

**FEDERAL INLAND REVENUE SERVICE (FIRS) OF NIGERIA AND VAT  
COLLECTION: A CRITICAL ANALYSIS**

By

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**Abstract**

A critical overview of Value Added Tax (VAT) administration in the context of the contemporary contentions between some states of the federation and the Federal Government of Nigeria became necessary because of the strategic importance of VAT, as a major source of revenue generation in the country. Value-added tax has not only become the fastest-growing tax revenue in Nigeria, but the constitutional lacuna which could not explicitly indicate the tier of government that should collect VAT in a country that operates a federal system has led to some controversies in the administration and generation of VAT revenue between the different tiers of governments. The research adopted an interdisciplinary method and depended on the use of secondary sources. Using federalism as a general theory with fiscal federalism as its other thread, the paper analyzes the controversy between the Federal Inland Revenue Services (FIRS) and some states in Nigeria in the collection of VAT. Findings showed that the contentious issue of the jurisdiction of VAT administration between the federal and state governments is a product of the void created by the 1999 Constitution (as amended) with negative implications on the Nigerian economy. Therefore, the paper concluded that national legislation with unambiguous provisions is necessary for VAT administration and economic development in Nigeria.

**Keywords: Value Added Tax, Revenue, Conflicts, National Assembly, Fiscal federalism**

## **Introduction**

Across the globe, governments are concerned about the well-being of their economy and the welfare of their citizenry. They pay attention to their economic prosperity much more than their primordial political affiliations because they believe that the economic well-being of a people determines the political stability of a Nation. Notwithstanding the presence of abundant natural resources in the country as revenue generation points, the government still engages in the search for, evaluation, and implementation of time-tested and effective financial policies using taxation. In other words, for most governments to guarantee, enlarge, and sustain revenue for sustainable development, they adopt strategic, sometimes radical, measures to raise and even enlarge their income base mostly through taxation for government businesses. This paper has attempted a review of the VAT administration and the contentions between some states of the federation and the Federal Government of Nigeria on the collection and sharing of VAT revenue funds. The paper also analyzes the constitutional implications of this to the Nigerian economy and the nation-state at large. It concludes with recommendations for policy concerns.

### **Value Added Tax: A brief background**

VAT as a system of tax is traceable to a German Economist, named William Von Siemens who championed in 1918 the system of taxation today known as Value Added Tax-(VAT)<sup>1</sup>. VAT was not adopted by any country or government until 1954 when France applied it on a limited scale to replace the turnover tax. However, due to its successes, the tax was expanded in 1968 to cover the entire economy<sup>2</sup>. The tax was due on goods sold and services rendered in France with

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<sup>1</sup> Wikipedia, [Accessed 23/09/23.](#)

<sup>2</sup> e.clear.com knowledge, [Accessed 23/09/23.](#)

the standard rate being 20% on some kinds of medicines and transport of persons being subject to a 10% VAT rate. VAT, including income and corporate tax, represent most of the French State's public revenue such that in 2021, total public revenue in France reached 442.96bn Euros<sup>3</sup>.

As a system of tax, VAT is a relatively recent form of tax when compared to other forms of taxes like the income tax, which originated in the ancient city of Egypt as far back as 10AD as well as the Stamp Duty tax, which was originated in Spain by 1637<sup>4</sup>. VAT was not adopted in Nigeria until 1993. The process started in 1991 when the federal government set up a study group led by Dr. Sylvester Ugoh to, among other things, carry out extensive research on raising revenue for the country through indirect taxation. Based on the group's report, a second Committee under the Chairmanship of Mr. Emmanuel Ijewere was established; the recommendations of this Committee led to the promulgation of Decree 102 of 1993 which introduced VAT in 1993, thereby replacing the sales tax regime which had been in existence with decree 7 of 1986.<sup>5</sup> The new 1993 decree took effect on 1<sup>st</sup> January 1994, but the proper and real commencement of collection of VAT is dated 15<sup>th</sup> January 1994.<sup>6</sup>

Since its promulgation, diverse provisions of the Act have undergone a series of amendments. For example, the VAT Decree No. 102 of 1993 repealed the Sales Act of 1986 even though the 1993 decree itself became effective on 1<sup>st</sup> January 1994. Recent amendments to the VAT Act were in 2007 and 2012 respectively [Value Added Tax (Amendment) Act Cap IV 2004].

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<sup>3</sup> [www.statista.com](http://www.statista.com), Accessed 23/09/23.

<sup>4</sup> T. Oyedele. "How to Fix Nigeria's Broken VAT System" (PWC: Lagos, 2021), 3.

<sup>5</sup> E. I. Agbor and E. O. Nwadior. "The genesis and development of value added tax administration: Case study of Nigeria" *International Journal of academic accounting, finance and management sciences*. [www. Hr. mars.com.](http://www.Hr.mars.com), 23.

<sup>6</sup> James, O. A and Zainah B. Z et al. "Determinants of Tax compliance Behaviour: A Proposal Model for Nigeria" *International Journal for Finance Economics*, 2011, 78.

By the year 2020, the VAT Act was repealed and reenacted under the uniform law referred to as the “Finance Act” (Finance Act: 2020). The Finance Act was primarily motivated by the government’s quest to raise revenue to finance its budgets and to block loopholes that aid tax evasion.

In Nigeria, VAT as a federal government tax is administered using the existing institution of the Federal Inland Revenue Services (FIRS) with headquarters in Abuja. It has a network of Zonal and Local offices throughout the Federation. The Directorate of the tax is headed by a Director who is assisted by two Deputy Directors. The Zonal Coordinators of the FIRS at Ibadan, Enugu, Lagos, Kaduna, and Jos also coordinate the activities of local VAT offices within their areas and are responsible to the VAT Directors in Abuja for all VAT-related matters.

Before the introduction of VAT, the federal government had worked relentlessly on how to revamp the nation’s economy. To this effect, a lot of economic measures were introduced, amongst which included the Second Tier Foreign Exchange Market (SFEM), Structural Adjustment Programme (SAP) and Foreign Exchange Market (FEM), etc. All these efforts at revamping the economy were to no avail, as the economy seems to be nosediving, defying all economic therapy or fiscal measures, prompting the introduction of this tax policy by the Head of State, General Sani Abacha. VAT was computed at a flat rate of 5%, though presently at 7.5% of prices of goods and services and Zero rate for exports.<sup>7</sup> As a policy, the registration of VAT covers all business activities relating to all domestic manufacturers, wholesalers, distributors, importers, and suppliers of goods and services in Nigeria. These business concerns are expected to register

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<sup>7</sup> Seyi, O. “Fundamental Principles of Nigeria Tax” *Segriba Tax Publications*, 2003, 52.

for VAT within six months after the commencement of the Decree or Six months from the commencement of business, whichever is earlier.

### **The Problematique**

Taxation is significant to the successful administration of any government because it is an essential source of revenue globally. Apart from most governments adopting creative approaches to taxation, the Nigerian government has also adopted a radical measure to ensure that income from taxation is enlarged and sustained. Incidentally, the subject matter of VAT is relatively recent in the Nigerian tax lexicon with perfunctory scholarly attention having been introduced only in 1994. Moreso, conflicts have trailed the issues relating to whether it is the federal government or component states of the Nigerian federation that have the powers to administer and collect VAT. The issues of its newness and the lack of scholarly attention as well as contestation present a problematique between the federal and state governments that should provoke scholarly attention. In fact, “a tax war” was in the offing until the Court of Appeal intervened. This paper seeks to analyze FIRS tax collection policy as far as its constitutionality is concerned with a view to finding solutions through recommendations made to solve the problems of VAT administration between the federal government and states in Nigeria. Commencing with the introduction, this paper has been segmented into stating the problem, the theoretical basis of the paper, the rationale, and concluding with recommendations

### **The rationale**

The main aim of this paper is to examine the contestation in VAT administration between the federal and state governments and to make suggestions for lasting solutions. Other objectives are:

- To analyze the importance of VAT on the economy of Nigeria.
- Critically examine VAT regimes and their implication on revenue generation in the Nigerian federation or federal structure
- To make recommendations for a smooth, effective, efficient, and rancor free VAT collection in Nigeria.

### **Constitutional ambiguity in the administration of VAT and litigations in Nigeria**

As earlier stated, Nigeria operates a federal system of government with three tiers such as the federal, the state, and local governments. Each tier has its legislative competence under section 4 of the constitution of the Federal Republic of Nigeria; 1999 (as amended 2011). The federal government's legislative competence is limited to only items listed on the exclusive list specifically mentioned in this case, in items 58 and 59 of the exclusive list relating to the taxation of incomes, profits, and capital gains tax and the concurrent list. While the state government legislates on matters listed on the concurrent list<sup>8</sup>. this constitutional arrangement implies that matters which cannot be found either under the exclusive list or in the concurrent list are considered as residual matters and are vested on the legislative jurisdiction of the component states<sup>9</sup>. unfortunately, the federal government has been the authority imposing and collecting VAT under

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<sup>8</sup> S. Adewale. "Constitutional Issues on Value Added Tax in Nigeria" [www.linkedin.com](http://www.linkedin.com) 19<sup>th</sup> September, 2021. Accessed 8<sup>th</sup> October, 2023, 1.

<sup>9</sup> E. I. Amah. "A Critical Analysis of the Federal and State Taxing Powers in Nigeria: *Journal of Commercial and Contemporary Law (JCCL) of the Department of Commercial Law, Faculty of Law, Imo State University*" 2011, 287-310.

the taxes and levies<sup>10</sup> and Value Added Tax leading to serious ambiguity even to “VAT WAR” between the federal and state governments.

The above scenarios led the Rivers and Lagos State Governments as had other state governments, to challenge the constitutional powers of the federal government to impose and collect VAT at the federal High Courts in Port Harcourt and elsewhere to resolve this ambiguity. For instance, the Rivers State government challenged the constitutional powers of the federal government over this imposition and collection of VAT at the Federal High Court in Port-Harcourt Division in suit No: FHC/PH/CS/149/2020 in the case of Attorney General of Rivers State vs Federal Inland Revenue Service and Anor. To correct this ambiguity, the Federal High Court averred that the federal government does not have the constitutional powers to impose, demand and collect value-added tax, withholding tax, education tax, and technology levy, being that federal government powers are limited to taxation of income, profits and capital gains specially mentioned in items 58 and 59 of the exclusive legislative list.

Aside from Rivers State Government, the supreme court had previously ruled in the case of Attorney General of Ogun State vs Aberuagba (1985) 1 NWLR (PT. 3) 398 at 405 that a careful perusal and construction of SECTION 4 of the constitution Nigeria reveal that residual powers reside with the states, so also did the supreme court in a related matter ruled in favour of the state in the case between Attorney General Lagos State vs Attorney General. Federation and ors (2003) LPELR - 620 (Sc), wherein the court held that in matters dealing with Town and Regional Planning, such matters are not in the exclusive and concurrent list but clearly in the residual matters

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<sup>10</sup> Finance Act 2020

for the <sup>11</sup>states. Another case that deserves mention on how this ambiguity has been tackled is the case between Uyo Local Government Council vs Akwa-Ibom State Government and Anor. (2020) LPER - 49691 CA, where the Appeal Court nullified the taxes and levies (Approved list for collection) Decree No 21 of 1998 (now Act) for being inconsistent with the provisions of the constitution. Emboldened by the above rulings or judgments, the Rivers and Lagos State governments had gone ahead to enact their respective VAT laws with Lagos state fixing its VAT at 6% while Rivers State fixing its own at 7.5%.

Notwithstanding the rulings and bold steps by Lagos and Rivers State Governments on fiscal federalism, the controversy continued as highlighted by Omorogbe when he noted that between 2020 and 2021, there were four notable cases decided by the Federal High Court on the validity of Value Added Tax (VAT) legislation in the country<sup>12</sup>. Two of the cases were decided in Port Harcourt against the federal government legislating on VAT, while another one in Lagos also nullified the law. In the fourth case however, the Federal High Court Kano ruled endorsing the federal collection of VAT as it restrained Kano State Government from imposing consumption tax on transactions involving goods and services, which are already subject to federal government collection since the VAT Act had covered this area in this regard. Again, Omorogbe, noted that in one of the latest court rulings, Justice Stephen Dalyop Pam stated that, “the constitutional powers and competence of the Federal government was limited to taxation of incomes, profits and capital gains, which did not include VAT or any other species of sales, or levy other than those specifically mentioned in items 58 and 59 of the Exclusive Legislative List of the constitution”<sup>13</sup>.

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<sup>11</sup> S. Adewale. “Constitutional Issues on Value Added Tax in Nigeria” [www.linkedin.com](http://www.linkedin.com) 19<sup>th</sup> September, 2021. Accessed 8<sup>th</sup> October, 2023, 1.

<sup>12</sup> P. Omorogbe. “Analysis: VAT as a Weapon in the Battle for Resource Control” *Tribuneonline.ng.com*, 2021, 1.

<sup>13</sup> P. Omorogbe. “Analysis: VAT as a Weapon in the Battle...” 1.



The Court agreed with the Rivers State government (plaintiff) that the State and not FIRS was constitutionally entitled to impose taxes enforceable or collectable in its territory of the nature of consumption or sales tax, VAT education and other taxes or levies, other than the taxes and duties specifically reserved for the Federal Government by items 58 and 59 of part 1 of the second schedule of the 1999 constitution as amended. The Court also declared that the FIRS and Minister of Finance were not constitutionally entitled to charge or impose levies, charges or rates (under any guise or by whatever name called) on the residents of Rivers and any State of the Federation<sup>14</sup>. Whatever be the ruling of these Courts, it is imperative that a superior court (Supreme Court) rules on the issue to provide clarity and certainty on the implications of the VAT Act or the appropriate body (National Assembly) does the needful by amending the revenue portion of the constitution to either include VAT in the exclusive, concurrent or residual list.

In spite of the rulings above, about the unconstitutionality of the Federal government collecting VAT, it will be difficult if not impossible for States to, individually, administer VAT within their jurisdictions for lack of capacity. Companies operating in multiple States may also have difficulties dealing with different laws in different states. On the other hand, it is argued that should the Federal Government hands off VAT collection, fiscal federalism would have been promoted as states will now be able to impose and demand VAT from those transacting businesses within their jurisdictions. States will also be forced to make their States investor friendly, since the more goods and services people consume, the more VAT they will collect. This will also help to remove the unfairness and the practice whereby Sharia compliant States like Kano will cease to

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<sup>14</sup> P. Omorogbe. “Analysis: VAT as a Weapon in the Battle...” 1.

share from proceeds like those of alcoholic beverages, which has also been a reason for the controversy between the Federal Government and the States and between the States.

In the interim, the Court of Appeal directed these states to maintain the status quo as the conflictual court judgments reached their crescendo, fueling ethnic and regional biases. Although the appeals are still lingering in respect of these, if the cases are eventually settled on the side of state governments, VAT will be added to be the 25th tax being charged by some state governments, which implies that the federal government will no longer enjoy the VAT proceeds from the states of the federation except those accruable from the FCT Abuja including the import VAT revenue and VAT revenue from other international transactions<sup>15</sup>.

The various taxes being charged by some state governments are, personal income tax in respect of individuals resident in the state, such as pay as you earn, also known as PAYE and direct taxation, which is self-assessment. Others are withholding tax, paid by individuals only, stamp duties on instruments executed by individuals, betting, lotteries, gaming and casino taxes. Among the twenty-five (25) kinds of taxes also charged by States are, taxes on business premises, registration fees in respect of urban and rural areas which includes registration fees per annum renewable as fixed by each state. Road taxes, development levy not more than 100 per annum on all taxable individuals, naming of streets and registration fees in the state capital and right of occupancy in urban areas of the state. Others are, market taxes and levies where state finances are involved in land use charge, where applicable, environment tax, entertainment tax, mining, milling and quarrying fees where applicable as well as annual trade tax where applicable. The state also

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<sup>15</sup> E. I. Amah. "A Critical Analysis of the Federal and State Taxing Powers in Nigeria: *Journal of Commercial and Contemporary Law (JCCL) of the Department of Commercial Law, Faculty of Law, Imo State University*" 2011, 7-8.

collects taxes on produce or sales tax, slaughter or abattoir, infrastructure maintenance charge, fire service charge, economic development levy as well as social service contribution levy and signage mobile advertisement, which is jointly collected by the state and local government<sup>16</sup>.

In spite, of the above, and the directive of the Court of Appeal to maintain the status quo notwithstanding or even the fact that the judgment of FHC Port Harcourt between Attorney General of Rives State, FIRS and the Attorney General of Federation has declared that such collection is ultra vires and therefore, null and void<sup>17</sup>, the federal government still collects taxes on VAT, education and technology tax. This is because as posited earlier, VAT is an enormous revenue base and contribution to the government purse, reaching a trillion naira in 2020. In 2021, the service announced that it collected over N10 trillion in tax revenue, the highest tax collection ever recorded in its history<sup>18</sup>. This is when compared with revenue from sale of crude oil which was ₦14.41 trillion in same year,<sup>19</sup> or from residency tax (personal income tax) for 2020 which stood at ₦851 bn<sup>20</sup>.

From the 2020 VAT reports and statistics. Lagos State had the highest VAT revenue generation at 50%, closely followed by FCT at 13.2%. The States of Oyo, Rivers and Kano are on the third and fourth and fifth rankings respectively. The States ranking the least from bottom are Zamfara, Osun and Abia with a cumulative contribution of less than 0.1% of the overall amounts of VATS generated for the year 2020<sup>21</sup>. Oyedele confirmed that Lagos, Kano, Oyo, Rivers States and FCT top the list amongst the recipient States with 14.7% shares for Lagos followed by Kano at 3.8%, Oyo gets 3.2%, Rivers gets 2.7% and FCT ranks 5th with 2.5%, whereas, the 3 least States of Osun, Abia and Zamfara states are allotted 2%, 1.6% and 1.6% respectively<sup>22</sup>.

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<sup>16</sup> Ugboaga, Mary. At a glance: Personal income, capital gains... taxes collected by Lagos State. *www. The cable.ng*. September 27, 2021, 1.

<sup>17</sup> J. Odinkonigbo. "Attorney General of River State versus Federal Inland Revenue Service". [www.templars-law.com](http://www.templars-law.com), 2021, 2.

<sup>18</sup> O. Ifeanyi. "FIRS Breaks 2021 Tax Revenue Record, Collects ₦10 Trillion in 2022" *The whistler: Annual Report, 2022*, 1.

<sup>19</sup> *www. Zawya.com*

<sup>20</sup> D. Sasu. "Personal Income Tax (PIT), (2010-2021) revenue in Nigeria". *www. Statista.com*, 1.

<sup>21</sup> T. Oyedele. "How to Fix Nigeria's..." 2.

<sup>22</sup> T. Oyedele. "How to Fix Nigeria's..." 2.

Notwithstanding this huge revenue collected, revenue generated as VAT is shared in accordance with specified formula. Thus, while 15% is accruable to the Federal Government, 50% goes to the States and the Federal Capital Territory (FCT), and the remaining 35% is accruable to the Local Government Councils<sup>23</sup>. Furthermore, the Federal Inland Revenue Service (FIRS) is entitled to 4% as administrative cost while 2% is accruable to Nigerian Custom Service in the case of VAT generated from imported goods and services<sup>24</sup>. The above shows a big difference in the percentage shared among the States and the Federal government. Again, some States with less than 0.1% VAT revenue generation are allocated 1% to 2% VAT shares. This is particularly another root cause of the controversy between the Federal Government and some State governments over the administration, collection and distribution of VAT funds. For instance, in June, 2021, Rivers State generated fifteen-billion-naira (₦15bn) VAT but got ₦4.7bn. In the same month Kano generated ₦2.8bn and got same amount back. While Lagos generated ₦46.4bn in June of same year but was given ₦9.3bn<sup>25</sup>.

Arising from the constitutional lacuna in respect of VAT collection and administration with the implication that the States ought to legislate on, administer and collect VAT, besides the issue of the difference between generation and distribution of VAT revenue between States, the Federal government has continually been legislating and collecting VAT to the exclusion of the States. It is no wonder that despite the 50% of VAT revenue set aside for the states and 15% for the federal government, the above has not been without litigations relating to the appropriate authority to administer such taxes in the form of VAT. The decisions of the court have further deepened the controversy.

### **Significance of VAT in Nigeria**

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<sup>23</sup> U. Ode. "Is Nigeria Optimising its VAT Revenue?" [www.dataphyte.com](http://www.dataphyte.com) 2022, 1.

<sup>24</sup> S. Oyekanmi. "Nigeria Generates ₦1.53 trillion VAT in 2020, grows by 29%". [www.nairametrics.com](http://www.nairametrics.com) 2021, 2.

<sup>25</sup> O. Kayode. "Rivers generated ₦15bn VAT in June, got 4.7bn, Kano earned ₦2.bn, got same back: Wike", *Punch*, 19<sup>th</sup> September, 2021, 1.

Value Added Tax has risen to become the fastest growing tax revenue in Nigeria. As a form of tax, it guarantees and provides enlarged and sustainable revenue for growth and development in the country. It helps also to provide resources for the enhancement of the country's economic growth while also minimizing the rate of the country's fiscal deficit as it serves as an effective and appropriate policy of revenue generation. VAT has helped the government, both federal and states, to raise revenue to finance her budgets, while blocking loopholes that aid tax evasion. The tax also helps in restraining certain types of consumption while encouraging and or protecting home industries thereby helping in controlling certain aspects of the country's economy. VAT is also an instrument to the successful administration of any state because it is an essential source of revenue to governments, not only in Nigeria but also globally.

### **Conclusion**

This paper examined the historical development of VAT in Nigeria. It also analyzed the attendant controversy in its administration and collection, noting that the conflict and controversy of VAT collection and administration in Nigeria has arisen from VAT, not only being a major source of government revenue but the constitutional lacuna regarding which level of government between the Federal and State Governments should collect the tax.

More so, the sharing formula between the governments has also been contentious, as some States perceive this formula as being unjust to them, especially against those States that contribute little or nothing to the pool. While this form of tax has impacted positively in the overall increase on the revenue base of the government, with its attendant sustainable economic development, it also has negative implications in the relations between the various levels of governments, especially as the judiciary is not able to wade into this controversy with finality. In the light of the forgoing dilemma, and arising from findings, this paper makes the following recommendations

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which it is hoped would shed light on the dark areas of VAT administration between the federal and state government and enthrone a regime of peace between the tiers of government.

## **Recommendations**

To assuage these contentions and controversies, this paper opines that;

- i. VAT revenue distribution should, be based on derivation in order to remove the perceived inequality and injustice in the current VAT revenue sharing regime.
- ii. the judiciary should live up to its responsibility by being courageous, and firm in interpreting the constitution so as to fill the vacuum created by the law
- iii. the National Assembly should step into reframing the relevant sections of the constitution to give explicit listing of which tier between the Federal and State governments, is vested with the power to legislate on and collect VAT revenue in the country
- iv. to address the issue of perceived injustice, by some States that think that they are being unfairly treated against states that contribute little or nothing to the pool, such individual States should be entitled to a share of funds equivalent to the percentage of VAT revenue generated from its state or territory.