCT recently introduced a programme called the Abuja Geographic Information Systems (AGIS) under which every owner of properties, whether developed or undeveloped, within the FCT is required to recertify their allocation papers.¹⁰⁰ Specified fees are charged for the services. It has been reported that the FCT has generated a sum of over N9 billion as at November 2006.¹⁰¹ This therefore raises the concern whether the AGIS Programme is not an indirect way of raising revenue which would have otherwise been raised in form of

⁹⁴A judicial definition of tenement was provided in *Shell v Burutu* (2000) 1 NRLR p.1. See also Section 51 of the Tenement Rate Law No.10 1989, Cap T2, The Laws of Lagos State, 2003.

⁹⁵Assessment of privately owned tenement is reserved by the Constitution for the Local Government Councils in Nigeria. See item j of the Fourth Schedule CFRN, 1999.

⁹⁶Section 7(1) of the 1999 Constitution requires every State to ensure the existence of local governments within their territory under a Law which provides for their "establishment, structure, composition, finance and functions of such councils."

⁹⁷A.O. Sanni, *op. cit.*, p. 658.

⁹⁸See Section 303 of the 1999 Constitution.

⁹⁹The neighbouring States of the FCT are Nassarawa, Kogi, Kaduna and Niger States

¹⁰⁰Abuja Geographic Information Systems (AGIS) was initially established on July 5, 2004 as a unit in his office. There is a plan to transform it into an independent Agency to serve as the only official source of Geospatial data for the FCT. Abuja Geographic Information Systems (AGIS) <http://www.fct.gov.ng/Ministers+Office/AGIS.htm>

¹⁰¹This disclosure was made by the Director of AGIS, Ms Altine Jibrin made this disclosure on Tuesday (January 9, 2006) after the weekly FCT EXCO meeting in Abuja. See "AGIS Generates over N9bn as at Nov 2006 - Director" 19,344 plots of land re-certified, <http://www.fct.gov.ng/NR/rdonlyres/A6726B34-BFFC-402E-9677-C14D8D7AB03/411/AGISGENERATESOVERN9BNAASATNOV2006.doc>

Tenement Rate. A confirmation that the programme is envisioned for revenue purpose can be seen from this remark:

"AGIS would also serve as a 'Resource Centre' and may likely operate as a commercial out fit to enable it generate adequate revenue for its sustenance and for the benefit of the Ministry and Its Agencies."¹⁰²

While AGIS may be an ingenuous way of raising revenue in respect of properties located within the FCT in the short run under the present circumstance, it is better in our view for the FCT to address the challenges of establishing a proper framework for an introduction of Tenement Rate. Since, AGIS has now provided the FCT a reliable data-base on the ownership and value of the various properties within the FCT, an introduction of a well-structured and well-administered tenement rate has the potential of being a veritable source of revenue for the area councils in the FCT on sustainable basis. If this is done, the revenue from property tax can be used to gradually develop and open up the rural satellite towns and rural areas of the FCT.

Another attraction for an introduction of tenement in the FCT is that the FIRS is not likely to contest the power of the FCT to collect tenement rate since tenement is not one of the taxes presently being collected the FBIR. Furthermore, there are no express Constitutional provisions vesting the FIRS with the power to collect tenement/taxes in respect of properties located within the FCT as it was done in the case of Personal Income Tax of those who are resident within the FCT. An introduction of tenement rate in the FCT would require a statute of the National Assembly establishing the legal and administrative framework for tax.¹⁰³ The FCT could adopt the tenement rate law of any of the State or the one under the old FCT with necessary modifications.

There are usually many challenges in either introducing a tax¹⁰⁴ or establishing a tax system and that of FCT cannot be an exemption. Of all the possible challenges, it is quite obvious that the most important one is that the proposed tax or tax system must be within the constitutional powers of the government.¹⁰⁵

Constitutionality of the proposed FCTBIR

The FBIR had opposed the establishment of a separate Tax Authority for the FCT on ground that it unconstitutional and will wreck double taxation on the residents of the FCT. It should be noted that there is no express provision of the Constitution that vests the FBIR with the power to collect taxes

¹⁰²Ibid.

¹⁰³Taxes are imposed under the authority of the legislature. See S.A. Authority v. Regional Tax Board (1967) N.C.L.R. 452, Tennant v. Smith (1892) A.C. 154, Coltness Iron Company v. Black (1881) 6A.C.315.

¹⁰⁴The huddles may be political, social and constitutional. Politically, introduction of a tax system may make the political leaders unpopular with the electorates. Socially, the attitude of the different classes of people to the tax may differ depending on who bears the heavier burden constitutionally.

¹⁰⁵Section 1(3) 1999 Constitution enthrones the supremacy of the constitution and declares any infraction of the Constitution as null and void.

within the FCT.¹⁰⁶ The FBIR is established by Section 1 of the Companies Income Tax Act.¹⁰⁷ The FBIR was originally vested with the power to administer only the Companies Income Tax Act.¹⁰⁸ However, since its establishment, the FBIR has been specifically vested with power by various tax statutes to administer other taxes such as the Capital Gains Tax,¹⁰⁹ the Petroleum Profits Tax Act, the Education Tax, the Value Added Tax Act and Stamp Duties etc. For instance, Section 2(2) of the PITA which vests the FBIR with power to administer the Personal Income Tax specifically provides:

2(2). "In the case of an individual other than an itinerant worker and persons covered under paragraph (b) of subsection (1) of this section, tax for any year of assessment may be imposed only by the State in which the individual is deemed to be resident for that year under the provisions of the First Schedule to this Act and in the case of persons referred to in subsection (1) (b) of this Section tax shall be imposed by the Federal Board of Inland Revenue".¹¹⁰

It is submitted that in the absence of these specific provisions, the FBIR would have been bereft of any power to administer other taxes other than the CIT throughout the Federation including the FCT.

The mischief of double taxation could be avoided, in our view, by amending the provisions of some of the taxing statutes which vest the FBIR with the power to collect various taxes within the FCT¹¹¹ and vest the power to collect those taxes on the proposed FCTBIR when created. What is therefore required therefore, in this regard, is not a constitutional amendment¹¹² but the amendment of the various relevant taxing statutes.

Alternatively, the Federal Government may consider the policy option of leaving the jurisdiction of the FBIR undisturbed while the proposed FCTBIR is charged with the power to collect other new taxes and levies which may be introduced such as Tenement Rate/Property Tax, Entertainment Tax, Development

¹⁰⁶As a matter of fact, the only provisions of the Constitution that directly touch taxation within the FCT is Section 162(1)..

¹⁰⁷See Section 1 CITA

¹⁰⁸*ibid.*

¹⁰⁹Section 43(1) CGTA.

¹¹⁰A cursory reading of the provision of section 2(2) PITA, with particular reference to the word "imposed" may give the impression that the State and the Federal Board of Inland Revenue could impose Personal Income Tax. However, if the entire provision is read together, it will be clear that the object is to identify the relevant tax authority in respect of the income of a taxable person and therefore avoid undue conflict of jurisdiction between the tax authorities of two or more States over the same income. This view is reinforced by the last line of the subsection which reads "... tax shall be imposed by the Federal Board of Inland Revenue". It is a notorious fact the Federal Board of Inland Revenue, being an agency of the Federal is bereft of any legal or constitutional power tax which is the prerogative of the National Assembly. See generally, A.O. Sanni, *op. cit.* pp- 654-656 note 7, pp. - , for a critique of the legislative framework for the administration of the Personal Income Tax, Capital Gains Tax and Stamp Duties in Nigeria.

¹¹¹Such as Section 2(2) PITA, Section 43(1) CGTA and Section 4(1) SDA.

¹¹²Section 9 of the 1999 Constitution provides an elaborate and laborious procedure for the amendment of the Constitution. For example, it requires the concurrence of not less than 2/3 majority of all members of the House of National Assembly and approved by the by the resolution of the Houses of Assembly of not less than two-thirds of all the States.

Levy, Business Premises Registration/Renewal Levy, among others, although it may be better to have a one-stop shop for the administration of all taxes and levies in the FCT.

However, where the policy option is to allow the FBIR to continue to collect the taxes within its jurisdiction, it is suggested that there should be a proactive collaboration between the FBIR and the FCT. In this regard, the composition of FBIR may be expanded to include a representative of the FCT.¹¹³ Furthermore, it is suggested that a separate Directorate could be created for the FCT within the structure of FBIR.

Can the proposed FCTBIR keep taxes collected for its use?

Having established that it is constitutional for the National Assembly to establish a separate tax authority for the FCT, it is pertinent to probe whether the proposed FCTBIR could lawfully keep the proceeds of the taxes collected by it for its independent use in view of the provisions of section 162(1) of the Constitution?

Section 162(1) provides:

"The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds of the personal income tax of the personnel of the armed forces of the Federation, the Nigerian Police Force, the Ministry or Department of government charged with responsibility for foreign Affairs and the residents of the Federal Capital Territory, Abuja".

The provisions make it clear that the revenues collected by the Federal Government and all its agencies throughout Nigeria do not belong exclusively to the Federal Government. Rather, they are mandated to be paid into the Federation Account and later distributed among the three tiers of government.¹¹⁴ The Supreme Court has held that the Federal Government is a trustee of the revenue in the Federation Account and the Federal Government has a duty to render account to the beneficiaries of the trust if, and when, called upon to do so.¹¹⁵ The Constitution places the administration of the FCT under the supervision of the President who may appoint a Minister to exercise his powers and perform his functions on his behalf.

The provisions of Section 302 make it clear that the FCT is part and parcel of the Federal Government, therefore, and any agency established by the FCT is *ipso facto* an agency of the Federal Government. Since Section 162(1) has prescribed that all revenues collected by the Government of the Federation shall be paid into the Federation Account, it is submitted that it is *ultra vires* the National Assembly to make a law allowing the FCT to collect and retain taxes within the FCT. If this were to be allowed, it

¹¹³The FBIR is composed of the representatives of the (i) Board of the National Revenue Mobilization Allocation and Fiscal Commission, (ii) Nigerian National Petroleum Corporation, (iii) National Planning Commission, (iv) Nigerian Customs Services and (v) Corporate Affairs Commission. See Section 1(2) of CITA.

¹¹⁴The provisions of Section 162(1) provide 'the Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenue". The use of the word "shall" implies that it is a mandatory obligation.

¹¹⁵*A.G. Federation v A.G. Abia States & 35 Ors. (Supra)* See Note 29, p.8.

would lead to a reduction of the total amount accruing to the Federation Account and ultimately a reduction in the share of all the three tiers of government. The States have shown the inclination to always challenge any action of the Federal Government that may negatively impact on their revenues.¹¹⁶ If some States could successfully urge the Supreme Court to nullify the one per cent Federal allocation to the FCT from the Federation Account, it is almost predictable that they will fiercely challenge any law that seeks to give the FCT the power to collect and retain the taxes within the FCT.

Conclusion

It is clear from the foregoing discussion that Nigeria is yet to evolve a clear-cut consistent policy regarding the fiscal status of the FCT.

Although the Constitution provides that the provisions of the Constitution shall apply to the FCT as if it were one of the States of the Federation,¹¹⁷ the FCT and its area councils are in practice not being treated like a State and local government councils in the distribution of revenue from the Federation Account.¹¹⁸ Furthermore, there is inconsistency in the tax treatment of the FCT with regards to tax revenues being paid into special accounts other than the Federation Account. For instance, while the FCT is sharing directly from the revenue accruing from the VAT, its area councils are excluded for inexplicable reasons.¹¹⁹ The situation is, however, reversed in the case of the Education Tax. While the area councils of the FCT are sharing directly from the revenue accruing from the Education Tax, the FCT is excluded for inexplicable reasons.¹²⁰ Furthermore, there is an array of taxes being collected by the States which are not presently being collected in the FCT due to the absence of the necessary legislative framework.¹²¹ The effect of the foregoing fiscal anomalies and inconsistencies is that the FCT is being short-changed in the present fiscal arrangement. In other words, the FCT is not getting as much as it could get from the various taxes being collected within its territory and from taxation generally speaking.

There is therefore the urgent need for the FCT to develop its independent sources of tax revenue to complement the allocation from the Federal Government, no matter how generous the allocation might be or become. In this regard, necessary constitutional amendments should be effected to ensure that the FCT is able to partake in the sharing of the revenue from the Federation Account in its own right and not as an appendage of the Federal Government. Such a constitutional amendment will correct the defect in the current arrangement whereby taxes are collected by the Federal Government from the residents of FCT and paid into the consolidated Account while FCT now goes cap in hand to the Federal Government for its roost basic revenue. Furthermore, the National Assembly should enact tax law imposing states and local government taxes which shall be collected by the proposed FCTBIR for its

¹¹⁶ See *A.G. Federation v A. G. Abia State*, (*Supra*), *Ibid*, *A. G Federation v A.G. Abia State (No.2)* [2002] 16WRN 1, *A.G OgunState v A.G. Federation* [2003] 3 WRN 1, *A.G. Lagos State v A.G. Federation* [2003] 12 NWLR (Pt. 833) 1 S.C.

¹¹⁷ See the opening paragraph of Section 299 of the 1999 Constitution.

¹¹⁸ See *AG. Federation v A.G. Abia & 35 Ors. (Supra)*

¹¹⁹ See section 36 VAT Act. See also p. 21 *infra*.

¹²⁰ See section 5(4) ET Act. See also p.23 *infra*.

¹²¹ See the list of taxes collectible by States in Part II of Taxes and Levies (Approved List of Collection) Act No 21 of 1988. See pp 40-1 *infra*.

independent use. Furthermore, the FCT should have its own judicial and *quasi*- judicial institutions for the enforcement of tax laws such as Body of Appeal Commissioners and Revenue Courts.