AN APPRAISAL OF THE INSTITUTIONAL FRAMEWORK OF VALUE ADDED TAX ACT IN NIGERIA[1].

Abstract

The institutional framework is the mechanism through which the value added tax is enforced. Making adequate provision for smooth administration of a law to generate the targeted revenue is quite important. The law established institutional framework for effective administration and enforcement of Value Added Tax (VAT) Act in Nigeria. There is a conflict of role statutorily exercised and played by the chairman of the Federal Inland Revenue Service as he doubles as the chairman of the Value Added Tax Technical Committee. One of the major reasons of the Technical Committee is to advise the Board. The objective of this paper is to appraise the institutional framework of the Value Added Tax Act in Nigeria with particular reference on the Federal Inland Revenue Service. It proffers suggestions to enhance the effective administration of Value Added Tax in Nigeria. This paper adopted the doctrinal research methodology by consulting statutes, textbooks and journals in conducting this research. The paper found that the Federal Inland Revenue Service is given exclusive power to administer Value Added Tax in Nigeria and the Value Added Tax Technical Committee is chaired by the Chairman of the Federal Inland Revenue Service Board which it is supposed to be an advisory committee to the Board on professional and technical issues. The paper, therefore, recommended that the Value Added Tax Technical Committee should comprise of other professionals, experts and be made independent of the Board to enable it performs the advisory role without interference. The institutional framework should also be more effective in terms of administration to improve on the revenue generation.

Keywords: Technical Committee, Revenue Forgone, consumption tax, Revenue Base, Institutional Framework.

1.Introduction

Value Added Tax has a young history within and outside Nigeria[2]. Value Added Tax is a consumption tax that has been embraced by many countries world-wide[3]. In Nigeria, the decision to adopt Value Added Tax was taken in January 1992 and implemented in 1993[4]. Value Added Tax (VAT) was introduced by the Federal Government of Nigeria in 1993 to replace Sales Tax. The aim was to increase the revenue base of government and make funds available for developmental purposes that will accelerate economic growth[5].

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[2] JAA Agbonika, *Problems of Personal Income Tax in Nigeria* (Ibadan: Ababa Press Ltd, 2012) 132.

[3] MT Abdulrazaq, *Revenue Law and Practice in Nigeria* (Lagos: Malthouse Press Ltd, 2010) 268.

[4] CS Ola, *Income Tax Law and Practice in Nigeria* (Ibadan: Dalak Prints and Pak Ltd) 583.

[5] SA Adereti, MR Sanni and JA Adesina, 'Value Added Tax and Economic Growth of Nigeria' [2011] (10) (1) *European Journal of Humanities and Social Sciences*, (Special Issue), 455, 456.

Value Added Tax is a merger of two concepts to wit: "value added" and "tax"[6]. The phrase "value added" has been described as "the increase in the value of goods or services in the process of their production or delivery"[7]. It has also been described as the amount of value a firm contribute to a good or service by applying its factors of production namely-land, labour, capital and entrepreneurial ability.[8] In other words, Value Added Tax is charged on goods and services where there is improvement in their value. Value can be added to a product by altering its form (improving it), removing it to an area of higher need (transportation) and passage of time (storage). It is the tax levied on this additional value of goods or service that is couched "Value Added Tax"[9].

The basic problem of the study is the exclusive power given to FIRS to administer VAT. The law arrogates exclusive power to FIRS for the administration of VAT to the exclusion of other tax institutions. The law empowers only the FIRS to administer VAT alongside other taxes. This enormous responsibility has brought about some taxable persons being out of the tax net. Despite the fact that VAT is a consumption tax which is difficult to evade, the number of taxes administered by FIRS are so much that it is ineffective in the administration of VAT. This has resulted in the loss of so much revenue by government which to an extent tend to negate the aim of its introduction. In order to ensure its efficacy, the power to administer VAT should be distributed among other institutional frameworks such as the state tax authority and the local government revenue committee. Hence, this would enable the Federal Inland Revenue Service Board focus on providing the general policy guidelines relating to the functions of the FIRS; managing and superintending the policies of the FIRS on matters relating to the administration of the revenue assessment, collection and accounting system under the FIRS, Value Added Tax Technical Committee (VATTC), Tax Appeal Tribunal (TAT), Joint Tax Board (JTB), State Tax Authority (STA) and Local Government Revenue Committee (LGRC).

The Value-Added Technical Committee (VATTC) is headed by the chairman of the FIR Board (the Board) and also the composition comprises of all directors in the FIRS. Among others the functions of the VATTC is to consider tax matters that require professional and technical expertise and making recommendations to the Board. There is the problem of unproductiveness because the VATTC that is supposed to advice the Board is made up of members of the Board itself. It is invariably an attempt to command the impossible by advising itself.

[6] JAA, Agbonika, (n1) 133.
[7] C S Ola C.S (n 4) 584.
[8] JAA Agbonika(n 1) 133.
[9] *Ibid.*

This paper aimed at appraising the exclusive power given to FIRS to administer VAT and to proffer suggestions to enhance the effective administration of Value Added Tax in Nigeria. In other words, it analyses the exclusive power of the Federal Inland Revenue Service in administering value added tax. The paper specifically deals with the institutional framework of Value Added Tax administration in Nigeria. It is also a crux of the paper to discuss the structure and functions of the Federal Inland Revenue

Service (FIRS), Value Added Tax Technical Committee, Tax Appeal Tribunal, Joint Tax Board, State Tax Authority, and Local Government Revenue Committee.

It also analyse the viability of the role of Value Added Tax Technical Committee along with its composition whether it is achieving its set objectives. This paper also critically analyse the enabling legislations of the various bodies mentioned above with a view to appraising their efficacy. This will enable us consider the ability of the established frameworks to deal with the scheme of Value Added Tax.

2.Value Added Tax Act and Administration in Nigeria

Pursuant to Section 25 (1) Federal Inland Revenue Service (Establishment) Act,[10] the Federal Inland Revenue Service is clothed with the power to administer all the enactments listed in the First Schedule to the Act among which is the Value Added Tax Act and any other enactment or law on taxation in respect of which the National Assembly may confer power on the Federal Inland Revenue Service. The Federal Inland Revenue Service is the body charged with the responsibility of administering and managing VAT. It is a federal agency responsible for the management and administration of federal taxes with inherent power to do such things as it may deem necessary and expedient for the assessment and collection of the tax and equally account for all amounts so collected[11] to the Federal Government of Nigeria.

The administration and management of the Value Added Tax is so important in terms of revenue generation so much that it occupies a unique position in the tax system. To ensure its effective administration, among others, a VAT Directorate was established as one of the directorates of FIRS. Local VAT Offices were equally established in all the State capitals and some major towns in each States with the ultimate plan to have a Local VAT Offices in each of the 774 Local Government Councils. Each of the Local VAT Office was under the supervision and control of the Zonal Office in the area. The Zonal Co-ordinator on his part reports regularly the activities and performances of the Local VAT Offices in his zone to the VAT Director in Abuja.[12]

[10] Federal Inland Revenue Service (Establishment) Act, No. 13, 2007.

[11] Value Added Tax Act Cap. V1, Laws of the Federation of Nigeria, 2004, s. 7.

[12] A Sanni, 'Current Law and Practice of Value Added Tax in Nigeria' [2012] 5 (2) *British Journal of Arts and Social Sciences*, 199-200. <http://www.bjournal.co.uk/BJASS.aspx> accessed 15 June 2013.

The VAT is administered and controlled by the federal government vide the already existing tax structure of the Federal Inland Revenue Service in collaboration with the Nigeria Custom Service and the State Inland Revenue Service. The net proceeds from VAT are shared among the Federal, States and Local governments. The sharing formula of the revenue accruing from VAT is 15% to the Federal Government, 50% to the State Governments and the Federal Capital Territory Abuja and 35% to the Local Governments.[13] The innovation lies in the proviso to this section to the effect that the principle of derivation of not less than 20% shall be reflected in the distribution of the allocation amongst states and local governments.In order to maximize the revenue generated from VAT there must be administrative cost efficiency. The tax authority should ensure that the cost of compliance or generating the revenue from the tax payers does not exceed the proceeds of the tax itself. There should equally be a statutory authority enabling them to perform both management and technical functions in the administration of the Act.

3.The Institutional Framework of the Value Added Tax Act.

The framework design of the Value Added Tax to ensure its smooth administration is the skeleton upon which the revenue flesh is built. In other words, the framework is the machinery laid down or established by statute through which the targeted revenue is generated.

3.1 **Federal Inland Revenue Service**

The Value Added Tax is administered and managed by the Federal Inland Revenue Service.[14] The Federal Inland Revenue Service (hereinafter referred to as FIRS) is established by virtue of section 1(1) Federal Inland Revenue Service (Establishment) Act, 2007[15]. The FIRS is a body corporate with perpetual succession and a common seal. It may sue or be sued in its corporate name and may acquire, hold or dispose of any property, movable or immovable, for the purpose of carrying out any of its functions under the Act[16]. This enable the Federal Inland Revenue Service to sue, that is, institute an action against any taxable person who is in default. The taxable person is also entitled to commence an action against the FIRS in its corporate name in the event of over assessment. It is important to state that an officer of the FIRS shall be entitled to protection under the Public Officers Protection Act[17] whenever his duties are carried out within the ambit of the law. Similarly, by virtue of section 55[18] the provisions of the Public Officers Protection Act shall apply in relation to any suit instituted against any member, officer or employee of the Federal Inland Revenue Service and no action

[13] Value Added Tax (Amendment) Act, No. 12, 2007, s. 11, para (a), (b) and (c).
[14] S. 2 and 25 of the Federal Inland Revenue Service (Establishment) Act, 2007.
[15] *Ibid.*
[16] I*bid,* s. 1(2)(a)(b) & (c).
[17] *Ibid,* s. 38
[18] *Ibid.*

shall commence before the expiration of a period of one month without a written notice of the intention to commence the action been served on the Service by the intending claimant/plaintiff or his agent.

The object of the Service shall be to control and administer the different taxes and laws specified in the First Schedule or other laws made or to be made, from time to time, by the National Assembly or other regulations made thereunder by the Government of the Federation and to account for all taxes collected.[19] The Federal Inland Revenue Service has exclusive mandate to administer Value Added Tax and all other taxes stipulated in the first schedule to the Act. This provision is anticipatory in nature for providing for laws to be made from time to time by the National Assembly inclusive of regulations made by the government of the federation. This is quite enormous and could easily give room for tax leakages due to inadvertence inherent in human nature.

3.2 Value Added Tax Technical Committee

The Value Added Tax Technical Committee[20] is established by virtue of Value Added Tax Act[21] which is also referred to as "the Technical Committee". This committee is specifically established for the purpose of Value Added Tax Administration in Nigeria.

The Technical Committee of VAT comprises the following:

(a) A chairman who shall be the chairman of the Federal Board of Inland Revenue;
(b) All directors in the Federal Inland Revenue Service;
(c) The legal adviser to the Federal Inland Revenue Service;
(d) A director in the Nigerian Customs Service;
(e) Three representatives of the State Governments who shall be members of the Joint Tax Board[22].

The Technical Committee as one of the institutions established for effective administration of the Value Added Tax is saddled with the following responsibilities as it functions:

a. Consider all the tax matters that require professional and technical expertise and make recommendations to the Board;
b. Advise the Board on the duties required in the administration of the tax[23]; and
c. Attend to such other matters as the Board may, from time to time, refer to it[24].

[19] *Ibid.* s. 2
[20] Value Added Tax Act Cap V1, L.F.N. 2004, s 21
[21] Cap V1, Laws of the Federation of Nigeria, 2004.
[22] *Ibid*, s. 21.
[23] *Ibid*, s. 7.
[24] *Ibid*, s. 22.

The proceedings, subject to such directions as the Board may, from time to time, give; the Technical Committee granted the latitude to determine its quorum and otherwise regulate its own procedure[25]. This could herald a situation quagmire because in a crisis situation few members will take advantage of the provision to take far reaching decisions. The Federal Inland Revenue Service may post to the Technical Committee such staff as the Technical Committee may require for the discharge of its functions[26].

The chairman of the Federal Inland Revenue also doubles as the chairman of the Technical Committee. These responsibilities shouldered by the chairman are rather too much and would result to ineffective administration of the tax. Being a technical committee, it will be in the overall interest of the government to appoint professionals such as lawyers, chartered accountant etcetera of cognate experience in tax matters to head such committee with their expertise.

In Nigeria today, the private sector has been contributing enormously both in national development and revenue generation to the government. In the composition of such important committees, the private sector ought to be taken into consideration by the enabling law. These will enhance proper representation of the private sector and increase revenue generation since bulk of the revenue is generated from the private sector. The private sector should be accorded the right to participate in the decision-making process of the administration of VAT. Moreso, this will curtail the excesses of tax evasion and avoidance by the private sector.

3.3 Joint Tax Board in Relation to Value Added Tax

The Joint Tax Board[27] (JTB) is the body saddled with the responsibility of administering the income tax[28]. The enabling law empower the JTB with legal power to advise the Federal Government, on request, in respect of double taxation arrangement concluded or under consideration with any other country, and in respect of rates of capital allowances and other taxation matters having effect throughout Nigeria and in respect of any proposed amendment to the Act.[29] For instance, the imposition of Sales Tax by Lagos State Government alongside Value Added Tax. The Joint Tax Board is saddled with the responsibility of advising the government on the consequences of such as to whether it amount to double taxation or not. More so, that the Value Added Tax Act repealed and replaced the Sales Tax Act.

The Joint Tax Board also uses its best endeavours to promote uniformity both in the application of the Act and in the incidence of tax on individuals throughout Nigeria and

[25] *Ibid*, s. 23.
[26] *Ibid*, s. 24.
[27] Personal Income Tax Decree 1993 Act, Cap. P8 L.F.N 2004. s. 86(1)
[28] Personal Income Tax Decree 1993 Act, Cap. P8 L.F.N 2004.
[29] *Ibid. 86(9)(c).*

impose its decisions on matters of procedure and interpretation of the Act on any State for purposes of conforming with agreed procedure or interpretation[30].

The nomination of a member to the Board from the state could be done either by name of office, from time to time, by the Commissioner charged with responsibility for matters relating to income tax in the state in question. The nomination shall be evidenced by notice thereof in writing delivered to the secretary to the Board[31].

An officer experienced in income tax matters shall be appointed by the Federal Civil Service Commission to be the Secretary to the Board and appoint such other staff as the Board may deem fit to be necessary, from time to time, including on secondment or transfer, from any public service in Nigeria[32]. The Secretary is not a member of the Board but shall be responsible for maintaining records of the Board's proceedings and for signifying all decisions of the Board[33]. The Legal Adviser of the Federal Board of Inland Revenue shall be in attendance at meetings of the Board and shall serve thereat as adviser to the Board[34]. The Board meets on quarterly basis to appraise the performance of the members and to deliberate on tax issues of national importance to develop new strategies to carry out its functions.

The functions of the Joint Tax Board are as follows:

1. Advising all tiers of Government on tax matters, so as to evolve an efficient tax administration system in the country;
2. Resolving areas of conflict on tax jurisdiction among member state;
3. Using its best endeavours to promote uniformity in both application of the tax laws and in the incidence of tax on individual throughout the country;
4. Imposing it's on matters of procedure and interpretation on income tax matters on member state[35].

The said functions of JTB as enumerated under the Act also had a judicial blessing in the case of *Eti-Osa Local Government v Rufus Jegede & Anor*[36] where the court held that:

> *The Joint Tax Board is a regulatory body established to co-ordinate the nature of taxes allowable by the appropriate tier of government. The Joint Tax Board is the said body. To leave taxation at large at the*

[30] *Ibid*. s. 86 (9) (a)-(e).
[31] *Ibid*. s. 86 (2) (b).
[32] *Ibid*. s. 86 (3)
[33] *Ibid* s,86 (4)
[34] s. 86 (8)
[35] http://www.jtb.gov.ng accessed 15 June 2013.
[36] (2007) 5 CLRN Pg. 67 at 68 Ratio 2.

> *whim and caprice of the different tiers of government would expose the entire citizenry to undue multiple and overlapping taxes and levies. Taxation should be a tool of social engineering, of societal class structural adjustment in the hands of a responsive and sensitive government.*

The decision, in this respect, was hinged on one of the basic functions of the Joint Tax Board which is to advise all tiers of Government on double taxation, promote unity and resolving areas of conflict on tax jurisdiction.

Notwithstanding the quarterly general meetings and committee meetings, the Board also organises retreat for members. The retreat is used as an avenue to consider other vital issues that cannot be accommodated during the normal meetings. All members of the Board are mandated to attend the Board meeting and other activities. It is also of interest to know that the Board carries out its functions via committees. The committees report to the board. Members can be assigned to the committees and be always ready to make a meaningful contribution as they are expected to be actively involved in the activities of the committees.[37]

It is submitted that nomination of a member to the Joint Tax Board is made by the Commissioner of Finance. The Commissioner charged with responsibility for matters relating to income tax being an appointee of the Governor his choice of persons to be nominated is often influenced. The persons nominated to such Board are most at times politicians at the expense of other qualified and experienced ones. The nomination should basically be on the merit to ensure efficiency and to avoid redundancy.

Important also is the fact that the Act should be made clear that the Legal Adviser to the Federal Inland Revenue Service should be a lawyer with requisite experience on tax matters. The required number of years of experience should be stated in the law.

Another issue is that the Board meet on a quarterly basis for the purpose of appraising the performance of the members. No mention was made of the consequences of redundancy or non-performance by a member. It is suggested that the law should be amended to consider the penalties to be meted on a member since the Board deliberate on tax issues of national importance.

3.4 Appeal Tribunal on VAT

The Tax Appeal Tribunal (TAT) is established in accordance with Section 59(1) of the Federal Inland Revenue Service (Establishment) Act, 2007. TAT formerly took off pursuant to the Tax Appeal Tribunals Establishment Order 2009 issued by the Minister

[37] https://ngfrepository.org.ng> accessed 10 July 2024. This is an instance where the Chairman, JTB asked the Chairman Abia IRS to chair the 111 Committee

of Finance, Federal Republic of Nigeria as published in the Federal Government Official Gazette No. 296, Vol. 96 of 2nd December, 2009. By this enactment, TAT replaces the former Body of Appeal Commissioners (BAC) and Value Added Tax Tribunals[38].

Accordingly, TAT adjudicates on all tax disputes arising from operations of the value added tax as spelt out in the fifth schedule to the FIRS Establishment Act. By virtue of the Act[39], TAT has jurisdiction over disputes arising from the administration of Value Added Tax Act. TAT also has jurisdiction over matters arising from all other tax laws such as Company Income Tax Act, Petroleum Profit Tax Act, Personal Income Tax Act, Stamp Duties Act and Taxes and Levies (Approved list for collection) Act; as well as other laws, regulations, proclamations, government notices or rules related to these Acts.

TAT was established by the Federal Government, being part of the reforms of the tax system in Nigeria, to adjudicate on all tax disputes or controversy arising from operations of the various Tax Laws as spelt out in the Fifth Schedule to the FIRS (Establishment) Act 2007 as stated above. Pursuant to the Tax Appeal Tribunals Establishment Order 2009, TAT is established in eight zones to cover the six geo-political zones namely: Abuja, Lagos, Ibadan, Benin, Enugu, Kaduna, Jos and Bauchi. The Coordinating Secretariat is situated at Abuja.

A Tribunal shall consist of five members to be appointed by the Minister[40]. The Chairman for each zone shall be a legal practitioner who has been so qualified to practice for a period of not less than 15years with cognate experience in tax legislation and tax matters.[41] Consequently, the Tax Appeal Tribunal Chairmen and Commissioners were inaugurated on the 4 February 2010 while the secretariat staff resumed duties at their respective posts on 1 July 2010 after a two-week induction training. This marked the formal take-off of the new Tax Appeal Tribunal in Nigeria. All proceedings before the Tribunal are guided by the Tax Appeal Tribunal (Procedure) Rules 2010[42].

Tax Appeal is an important component of the tax system and the new tax policy offers a step-by-step objection and appeal process which gives the complainant an opportunity to explore other dispute resolution mechanisms before gaining access to the regular court system. According to the Establishment Act, both the tax payer and relevant tax authority can initiate the appeal process. A person aggrieved by an assessment or demand notice made upon him by the Federal Inland Revenue Service or aggrieved by any action or decision of the Federal Inland Revenue Service under the provisions of the tax laws may appeal against such

[38] http://tat.gov.ng accessed 8 June 2013.
[39] FIRS (Establishment) Act, 2007, s. 59 (2)
[40] Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act, 2007, s. 2(1).
[41] *Ibid*. s. 2(2).
[42] http://tat.gov.ng accessed on 8 June 2013

decision, or assessment or demand notice within a period of 30 days[43]. On the other hand, if the Federal Inland Revenue Service is aggrieved by the non-compliance by a person in respect of any provision of the tax laws; it can within a period of 30 days, file an appeal at the appropriate zone of the Tribunal[44]. All appeals filed before the Tribunal shall be held in public[45].

The establishment of the TAT has decided and resolved a lot of VAT disputes. It has gone a long way in reducing the incidence of tax evasion. This will in no small major curtail the excessive incidence of tax evasion as demonstrated in plethora of authorities. It would also provide an avenue for effective involvement of parties; ensure fairness and transparency of the tax system. It would equally enhance the tax payers' confidence in our tax system; provide opportunity for expertise in tax dispute resolution.

Furthermore, it is also pertinent to note that the establishment of TAT would lessen the experience of delays in adjudication of tax matters as in our regular court system. It gives more credence to justice rather than technicalities. The introduction of TAT saves time in the adjudication of tax matters in the interest of the economy.

The Tribunal is conferred only with civil jurisdiction. The Tribunal has no jurisdiction on criminal matters. Conferment of both civil and criminal jurisdiction on the Tribunal would have strengthened it and further enhanced the cause of justice, more so that most tax disputes have both civil and criminal flavours[46].

It is suggested that though tax matters are seen as more of civil than criminal but criminal issues could rise from the transaction. Lack of conferment of criminal jurisdiction on the Tax Appeal Tribunal would likely halt the trial of cases filed before it. It is therefore important to confer criminal jurisdiction on the Tax Appeal Tribunal.

3.5 State Tax Authority

The Act established for each state, a Board to be known as the State Board of Internal Revenue (referred to as "the State Board") whose operational arm shall be known as the State Internal Revenue Service (referred to as the "State Service").[47] The State Board comprise the following:

[43] Fifth Schedule to the Federal Inland Revenue Service (Establishment) Act, 2007. s. 13(1) & (2)
[44] *Ibid*, s 14.
[45] Fifth Schedule to the FIRS (Establishment) Act, 2007, s 15 (5).
[46] JAA Agbonika, Problems of Personal Income Tax in Nigeria, (Ababa Press Ltd, Ibadan 2012), 227.
[47] Personal Income Tax Act, Cap. P8 L.F.N. 2004, s 87 (1).

(a) The executive head of the State Service as chairman;
(b) The directors and heads of departments within the State Service;
(c) A director from the State Ministry of Finance;
(d) The Legal Adviser to the State Service;
(e) Three other persons nominated by the Commissioner for Finance in the State; and
(f) The secretary of the State Service[48].

The Chairman of the State Service shall be a person who is experienced in taxation and he is appointed from within the State Service by the Governor of the state in question. The person to be appointed as chairman shall be experienced in tax matters and shall be a member of a relevant recognised professional body. The three persons to be appointed into the State Service by the Commissioner of Finance shall be made base on their personal merits. The Secretary of the State Service shall be an ex-officio member.

Any five members of the State Board, of whom one must be the Chairman or a Director, shall constitute a quorum[49]. The Secretary of the State Service shall be appointed by the Board from within the State Service[50].

Notwithstanding that the Legal Adviser to the State Service is a member of the State Board, he may appear for and represent the State Board or State Service in his professional capacity in any proceedings in which the State Board or State Service is a party, and the Legal Adviser shall not in such circumstances give evidence on behalf of the State Board or State Service[51].

The State Board is the body charged with carrying out the following responsibility as its functions:

(a) Ensuring the effectiveness and optimum collection of all taxes and penalties due to the government under the relevant laws;
(b) Doing all such things as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Commissioner;
(c) Making recommendations, where appropriate, to the Joint Tax Board on tax policy, tax reform, tax legislation, tax treaties and exemption as may be required, from time to time;
(d) Generally controlling the management of the State Service on matters of policy, subject to the provision of the law setting up the State Service; and

[48] *Ibid*, s. 87 (1).
[49] *Ibid*, s. 87 (3).
[50] *Ibid*, s. 87 (4)
[51] *Ibid*, s.87 (5)

(e) Appointing, promoting, transferring and imposing discipline on employees of the State Service[52].

The State Board is autonomous in the day-to-day running of the technical, professional and administrative affairs of the State Service[53]. The State Board may, by notice in the Gazette or in writing, authorise any person to perform or exercise on behalf of the State Board any function, duty or power conferred on the State Board[54].

Pertinent to note is that there is also a Technical Committee of the State Board[55]. The Technical Committee have the powers to co-opt additional staff from within the State Service in the discharge of the duties; consider all matters that require professional and technical expertise and make recommendations to the State Board; advise the State Board on all its powers and duties and attend to such other matter as may, from to time, be referred to it by the Board[56].

It is humbly opined that the criteria for the appointment of the Chairman of the State Board should be reviewed. It is not enough to say that the person should be experienced in tax matters and should also be a member of a recognised professional body. The experience required and membership of a professional body should be qualified by way of definition of the number of years and the kind of body respectively.

As one of the functions of the State Board of Internal Revenue is doing all such things as may be deemed necessary and expedient for the assessment and collection of the tax and shall account for all amounts so collected in a manner to be prescribed by the Commissioner. The discretionary power given the Commissioner of Finance could be abused since accounting for amounts collected is to be done in a manner prescribed by him. There should be a standard laid down along with other members of the Board.

3.6 Local Government Revenue Committee

The Act established for each local government area of a state a committee to be known as the Local Government Revenue Committee (referred to as "the Revenue Committee")[57]. The Revenue Committee shall comprise of the supervisor for finance as chairman; three local government councillors as members and two other persons experienced in revenue matter to be nominated by the chairman of the local government on their personal merits[58].

[52] *Ibid*, s. 88 (1) (a)-(e).
[53] *Ibid*, s. 88 (2)
[54] *Ibid*, s. 88 (3) (a).
[55] *Ibid*, s. 89 (1).
[56] *Ibid*, s. 89 (2) (a) –(d).
[57] *Ibid*, s. 90 (1).
[58] *Ibid*, s. 90 (2).

The functions of the Revenue Committee include the Revenue Committee shall be *responsible* for the assessment and collection of all taxes, fines and rates under its jurisdiction and shall account for all amounts so collected.[59] The revenue committee is autonomous of the local government treasury and shall be responsible for the day-to-day administration of the department which forms its operational arm.[60]

By extension of the institutional structures for the administration of the VAT Act, the Revenue Committee is the body charged with the responsibility of generating revenue internally within its jurisdiction to boost development.

Ordinarily, the Local Government Revenue Committee is supposed to be self-governing of the Council treasury but reverse is often the case in practice. In practice the chairmen of the Local Government Council is highjack the Revenue Committee.

4. The Role of Federal Inland Revenue Service in Value Added Tax Administration

The main object of the Federal Inland Revenue Service is to control and administer the Value Added Tax with other different taxes and laws specified in the First Schedule or other laws made or to be made from time to time by the National Assembly or other regulations made there under by the government of the federation and to account for all taxes collected.[61] The Federal Inland Revenue Service may do such things as it may deem necessary and expedient for the assessment and collection of the tax (VAT) and shall account for all amounts so collected in accordance with the provision of the Act[62]. The Federal Inland Revenue Service has such powers and duties as conferred on it by its Act and on such matters on which the National Assembly has power to make law.[63] The Federal Inland Revenue Service has a body that plays a supervisory role over it affairs for effective tax administration. The body that performs such overall supervision of the Federal Inland Revenue Service is known as the Federal Inland Revenue Service Board.[64] The Board performs the following functions amongst others:

i. Provides the general policy guidelines relating to the functions of the Federal Inland Revenue Service;
ii. Manages and superintends the policies of the Federal Inland Revenue Service on matters relating to the administration of the revenue assessment, collection and accounting system under the Act;
iii. Reviews and approves the strategic plans of the Federal Inland Revenue Service;

[59] *Ibid,* s 91 (1).
[60] *Ibid,* s. 91 (2).
[61] *Ibid,* s. 2.
[62] *Ibid,* s. 7(2).
[63] *Ibid,* s 1 (3).
[64] *Ibid, s. 7(1)(a) & (b)*

iv. Employs and determines the terms and conditions of service including disciplinary measures of the employees of the Federal Inland Revenue Service;
v. Stipulates remunerations, allowances, benefits and pensions of staff and employees in consultation with the National Salaries, Income and Wages Commission; and
vi. Do such other things which in its opinion are necessary to ensure the efficient performance of the Federal Inland Revenue Service under the Act[65].

On the other hand, the functions of the Federal Inland Revenue Service include:-

(a) Assess persons including companies, enterprises chargeable with tax;
(b) Assess, collect, account and enforce payment of taxes as may be due to the Government or any of its agencies;
(c) Collect, recover and pay to the designated account any tax under any provision of the Act or any other enactment or law;
(d) In collaboration with the ministries and agencies, review the tax regimes and promote the application of tax revenues to stimulate economic activities and development;
(e) In collaboration with the relevant tax enforcement agencies, carry out the examination and investigation with a view to enforcing compliance with the provisions of the Act;
(f) Make, from time to time, a determination of the extent of financial loss and such other losses by government arising from tax fraud or evasion and such other losses (or revenue forgone) arising from tax waivers and other related matters;
(g) Adopt measures to identify, trace, freeze, confiscate or seize proceeds derived from tax fraud and evasion;
(h) Adopt measures which include compliance and regulatory actions, introduction and maintenance of investigative and control techniques on the detection and prevention of non-compliance;
(i) Collaborate and facilitate rapid exchange of information with relevant national and international agencies or bodies on tax matters;
(j) Undertake exchange of personnel or other experts with complementary agencies for purposes of comparative experience and capacity building;
(k) Establish and maintain a system for monitoring international dynamics of taxation in order to identify suspicious transactions and the perpetrators and other persons involved;
(l) Provide and maintain access to up to date and adequate data and information on all taxable persons, individuals, corporate bodies or all agencies of government involved in the collection of revenue for the purpose of

[65] *Ibid*, s. 7.

efficient, effective and correct tax administration and to prevent tax evasion or fraud;

(m) Maintain database, statistics, records and reports on persons, organisations, proceeds, properties, documents or other items or assets relating to tax administration including matters relating waivers, fraud or evasion;

(n) Undertake and support research on similar measures with a view to stimulating economic development and determine the manifestation, extent, magnitude and effects of tax fraud, evasion and other matters that affect effective tax administration and make recommendations to the government on appropriate intervention and preventive measures;

(o) Collate and continually review all policies of the Federal Government relating to taxation and revenue generation and undertake a systematic and progressive implementation of such policies;

(p) Liaise with the office of the Attorney General of the Federation, all government security and law enforcement agencies and such other financial supervisory institutions in the enforcement and eradication of tax related offences[66].

5. The Unwieldy Powers of Federal Inland Revenue Service over VAT Administration

It is a considered opinion that the value added tax by its very nature being a consumption tax entails close monitoring of the taxable persons to ensure proper returns are made to the government. Mostly, the taxable persons in this regard are at the grassroots and closer to the states or local governments than the federal government. The administration of this tax would be better managed by states or local governments. Instead of the FIRS managing the VAT alone, the state and local governments should be allowed to manage and administer it; it would be easy to drag into the tax net persons that are outside it because they would know the taxable person better. Important also is the arm chair administration of the VAT by the Federal Inland Revenue Service. Tax collectors are not supposed to stay in their various comfort zones i.e offices with the expectations that the taxable person will casually walk into their offices to remit tax. Tax payers often do not adhere to voluntary tax compliance. The tax collectors must go out to maximally generate the expected revenue.

The law arrogate exclusive power to FIRS for the administration of VAT to the exclusion of other tax institutions. The law empowers only the FIRS to administer VAT alongside other taxes. This enormous responsibility has brought about some taxable persons being out of the tax net. Despite the fact that VAT is a consumption tax which is difficult to evade, the number of taxes administered by FIRS are so much that it is ineffective in the administration of VAT. This has resulted in the loss of so much revenue by government. In order to ensure its efficacy, the power to administer VAT

[66] *Ibid,* s 8.

should be distributed among other institutional frameworks such as the state tax authority and the local government revenue committee. This would enlarge the scope of the other institutional frameworks to enable them join hands with Federal Inland Revenue Service in the administration of VAT. If this is done, it would drag into the tax net those taxable persons that were not captured earlier.

6. Conclusion

The importance of the revenue generated from Value Added Tax is quite important. The importance of such revenue generated from VAT is to the effect that the revenue is used to provide social amenities such as schools, hospitals, good roads, portable water etc. Revenue generated from value added tax is also used to provide security and for the maintenance of law and order. In view of the importance of value added tax, the institutional framework should be more effective in terms of administration to improve on the revenue generation. Concerted efforts should be made to bring into the tax net all taxable persons.

7. Recommendations

It is the contention of this paper that the Federal Inland Revenue Service is given exclusive power pursuant to section 25 (1) of the Federal Inland Revenue Service (Establishment) Act, 2007 and section 7[67] to administer Value Added Tax in Nigeria. Moreover, the Value Added Tax Technical Committee is chaired by the Chairman of the Federal Inland Revenue Service Board which it is supposed to be an advisory committee to the Board on professional and technical issues. This can breed the conflict of interest and inefficiency in its advisory role. Owing to the above findings, the following recommendations are made thus:

1. It is recommended that section 25 (1) FIRS (Establishment) Act, 2007 and section 7 of the Value Added Tax Act, Cap V1, Laws of the Federation of Nigeria, 2004 should be amended to incorporate other tax authorities such as the State Inland Revenue Service(s) and Local Government Revenue Committees in the administration of VAT.
2. The Value Added Tax Technical Committee's composition be expanded to accommodate professionals such as lawyers, accountants etc of requisite experience in line with its functions such as consideration of tax matters that require professional and technical expertise and make recommendation to the Board. This would enable the VATTC to independently advise the Board on the duties required in the administration of the tax. It is further recommended that the Board should focus on providing the general policy guidelines relating to the functions of the Service; managing and superintending the policies of the Service on matters relating to the administration of the revenue assessment, collection and accounting system.

[67] Value Added Tax Act, Cap V1, L.F.N. 2004.