

CHAPTER NINE

LAGOS STATE SALES TAX: MATTERS ARISING

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1.0. INTRODUCTION

There is now a new tax consciousness among the States and Local Governments in Nigeria, especially in Lagos State. The main reason for this development is not far to seek. Consequent upon the agitation by the oil-producing State for resource control,¹ Lagos State being a non-oil State is poised to consciously expand its revenue base, especially through taxation - a form of resource control!² Against this background, the State has recently re-introduced its own Sales Tax in competition with the Federal Value Added Tax(V.A.T). This development has generated tension and friction in the intergovernmental fiscal relations on the one hand and resistance from the tribe of the Organised Private Sector (OPS) on the other hand.³ Although the "fiscal battlefield" is at present restricted to Lagos, it is nevertheless bound to have far-reaching implications for the whole country. This is because if Lagos State successfully wrestles Sales Tax/VAT from the Federal Government, it is bound to profoundly alter the structure of tax administration in Nigeria.

The focus of this chapter is to analyse the legal implications of the reintroduction of Sales Tax in Lagos State. Central to this task is the determination of the appropriate level of government to impose Sales Tax or VAT under the Constitution of the Federal Republic of Nigeria, 1999. A brief historical background of Sales Tax in Nigeria is provided while attempt will be made to hazard reasons why Lagos State has pressed ahead to reintroduce its own Sales Tax in spite of the recent concession by the Federal Government to review the formula for distributing the VAT proceed. The chapter is broadly divided into two parts. Part one traces the historical background of Sales Tax in Nigeria up to the introduction of VAT and also examines the possible reasons for the reintroduction of Sales Tax in Lagos State. Part two which is the heart of the chapter is devoted to the consideration of some of the legal implications this development.

1.1 Genesis of Sales Tax in Nigeria

Our historical account of Sales Tax in Nigeria would begin from 1979 under the 1979 Constitution. During the Military Regime that preceded the Second Republic there was reduction in federal grants to the States notwithstanding that States were given more responsibilities. To make matters worse, the oil market⁴ suffered severe setbacks. This resulted in a serious cash crisis in the economy. Most States could no longer embark on capital projects while payment of workers' salaries was months in arrears.⁵ They were therefore faced with the stark reality that other sources of generating internal revenue

independent of the Federal Government must be sought. The direction to which many of them turned was the introduction of Sales Tax.⁶

Lagos State was perhaps the first State to introduce Sales Tax on a number of goods and services. Following the success of the Lagos State experiment, other States like Ogun, Oyo, Ondo, Bendel, Cross Rivers Benue State, Kano, Kaduna, Anambra, inter alia, enacted their Sales Tax Law in one form or the other between 1980 and 1983. No sooner was the tax introduced, that a number of constitutional issues surfaced. The Productivity Prices and Incomes Board (PPIB)⁷ protested that the tax infringed on the Board's guidelines on income and prices.⁸ Not only that, the Manufacturers under the aegis of Manufacturer Association of Nigeria (MAN) warned that the taxes would wreck double taxation on the taxpayers.

The first Sales Tax Law to be challenged in the court was that of Ogun State in the celebrated case of Attorney General of Ogun State v Alh. Ayinke Aberuagba⁹. While the consideration of this case will be deferred to part two of this paper, it suffices to say that the Supreme Court upheld the power of States Governments to impose Sales Tax within the limit of their jurisdiction under the 1979 Constitution. However, the Sales Tax Laws enacted by the various States went beyond the scope of their power under the constitution and therefore fraught with myriad of constitutional and administrative complications. For instance, some of the Sales Tax Laws purported to impose tax on goods brought into their States or goods which were already subject to price control under the Price Control Act.¹⁰

1.2 The emergence of the Sales Tax Act

The proliferation of Sales Tax Laws of different States was compounded by the fact that different rates were charged in different States on different goods. Therefore, there were divergences in the Tax Sales Tax from State to State. Attempt was made by the Federal Government to redress this perceived anomaly by streamlining the legal and administrative framework of Sales Tax vide the Sale Tax Decree.¹¹ The Decree imposed tax on nine goods and taxable services in hotels, motels, restaurants etc.¹² A flat rate of 5 percent was imposed on all goods and services except wine liquor and spirit, which attracted 10 percent.¹³ Section 3 established a Committee known as the Sales Tax Committee comprising of the following:

- (a) the Chairman of the Joint Tax Board as the Chairman;
 - (b) all members of the Joint Tax Board;
 - (c) one representative of the Productivity, Prices and Income Board;
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- (d) one representative of the Department of Customs and Excise;
- (e) one representative of the Ministry charged with the responsibility for matters relating to commerce; and
- (f) the Legal Adviser to the Federal Board of Inland Revenue.

The functions of the Committee included the fixing of the prices of taxable goods and services, with the approval of the PPIB, making recommendation for the amendment or variation of taxable goods and services and the applicable rates. Before any proposed amendment in this regard could be effective the approval of the defunct National Council of States must be obtained.¹⁴ In this way, the power of the State to independently the taxable goods and the applicable rates was effectively withdrawn. However, section 7 of the Decree vested the day-to-day administration of the tax in the States Board of Internal Revenue (then known as The Internal Revenue Department) subject to any direction that may be given by the Joint Tax Board.¹⁵ The revenue from the tax accrued to each State on the basis of derivation. Hence, to all intent and purposes, Sales Tax could still be regarded as a "State tax" except that a federal law governed the imposition and administration. It was also clear that the intervention of the federal law was dictated by the perceived need to secure uniformity in the law and administration of Sales Tax and not for the purpose of enhancing the tax revenue of the Federal Government.

1.3 Shortcomings of the Sales Tax Laws

Due to a combination of factors such as inefficient administration, narrowness of its base and evasion, Sales Tax did not yield the much-desired revenue for the State Governments; hence, their reliance on federal allocation persisted. The quantum of federal allocation for all the three levels of government became largely unstable due to the vagaries of the forces of demand and supply on the prices of the country's oil in the international market. Being dissatisfied with this state of affairs, the Federal Military Government set up a Study Group headed by Prof. Edozien to examine and make recommendations on the reform of the Nigerian tax system so as to meet the escalating costs of public expenditure. During the same year, another group led by Dr. Sylvester Ugoh was charged with the responsibility to study the feasibility of introducing VAT in Nigeria as an improvement of the existing Sales Tax. The Ijewere led Modified Value Added Tax (MVAT) Committee was set up as a follow up before VAT was eventually introduced with effect from 1st January 1994 to replace Sales Tax. Section 41 of the VAT Decree specifically repealed the Sales Tax Decree of 1986.¹⁶

At the planning stage, some reservations were expressed about the competence and desirability of the Federal Board of Inland Revenue, (FBIR) to effectively administer the VAT. The States posited that the administration of VAT should be left for them.

The Federal Government however felt the States lacked the requisite level of expertise to efficiently administer the new tax particularly during the teething period. Therefore, Section 7 of the VAT Decree

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vested the administration and management of VAT in the FBIR.¹⁷ The revenue from VAT is paid into a special central account and distributed among the three levels of government. The initial policy was that 80 percent of it would be shared among the States and the Federal Capital Territory while Federal Government would retain 20 percent as administrative charges.¹⁸ However, when the prospect of VAT as a money spinner became manifest, the Federal Government made a volte face and modified the distribution formula in its own favour and also extended the 'largesse' to the Local Governments in the ratio of 50, 25 and 25 per cents to the Federal, State and Local Governments respectively.¹⁹ Due to protest by States and Local Governments, the distribution formula has been reviewed on a few occasions to Government before they can take up their responsibilities, then we are not operating a democratic constitution.²⁰

It was against these backgrounds that the Governor of Lagos State officially flew the kite to reintroduce Sales Tax in his Year 2000 Budget Speech "as permissible under fiscal federalism." The Governor deployed so much statistics, logic, rhetoric and indefatigable zeal in articulating his viewpoint on the issue in such a manner that what initially looked like 'a one-man protest' gradually won widespread public sympathy. The Federal Government, in spite of its rigidity and "obstinacy" on most burning national issues recently bowed to the pressure to amend the VAT Decree. The President assured in the Year 2001 Budget Speech that the VAT Decree would be amended in such a way that would "ensure fair VAT distribution based on the principle of derivation of its proceed. One would have thought that the assurance should have made the State to put its plan on hold. However, quite contrary to peoples' expectation, the State forged ahead to introduce its independent Sales Tax with effect from 1st January 2001. Since then new Sales Tax of Lagos State has been trailed by controversy and litigation.

2.0 Matters Arising

It is appropriate at this stage to turn to the core legal issue of whether a State can impose Sales Tax under the 1999 Constitution? If yes, will the collection of Sales Tax simultaneously with VAT not amount to double taxation? Couldn't a State move beyond Sales Tax and establish its own VAT under the 1999 Constitution? Who is the appropriate person to protest against the imposition of Sales Tax - the consumers or the suppliers of goods and services who act as collecting agents? The resolution of these questions, among others, will be the focus of the second part of this paper.

2.1 Can a state impose sales tax under the 1999 Constitution?

A resolution of this question will require a brief recourse to the division of VAT/Sales Tax powers in Nigeria.

The Value Added Tax is an improvement on the Sales Tax. Before the introduction of VAT in Nigeria, the jurisdictional competence of the State Governments to impose Sales Tax was called to question in the

celebrated case of Attorney General of Ogun State v Alh. Ayinke Aberuagba." It is pertinent to state the historical background and the facts of the case if only for the purpose of cohesion.

Under the Nigerian Independence Constitution, 1960, Sales or Purchase Tax was under the Exclusive Legislative List. Item 38 of the List provided thus:-

"Taxes on amount paid or payable on the sale or purchase of commodities except:-

- (a) produce;
- (b) hide and skin;
- (c) motor spirit;
- (d) diesel oil sold or purchased for use in road vehicles;
- (e) diesel oil sold or purchased for other than industrial purchases

Under the 1963 Constitution, the Exclusive Legislative List remained the same and in particular retained item 38 as quoted above. In 1979, unlike the two earlier Constitutions, the Exclusive Legislative List conspicuously omitted the item dealing with sales/ purchase tax.

It was against this background that the defunct House of Assembly of Ogun State enacted the Sales Tax Law, 1982, which imposed a tax upon certain goods, including petroleum and kerosene, brought into Ogun State and purchased within the State. The appellants, who were wholesale purchasers of beer in the State, instituted this suit to challenge the Law on the ground that it was inconsistent with the provision of the 1979 Constitution. As the case raised very important constitutional issues concerning the Federal and State taxing powers, the Supreme Court invited all the Attorneys General in the federation as amici curiae to file briefs on the issues and appear for oral argument at the hearing.

The appellants submitted that the omission of the words "sale and purchase", that is, item 38 from the Exclusive Legislative List did not ipso facto make Sales/Purchase Tax residual. Rather, the tax was impliedly covered by item 15 on excise duties and/or item 61 on regulations of trade and commerce of the Exclusive Legislative List in the 1979 Constitution. Hence, Sales Tax/Purchase Tax was said to be an incidental matter within the exclusive power of the Federal Government to impose Excise Duties and regulate trade and commerce. The Respondent on the other hand submitted that the omission of taxes on Sales and Purchase from the 1979 Constitution was to make the subject matter of the tax a residual matter on which only States could legislate.

The Supreme Court rejected the extreme arguments of both parties and held that both the Federal and State governments had powers to impose Sales Tax on any saleable matter within their respective legislative competence. The learned Justice who delivered the lead judgment held, inter alia that:

"Having regard to the foregoing, I may summarise that the federation has implied exclusive power to make sales tax law on all matters within the exclusive and concurrent lists while states have implied or residuary power to enact sales tax law on all matters outside the said list."

It is instructive however to note that all the seven Justices that heard the case were unable to agree on the outcome of the case and of course those who agreed in the result did so for varying reasons. However, there appeared to be an agreement on one point, and that is, that the States had power under the 1979 Constitution to impose Sales Tax.

This point was clarified beyond any shadow of doubt when the validity of the Sales Tax Law of Lagos State was contested in the case of Nigerian Soft Drinks Company Limited v Attorney General of Lagos State. While upholding the validity of that Law, the Court of Appeal distinguished between the Lagos State Sales Tax Law and its Ogun State counterpart thus:

"The Sales Tax of Ogun State Law was invalid under section 3(1) and 3(4) (ii) because according to Bello J.S.C., the sales Tax under the said two sub-sections is unconstitutional, null and void because the law imposed the tax on taxable products brought into the State which is a matter of inter-State trade and commerce which is within the exclusive legislative power of the Federation It has been contended by the appellant that purchases made in Lagos State by persons who are residents of another State, for retail or disposition to consumers in another State is also an interference within the provisions of trade and commerce per se. The argument to my mind misunderstands the nature of what the Sales Tax is about.....If persons from other States come into Lagos State to buy for retail or disposition to consumers in another state, the tax becomes payable just like other people resident in Lagos State who buy goods for retail or for consumption must pay the tax.

In so far as the levy is uniform and not discriminatory it cannot in my opinion be regarded as interference with commerce and trade inter- State."

With the legal furore generated by Sales Tax under the 1979 Constitution, one would have expected prominent attention to be given to the issue in the 1999 Constitution. Regrettably however, neither the Sales Tax nor VAT is specifically allocated again to any of the three tiers of government under the new Constitution.

Consequently, based on the decision in Attorney General of o gun State v Alh. Ayinke Aberuagba, it is submitted that both the Federal and State Governments have power to impose Sales Tax/VAT on the supply of any goods and services within their respective sphere of influence. However, a federal VAT can only be validly imposed on international and inter-State supply of goods and services while a State Sales Tax will be restricted to intra-State supplies of goods and services.

If it is agreed that both the Federal Government and States Governments have limited powers to impose Sales Tax, the next question will be to determine whether the Federal Government had kept within the limits if its taxing power under the 1999 Constitution in the VAT Decree? In order to answer this question, we have to turn to the charging provisions of the VAT Decree. Section 2 of the VAT Decree, provides that VAT shall be "charged and payable on the supply of all goods and services other than those listed in the Schedule 1 to the Decree. By this provision, it is clear that what is taxable under the Decree is "supply of goods and services". Also, international, inter-State and intra-State supplies are all taxable under the VAT Decree. The identity of the supplier of the goods and services is not relevant. VAT

is therefore payable by companies, individuals, charitable organizations, Federal, State and Local Governments' agencies, citizens, non-residents, trustees, families and other persons or bodies of persons that are usually exempted from income taxes.

Based on the foregoing, it is clear that it is the Federal Government that had exceeded its jurisdictional sphere. In the absence of the saving provisions of section 315 of the 1999 Constitution, the VAT Decree, as presently constituted would have been null and void to the extent that it purports to tax intra-State supplies of goods and services. The effect of section 315 of the 1999 Constitution will be considered in detail together with the question whether the re- introduction of Sales Tax would not result into double taxation.

2.2 Prospect of double taxation

The main opposition to the Sales Tax is that it would wreak double taxation on the taxpayers. According to a tax administrator:

I don't know whether States have power to legislate on VAT matter over and above the Joint Tax Revenue Board (sic). There may be a legal confusion in this issue. The VAT is similar to Sales Tax. However, to introduce sales tax will amount to double taxation on the people.

The concept of double taxation has generated much heat without light in Nigeria. The view of a distinguished Nigerian writer summarises the legally accepted notion of double taxation thus:

... for there to be double taxation, the same item or piece of property should be subject to tax twice or more to the same person. It will not arise where the same property is taxed to different persons when holding different interests in the same property. Indeed there can be no double taxation where the second tax is payable to a different taxing authority. Thus in a federation, it is no double taxation merely because the same property is subjected to both federal and state taxation. It will be so where two or more taxes are imposed on the same property by the same authority, during the same taxing period, and for the same purpose.

In the United State's case of *Second St. properties Inc. v Fiscal Court of Jefferson County* the concept of double taxation was also explained thus:

To constitute double taxation the two taxes must be imposed on the same property by the same governing body during the same taxing period for the same taxing purpose.

The next task is to show how the reintroduction of Sales Tax would amounts to double taxation. This will require a consideration of the effect of section 315 of the 1999 Constitution on the VAT Decree. Section 315 is hereby reproduced for ease of reference:

315.-(1) Subject to the provisions of this Constitution, an existing law shall have effect only with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be-

(a) an Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws; and

(b) a Law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws.

(2) The appropriate authority may at any time by order make such modifications in the text of any existing law as the appropriate authority considers necessary or expedient to bring that law into conformity with the provisions of this Constitution.

The value of the above provisions is to avoid lacunae where a subject matter hitherto under the jurisdictional competence of a level of government suddenly falls on another level of government under a new Constitution. The provision is meant to achieve a smooth transition by automatically converting the existing law on the subject matter into the law of the level of government that has power over the subject matter under the new Constitution, subject to necessary modification being made by the appropriate authority. Following the above reasoning, it is submitted that the provisions of VAT on inter-State and international dimension will continue to be regulated by Federal law while VAT on intra-State matters will now be deemed as States Laws." The aspect of the VAT Decree on intra State matters would therefore take effect as an existing State law with necessary modifications. For instance, references to the FBIR and the Minister under the Decree will now be SBIR and the Commissioner respectively. This position tallies with the view of Osita when he wrote:

"Support for this proposition that VAT Decree vis-a-vis intra-State trade and commerce is now deemed to be a State law is found in section 315(1)(b) of the Constitution. By virtue of the provision the VAT decree (as an existing law) "shall be deemed to be... a law made by a House of Assembly to the extent that it is a law with respect to any matter on which a House of Assembly is empowered by this Constitution to make laws." Since the Constitution does not classify existing law imposing VAT on intra-State trade and commerce shall now be deemed to be a law made by the House of Assembly of a State."

Hence, the implication of section 315 of the 1999 Constitution vis-a-vis VAT is that we now have two Lagos State Laws that is, the Lagos State VAT Law, as amended, and the newly introduced Lagos State Sales Tax Law, on certain intra-state supplies of goods and services. Therefore, the collection of VAT and Sales Tax simultaneously on the same subject matters is tantamount to double taxation. There is no doubt that VAT and Sales Tax are fundamentally the same in terms of their nature and incidence except that VAT is an improvement of the Sale Tax. Chief Gani Fawehinmi, when appraising the proposed Sales Tax expressed the view that:

. . Where the federal government has passed legislation that covered the field on that subject matter, the state cannot do same.... The federal government has covered the field already for this sales tax issue. They have identified with the areas of the tax. The commodities that are covered by the VAT for the state government to now proceed to pass another law on the same subject matter, using a different name or nomenclature. You may call it any name, but it's the

same thing. They serve the same purpose. You are taxing the people upon every purchase and you now want to do the same thing, on the same subject like buying beer, you pay VAT. The state government now wants you to pay another VAT in another name for the same commodities.

Although VAT on intra-state matters is still being (illegally) collected by the FBIR, with the acquiescence of States, including Lagos State, the FBIR should be deemed to be the agent of the various States in this regard. This is more so when the States are sharing out of the VAT revenue.

Our Constitution frowns at double taxation. Items D 8 & 10 of the Concurrent Legislative List to the 1999 Constitution enjoin Federal and State Governments to ensure that a tax or duty is not levied on the same person by more than one state or local governments thus:

8. Where an Act of the National Assembly provides for the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a State in accordance with paragraph 7 hereof, it shall regulate the liability of such persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one State.

10. Where a Law of a House of Assembly provides for the collection of tax, fee or rate or for the administration of such law by a local government council in accordance with the provision hereof it shall regulate the liability of such persons to the tax, fee or rate in such manner as to ensure that the tax, fee or rate is not levied on the same person in respect of the same liability by more than one local government council.

Although it is arguable that the above provisions apply only where there is a delegation of the administration of specific taxes by the Federal Government to the States or by the States to the Local Governments, it is nevertheless significant in our view that the two levels of governments are obliged to guide against 'double taxation' in the course of doing so.

2.3 Whether it is appropriate for VAT to be regulated by a federal statute

Perhaps the strongest argument in favour of a federal VAT is that it would prevent dichotomy in the law and administration of the tax from State to State as witnessed during the Second Republic under the 1979 Constitution. This was the logic that informed the enactment of the Sales Tax Decree⁴⁷ by the Federal Military Government in 1986. The "highjack" of the legislative power on Sales Tax by the Federal Government had been criticised as entrenching the fiscal dependence of States on the Federal Government. According to a distinguished writer:

Tax Law and ignore the VAT. The base of Sales tax is presently narrower and therefore more favourable to the most of the members of the Organised Private Sector. Since VAT is soon going to be distributed on the basis of derivation it would mean that the share of Lagos State from VAT would be reduced by the amount of the Sales Tax collected being collected. Although the penalty under the VAT Decree heavier, it may be easier for the taxpayers to successfully defend any action against them by the Federal

Government than to successfully challenge the validity of the Sales Tax Law. Another option is to sue and restrain the Federal Government from collecting VAT on intra-State supplies of goods and services.

Furthermore, the suppliers of the taxable goods and services should mount a sustained massive campaign on the implication of collecting both taxes on prices, capacity utilisation, job creation. Political solution may even prove to be more effective than legal option in the short run.

Based on the premise that VAT on intra-State supplies is now ultra vires the Federal Government, should we then ask the Federal Government to immediately disengage from the collection of VAT on intra-State supplies? If this is done how quickly can the various States empower or reposition their tax authorities to commence the collection of Sales Tax or VAT? This will certainly require adequate planning if the fiscal readjustment is to be to the enduring benefits of most States. It is therefore suggested that the States and the Federal Government should work out a realistic time frame within which all the requisite legal and administrative framework would be worked out to ensure a smooth take off of States' Sales Tax. The ongoing effort to review the 1999 Constitution should not fail to use the unique opportunity to resolve the nagging questions on the scope of federal and states governments VAT/Sales Tax taxing powers. We however must sooner come to terms with the reality and necessity of State VAT. In our own view, there is nothing sacrosanct or esoteric about the VAT that the administration of the intra-State aspects cannot be left to the States, provided adequate preparation is made. Also, since, the federal VAT has been in existence in Nigeria for almost a decade we can certainly now boast of a groundswell of home grown practical knowledge and experience, which the States could tap from.

3. Conclusion

Attempt has been made in this paper to show the inexpedience of seeking to simultaneously collect VAT with Sales Tax on some intra-state supplies of goods and services. Even if the Lagos State Government is on a firm legal ground for introducing Sales Tax, it will be naive for it to think that the civil society will tolerate the collection of the tax simultaneously with VAT. It is like attempting to grab with both hands at the expense of the taxpayers. It undoubtedly poses some political, social and even moral dilemma for the government. The State must not and should not be allowed to run with the hare and hunt with the hounds!

Some legal and political options of preventing the absurdity have been canvassed. It is advocated that a combination of both should be employed. Finally the consumers of the taxable goods and services who will ultimately bear the tax burden are here enjoined to join hands with the OPS in putting pressure on the Lagos State Government to choose between VAT or its own independent Sales Tax. Finally, the ongoing effort to review the 1999 Constitution must not omit to resolve the nagging and thorny legal issues on the scope and extent of VAT/Sales Tax taxing powers in Nigeria.

It is hoped that whatever option is eventually adopted will ultimately eliminate or reduce tension in inter-governmental fiscal relationship and also ensure equity and fair play.

REFERENCES

1. Resource Control refers to the agitation by the oil-producing states in Nigeria to reverse the constitutional provision which vest the ownership and control of all natural minerals, including oil, found anywhere within Nigerian the Federal Government of Nigeria. See Constitution of the Federal Republic of Nigeria. The Federal Government recently instituted an action in the Supreme Court to seek the interpretation of the Constitution in the case of A.G Federation v A.G. of 36 States.

2. The tendency in the past in most States and Local Governments was to rely mainly for the revenue from the federal allocation while they allowed the machinery for internally generated revenue to rust.

"The Organised Private Sector under the *aegis* of Manufacturers Association of Nigeria (MAN) has challenged the constitutionality of the reintroduction of Sales Tax in the Lagos High Court. See *MAN V. A.G. Lagos State.Suit No 19/105m/2E*

4. Which constituted about 80% of the nation's total revenue.

5. When the going was good, there was no problem; indeed the feeling at the time was that money was not a problem but how to spend money. Consequently many States embarked on gigantic social welfare projects. Similarly, both economic and uneconomic ventures were undertaken. There were also escalations of both of both domestic and foreign debts. See O. Akanle, Financing the State: The Constitutionality of Sales Tax, NIALS (1983), p.1

6. Ibid.

7. An advisory body set up by the Productivity, Prices and Incomes Board Act, No. 30 of 1977.

8. See Daily Times of September 23, 1982, p.5. See also O. Akanle, op. cit. p.4.

9Supra. See also (1997) 1 N.R.L.R. p.51.

10. Cap. Laws of Federation of Nigeria (LFNO), 1990.

11. Decree No.7 of 1986, Cap 399, Laws of Federation, 1990.

12. See the First Schedule of Sales Tax Decree.

13. Ibid.

14. Section 5(2).

15. Section 7.

16. See section 41 VAT Decree

17. The FBIR has a VAT Directorate located in Abuja and Zonal and Local VAT Offices (LVOs) in all the State capitals and some major towns. Each of the LVO is under the supervision and control of the Zonal Office in the area.

18. The FBIR has a VAT Directorate located in Abuja and Zonal and Local VAT Offices (LVOs) in all the State capitals and some major towns. Each of the LVO is under the supervision and control of the Zonal Office in the area.

19. See. A.R. Ipaye "Legal and Social Framework for VAT in Nigeria", unpublished paper presented at Workshop on Tax Law and Administration Organised by the Nigerian Law Reform Commission, p.5

20. The success of Sales Tax in Lagos State may however open the floodgate of the tax in other states.

21. It is doubtful, though, if this figure is not exaggerated in the absence of a reliable data and statistics.

22. See generally First Schedule, Part 1 of the Constitution of the Federal Republic of Nigeria 1999.

23. Sharia is an Islamic legal system. Zamfara State was the first State in the Northern Nigeria to introduce Sharia. Since then, some other Northern States like Kano, Sokoto, Niger, Jigawa, have followed suit.

24. Mr Olusola Sebanjo, Chairman, Budget Committee, Lagos State House of Assembly. See "Lagos Plan new sales tax to reverse wrong VAT allocation, The Guardian, January 14, 2001, p.12.

25. See the Guardian Tuesday, January, 9, 2001, Backpage.

26. See the year 2000 Budget Speech of Lagos State delivered by the Executive Governor, Alhaji Bola Ahmed Tinubu to Lagos State House of Assembly on Thursday 23rd December 1999, p.12.

27. A few National Newspapers did Editorial write up in support of Tinubu's crusade for redressing the inequity in the VAT distribution formula.

28. See the Year 2001 Budget Speech.

29. The Organised Private Sector under the aegis of Manufacturers Association of Nigeria (MAN) has challenged the constitutionality of the reintroduction of Sales Tax in the Lagos High Court. See MAN V A.G. Lagos State, Suit No 19/105m/2E

30. Supra. See note 25. See also (1997) 1 N .R.L.R. p.51.

31. Emphasis mine.

32. While some of the Justices were prepared to trace the source of the power to the inherent right of a Government to levy tax unless expressly excluded, other said the power emanate from the residual list. A third School traced the power to the Concurrent List. It must be noted here that there was at least one

discordant view of Karibi-White (J.S.C.) to the effect that Sales Tax was expressly reserved for the Federal Government. See O. Akanle, "In case the axe fall: A Pre-Commencement Analysis of the new Sales Tax", See The Nigerian Institute of Taxation, Selected Papers, ed P.A. Omoroguiwa, Ph. D., 1987, p.. 20

33. Cap 175 Laws of Lagos State, 1994.

34. [1987] 2 NWLR (pt. 57) 444.

35. Supra.

36. Mr.A.A. Jegede, the former Registrar and Chief Executive of the Chartered Institute of Taxation of Nigeria (CITN).

37 The CITN Vice President Mrs. Bimpe Balogun also shared the same view.

38. O. Akanle, The Power to Tax and Federalism in Nigeria, 1988 (Center for Business and Investment Studies, Lagos) pp. 54-55.

39. K.Y. 4452d 709 at p. 715.

40. At p. 715.

41 See s. 315 1999 Constitution.

42 It might seem absurd for the same statute to operate in one breath as a federal statute and in another breath as state statute. It must be realised however that the provision of section 315 is a temporary situation aimed at avoiding a vacuum. In a normal situation, the legislature is expected to quickly resolve the situation through an amending law.

43 L.O Okeke, "The VAT Decree and the Nigerian Constitution", Modern Practice Journal of Finance & Investment Law, MPJFIL, Vol.5, No.2, p.301.

44

45. See items 8&10 of the Concurrent Legislative List, 1999 Constitution.

46 Between 1980 and 1983, several other states like Ogun, Oyo, Ondo, Bendel, Cross Rivers Benue States, Kano, Kaduna, Anambra, inter alia, enacted their Sales Tax Law in one form or the other. There were wide divergences in the Sales Tax of some of the states, for instance, in terms of the chargeable goods and services and the rates.

47. Decree No.7 of 1986, Cap 399, Laws of Federation, 1990.

48. Op. cit. p.20.

49 Ibid. p.21

50. When the Federal Military Government has almost omnipotent power to legislate on virtually any subject matter. For instance, the Federal Military Government was vested with sweeping powers to make laws on any subject matter whatsoever including subject matters that were hitherto residual to the state governments. The consent of the federal government was required before a state can legislate on matters, which were on the Concurrent List. Not only that, the validity of any Decree or Edict could not be challenged in any law court. See generally sections 2 and 5 of the Constitution Suspension and Modification Decree 107, 1993.

51. The present writer wrote to support the quest for State VAT. See VAT: Why state government can introduce sales tax, The Guardian, Tuesday, 14 January, 2000, p34.

52. Section 2 Sales Tax Law.

53. Section 10 Sales Tax Law

54. See Section 30 VAT Decree.

55. It is remarkable however that the above penal provision can only be meaningfully enforced where there is substantial compliance and not when there is massive protest (though we are yet to reach that stage yet). No matter the coercive powers of the State, there is no doubt that it will need to carry the agents of collections along just as the Federal Government did before the introduction of VAT. A situation where the tax authority of the states simply writes to the companies in December informing them of their intention to commence the collection of Sale Tax with effect from 1st January 2001 is less than perfect in a democratic setting.

56. What is really required is to make adequate preparation before the introduction of States VAT just like the Federal Government did before the introduction of VAT. If States are prepared to motivate the employees of the FBIR in the VAT Directorate, THE zonal Offices and Local VAT Offices (LVO's) in multifarious ways, they should be able to attract quite a number of them to complement the effort of their existing staff to kick-start the States VAT. This may however entail the reorganization of the SBIR in such a way that it could operate outside the Civil Service structure.