

## **Current Law and Practice of Value Added Tax in Nigeria**

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### **Abstract**

The Value Added Tax (VAT) was introduced in Nigeria in 1993 by the Federal Military Government. Since then, the Value Added Tax Decree, had been amended more than half a dozen times the latest being the *Value Added Tax (Amendment) Act* of 2007. Some of the amendments have introduced significant changes which are yet to be reflected in the body of existing literature. This article discusses the thrust and evolutionary path of the changes to the legal and administrative framework of VAT and assesses the direction of development. The aim is to succinctly discuss the current position of the VAT law and administration in Nigeria in a coherent form for the proper guidance of taxpayers, researchers and foreign investors.

## 1. INTRODUCTORY BACKGROUND

Countries introduce a Value Added Tax (VAT) because they are dissatisfied with their existing tax structure.<sup>1</sup> The Value Added Tax (VAT) was introduced in Nigeria in 1993 by the Federal Military Government. Before then, Sales tax was under the jurisdiction of the States and generally poorly administered with marginal contribution in terms of revenue.<sup>2</sup> The idea of introducing VAT was recommended by the Study Group set up by the Federal Government in 1991 to review the tax system of the Federation<sup>3</sup> as a replacement of Sales Tax.<sup>4</sup> After extensive deliberation and consultation,<sup>5</sup> VAT was introduced on 24<sup>th</sup> August 1993 as a federal tax by the *Value Added Tax Decree*.<sup>6</sup>

Since, then the relative success of VAT in Nigeria has surpassed the expectations of all sceptics including the International Monetary Fund (IMF)<sup>7</sup> and emerged as a significant source of income for all the levels of government.<sup>8</sup> The current policy is to gradually reduce the rate of income tax while focus is shifted to indirect taxes, especially VAT.<sup>9</sup> According to the National Tax Policy Document:

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<sup>1</sup> This dissatisfaction falls broadly into one or all, of four categories: (1) the existing sales taxes are unsatisfactory; (2) a customs union requires discriminatory border taxes to be abolished; (3) a reduction in other taxation is sought, or (4) the evolution of the system has not kept pace with the development of the country. See Tait, A.A, *Value Added Tax International Practice and Problems*, (International Monetary Fund, 1988), p.9.

<sup>2</sup> See FIRS Information Circular No.9304 of 20<sup>th</sup> August.

<sup>3</sup> A Study Group on the review of the Nigerian Tax System was established in 2002. The terms of reference of the Study Group included *inter alia*: reviewing all aspects of the Nigerian Tax System and recommending improvements; reviewing all tax legislations in Nigeria and recommending amendments where necessary; considering international developments and recommending suitable adaptation to Nigerian circumstances; and evaluating and confirming the desirability or otherwise of the retention of the portfolio of fiscal incentives enshrined in the tax laws. See 'Nigerian Tax Reform in 2003 and Beyond' Main Report of the Nigerian Tax System, July 2003, pp 1-2.

<sup>4</sup> There was a Sales Tax Act enacted by the Federal Military Government which vested the administration of Sales Tax within each State on the State Government. The revenue from the tax collected by each State forms part of its Consolidated Revenue Fund and utilized for its independent purposes at its discretion. See section 7 of the Sales Tax Act No. 7 of 1986.

<sup>5</sup> After the Prof. Edozien-led Study Group on the Review of the Nigerian Tax System, another Study Group led by Dr. Sylvester U. Ugoh was set up later in the year (1991) with the responsibility to study the feasibility of introducing VAT in Nigeria. After making series of empirical studies and research tours both within and outside the country, the Ugoh Study Group came up with a firm recommendation in November 1991 that VAT should be introduced in Nigeria after two years of preparatory work. As a follow up, the Ijewere-led Modified Value Added Tax (MVAT) Committee was set up in 1992 to undertake preliminary work for the introduction of the new tax. The Committee handed over to the Federal Inland Revenue Services (FIRS) who eventually took over the administration of the tax. See. J.K. Naiyeju, *Value-Added Tax. The facts of a positive Tax in Nigeria*, Kupag Public Affairs (1996) p. 35.

<sup>6</sup> No. 102 of 1993

<sup>7</sup> Statistics showed a great improvement in the VAT returns on yearly basis. For instance, ₦ 8b was realized from the tax in 1994, ₦21b in 1995, ₦ 32b in 1996, ₦ 34b in 1997, ₦ 37b in 1998, ₦ 47b in 1999 while ₦ 12.59b has been collected in the first quarter of 2000. See the 1994 - 2000 Budget Speeches and Breakdown by the Minister of Finance. See also "Govt Income exceeds budget projection". The Guardian of Friday, September 1, 2000. pp. 1-2.

<sup>8</sup> The relative success of VAT in Nigeria has surpassed the expectations of all skeptics including the International Monetary Fund (IMF). Statistics showed a great improvement in the VAT returns on yearly basis. For instance, ₦ 8b was realized from the tax in 1994, ₦21b in 1995, ₦ 32b in 1996, ₦ 34b in 1997, ₦ 37b in 1998, ₦ 47b in 1999 while ₦ 12.59b has been collected in the first quarter of 2000. See the 1994 - 2000 Budget Speeches and Breakdown by the Minister of Finance. See also "Govt Income exceeds budget projection". The Guardian of Friday, September 1, 2000. pp. 1-2.

<sup>9</sup> I.A. Ayua, "An Overview of the Tax Regime in Nigeria" (Unpublished) paper presented at the Workshop on "Current issues in the Nigerian Tax Laws", Organized by the Institute of Advanced Legal Studies (NIALS) Lagos on 21st-2nd April, 1998 p.11.

“It is proposed to have a shift from direct to indirect taxation within the non-oil sector in order to stimulate economic growth in the sectors, whilst still meeting revenue requirements. This is particularly necessary, given that oil revenues are no longer viewed as a sustainable source of revenue and there is the urgent necessity to diversify tax revenue. In this regard, it is proposed that there should be lower rates of direct taxes such as Companies’ Income and Personal Income tax to reduce the cost of doing business in Nigeria by increasing cash flow and disposable income for corporate entities and individuals alike.”<sup>10</sup>

A writer has, however, cautioned against any temptation to abolish income tax in favour of VAT. According to the learned writer “The two taxes can nonetheless be efficiently administered side by side without any problem especially in the context of the low tax regime. There should be no question of one replacing the other. They are complimentary in revenue mobilisation”.<sup>11</sup>

Since 1993,<sup>12</sup> the Value Added Tax Act, had been amended more than half a dozen times<sup>13</sup> the latest being the *Value Added Tax (Amendment) Act*<sup>14</sup> of 2007. Some of the amendments have introduced significant changes which are yet to be reflected in the body of existing literature.<sup>15</sup> This article discusses the thrust and evolutionary path of the changes to the legal and administrative framework of VAT and assesses the direction of development. The aim is to succinctly discuss the current position of the VAT law and administration in Nigeria in a coherent form for the proper guidance of taxpayers, researchers and foreign investors.

## 2.0. LEGAL FRAMEWORK

The Value Added Tax Act<sup>16</sup> originally consisted of 42 sections and three Schedules.<sup>17</sup> The various amendments introduced by the *Finance (Miscellaneous Taxation Provisions) Decrees*<sup>18</sup> over the years were differentiated by adding alphabets such as A, B, C, etc after the amended sections. For example, in 1996, Section 8 of the Decree was amended by inserting Sections 8A and 8B in addition to existing section 8 resulting in sections 8, 8A and 8B. The same applies to sections 10 and 13 which later have sections 10A, 10B and 13A. The various amendments to the VAT Decree, as amended, were

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<sup>10</sup> See para 4.3 of the National Tax Policy – Final DRAFT submitted to the Federal Executive Council. Available online at <http://www.firs.gov.ng/News/National-Tax-Policy.aspx>. Site visited on 6th June 2010.

<sup>11</sup> I.A. Ayua, "An Overview of the Tax Regime in Nigeria" (Unpublished) paper presented at the Workshop on "Current issues in the Nigerian Tax Laws", Organized by the Institute of Advanced Legal Studies (NIALS) Lagos on 21st-2nd April, 1998. p. 14.

<sup>12</sup> VAT was introduced on 24<sup>th</sup> August 1993.

<sup>13</sup> See *Finance (Miscellaneous Taxation Provisions) Decree No. 21 of 1991*, *Finance (Miscellaneous Taxation Provisions) Decree No. 63 of 1991.*, *Finance (Miscellaneous Taxation Provisions) Decree No.31 of 1993*, *Finance (Miscellaneous Taxation Provisions) Decree No. 30 of 1996.*, *Finance (Miscellaneous Taxation Provisions) Decree No. 31 of 1996*, *Finance (Miscellaneous Taxation Provisions) Decree No. 32 of 1996*. *Finance (Miscellaneous Taxation Provisions) Decree No. 18 of 1998.* , *Finance (Miscellaneous Taxation Provisions) Decree No. 19 of 1998*, *Finance (Miscellaneous Taxation Provisions) Decree No. 21 of 1998* *Finance (Miscellaneous Taxation Provisions) Decree No. 40 of 1998.* and *Finance (Miscellaneous Taxation Provisions) Decree No.30 of 1999.*

<sup>14</sup> No 12 of 2007 which commenced on 27<sup>th</sup> May 2007.

<sup>15</sup> See The two authoritative books on VAT in Nigeria were written in 1996 and yet to be revised. See Naiyeju, J.K, *Value Added Tax The facts of a Positive Tax in Nigeria*, (Lagos: Kupag Public Affairs, 1996) and Ogundele, E.A., *Value Added Tax (VAT), Theory and Practice*, (Lagos: Libriserve Ltd, 1996).

<sup>16</sup> *Supra* note 1.

<sup>17</sup> Schedules 1 and 2 contain list of chargeable goods and services respectively while Schedule 3 contained the list of exempted goods and services.

<sup>18</sup> *Supra* note 2.

consolidated in Value Added Tax Act, Cap V-1, Laws of Federation of Nigeria, 2004. Sequels to the consolidation exercise, the provisions of the Act were renumbered by a number to each section serially including the sections which were hitherto differentiated by alphabets which resulted in 27 sections. After the consolidation exercise of 2004, the VAT Act was recently amended by the *Value Added Tax (Amendments) Act*<sup>19</sup> 2007.

The Value Added Tax Act, Cap V-1, Laws of Federation, 2004 consists of 47 sections with one Schedule which contains a list of goods and services exempt.<sup>20</sup> The Federal Inland Revenue Service (FIRS) had published a number of Information Circulars on VAT<sup>21</sup> which to some extent throw light on some of the provisions. It suffices to say that the FIRS Circulars or Information Notices are not legal documents and are merely issued for the guidance of taxpayers. They are neither binding on nor create estoppel against the FIRS.<sup>22</sup>

### **2.1 Scope of Imposition**

VAT is imposed “on the supply of all goods and services other than those goods and services listed in the First Schedule to this Act”.<sup>23</sup> If the charging provisions were to be strictly construed, VAT will be chargeable on international, inter-State and intra-State supplies of goods and services.<sup>24</sup> Apparently in recognition of the need for territorial limitation of the tax to goods and services supplied in Nigeria, the FIRS Information Circular 9304 provides that “supplies made outside Nigeria are outside the scope of Nigerian VAT.”<sup>25</sup> Even without making this qualification, it is hard to see how the tax can be administered extra-territorially considering the principle in *Boucher v Lawson*<sup>26</sup> that no nation will take account of the revenue law of another nation. While the self imposed limitation in the Information Circular might have served good practical purpose, there is the need to effect amend section 2 of the VAT Act to limit the scope of the tax to supply of goods and services in Nigeria. Guidance can be taken from the provisions of section 1(1) of the Value Added Tax Act, 1994 of the United Kingdom which provides that:

“Value Added Tax shall be charged in accordance with the provisions of this Act – (a) on the supply of goods and services within the United Kingdom (including anything treated as such a supply, (b) on the acquisition in the United Kingdom from other member states of any goods; and (c) on the importation of goods from places outside the member States.

The VAT Act had witnessed significant changes in the design of its charging clause. At inception, VAT was chargeable and payable on goods and services listed in column A of Schedules 1 and 2 while

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<sup>19</sup> *Supra* note 16.

<sup>20</sup> At inception The erstwhile Second Schedule and the Value Added Tax Tribunal Rule, 2003 which respectively established and governed the operation of the VAT Tribunal were recently deleted vide the VAT Amending Act, 2007.

<sup>21</sup> See FIRS Information Circular No.93/03 of 25<sup>th</sup> March 1993 on Collection Procedure, FIRS Information Circular No.9304 of 20<sup>th</sup> August, 1993 providing basic information on VAT, FIRS Information Circular No.9305 of 5<sup>th</sup> November, 1993 on VAT on Import to supplement Information Circular No.9304 and FIRS Information Circular No.9401 of 1<sup>st</sup> March, 1994 providing ‘Detailed List of Items Exempted from Value Added Tax (VAT).

<sup>22</sup> See *Halliburton West Africa Ltd v. Federal Board of Inland Revenue (FHC)* (2006) 7 CLRN, 138, at p.156 at lines 29-45.

<sup>23</sup> Section 2, VAT Act

<sup>24</sup> c/f with section 1(1) of the Value Added Tax Act, 1994 of the United Kingdom which provides that “Value Added Tax shall be charged in accordance with the provisions of this Act – (a) on the supply of goods and services within the United Kingdom (including anything treated as such a supply, (b) on the acquisition in the United Kingdom from other member states of any goods; and (c) on the importation of goods from places outside the member States.

<sup>25</sup> See FIRS Information Circular No. 9304 of 20<sup>th</sup> August, 1993 on Value Added Tax (VAT) item 6(ii).

<sup>26</sup> *Cas. t. Hardw.* 84, 89, 191 and *Holman v. Johnson*, Cowp. 341

Schedule 3 contained the list of exempted goods and services.<sup>27</sup> Based on the original design, there were 17 chargeable goods<sup>28</sup> and 24 chargeable services.<sup>29</sup> However, following the policy to expand the base of VAT, a new design was adopted which imposed tax on the supply of “all” goods and services other than the goods and services listed in the Schedule to the Act.<sup>30</sup> The new design, therefore, fundamentally changed the standard for determining chargeable goods. The bright line rule for determining whether a particular good or service is taxable under the extant law is whether it is specifically exempted in the First Schedule. In the absence of any specific exemption, the good or service will be taxable thus giving the tax a very wide base.

### **2.1.1. Exempted goods and services**

Taking the social, political and economic development of Nigeria into consideration, section 3 of the Act exempts the under listed goods and services listed in the Schedule which is divided into two parts<sup>31</sup> thus:

#### **Part 1 – Good Exempt**

1. All medical and pharmaceutical products
2. Basic food items
3. Books and educational materials
4. Baby products
5. Locally produced fertilizer, agricultural and veterinary medicine, farming machinery and farming transportation equipment
6. All exported goods
7. Plant and machinery imported for use in the Export Processing Zone
8. Plant, machinery and equipment purchased for utilization of gas in downstream petroleum operations
9. Tractors, ploughs, agricultural equipment and implements purchased for agricultural purposes.<sup>32</sup>

#### **Part II – Services Exempt**

1. Medical services
2. Services rendered by Community Banks, People’s Bank and Mortgage Institutions;
3. Plays and performances conducted by educational institutions as part

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<sup>27</sup> Section 2 was originally couched thus: ‘The tax shall be charged and payable on the goods and services 9in this Decree referred to as ‘taxable goods and services’) listed in column A of Schedules 1 and 2 to the Decree at the rate specified in column B of the said Schedules.

<sup>28</sup> See Schedule 1 to VAT Act, No 102, 1993.

<sup>29</sup> See Schedule 2 to VAT Act, No 102, 1993.

<sup>30</sup> See section 2, LFN 2004.

<sup>31</sup> Part Three was added by the VAT Amending Act for zero rated goods and services. See section 13 of the *VAT (Amending) Act. Supra* note 14.

<sup>32</sup> A writer has proffered reasons for these exemptions. According him basic food items, baby food, medical services etc are exempted because they are heavily patronized by the poor people. Medical services and pharmaceutical products are exempted because they are essential to life and governments wants to make them affordable. Books and educational materials are exempted because of the government policy of eradicating illiteracy and innumeracy. Agricultural products because they are difficult to tax. Financial services are exempted because they are low revenue yielding and VATing them may not be cost effective. See Ogundele, E.A.,pp.140-1. *Supra* note 15.

- of learning and  
4. All exported services.”

The meaning and scope of the exempted goods and services are not defined in either the Statute or the FIRS Circulars. For example, the scope of what is meant by “basic food” is not clear. Generally, what is a basic food depends on the status in life of an individual and varies from person to person.<sup>33</sup> The present practice by the FIRS is to limit the meaning of basic food to uncooked and unprocessed food items,<sup>34</sup> while processed food items such as spaghetti, corn flakes, baked beans and cheese are taxable. It is submitted that in the absence of clear definition of what constitutes basic food item, the current practice which imposes tax on processed and manufactured foods is open to challenge. This will also accord with the principle that ambiguity in tax laws should be construed in favour of the taxpayer.

At inception, there were 7 exempted goods and three exempted services. Initially, the trend was to extend the exempted goods and services from time to time ostensibly in response to lobby from interest groups. In 1996 the exempted list were increased to twelve while the services were increased to four.<sup>35</sup> Apparently being wary of the gradual erosion of the revenue base of VAT and perhaps curb the growing demand for tax exemption, a policy was adopted to restrict the scope of exemptions by reducing the number of goods and services on the First Schedule and therefore broadening the base of VAT.<sup>36</sup> Against this background, newspapers and magazines<sup>37</sup> and commercial vehicles and commercial vehicle spare parts which were part of the original seven exempted items were deleted<sup>38</sup> by Decree No. 30 of 1999. Only five out of the original 7 exempted goods survived till today in the First Schedule under the LFN, 2004 while all the exempted services had been retained with a new addition.<sup>39</sup>

## 2.2. Rate

Nigeria adopts the single rate of 5 per cent of the value of all taxable goods and services<sup>40</sup> which is the world lowest VAT rate.<sup>41</sup> A recent attempt by the National Assembly to increase the rate of VAT to 10% was unsuccessful.<sup>42</sup> Despite the avowed policy of the Federal Government to increase the VAT

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<sup>33</sup> Under the law of contract, whether an article e.g. cloth, food, shelter is a necessary or not is a question of mixed law and fact. The preliminary question whether an article is capable of being a necessary is one to be decided by a judge. If the judge decides that the article is capable of being a necessary it is question of fact whether it a necessary in the particular circumstances. This process involves a consideration of the status of the infant in life, whether he has already has an adequate supply of the articles and so on. See *Chapple v. Cooper* (1844) 13 M & W 253, *Peters v. Flemming* (1840) 6 M & W 42.

<sup>34</sup> such as *gari* (a staple cassava food in Nigeria)

<sup>35</sup> See generally *Finance (Miscellaneous Taxation Provisions) Decree No. 30 of 1996.*, *Finance (Miscellaneous Taxation Provisions) Decree No. 31 of 1996*, *Finance (Miscellaneous Taxation Provisions) Decree No. 32 of 1996*.

<sup>36</sup>Item such as water treatment chemicals, medical services, services rendered by community banks, peoples bank and mortgage institutions, plays and performances conducted by educational institutions as part of learning which were originally exempted now attract VAT by removing them from the list of exemption. For instance, President Olusegun Obasanjo declared in his year 2000 Budget Speech that the base of VAT will be further widened by delisting some of the exempted goods and services. See the 2000 Budget Speech.

<sup>37</sup> Item 4 of Schedule 3

<sup>38</sup> Item 6 of Schedule 3.

<sup>39</sup>The phrase “All exported services” was inserted vide the *Finance (Miscellaneous Taxation Provisions) Act No. 31, of 1996*.

<sup>40</sup> See section 4, VAT Act.

<sup>41</sup> See section 4. The rate is as high as 85 percent on some good and services in Kenya and Malawi. The rate is 17.5 percent in Ghana and 18 percent in Benin respectively. See. J.K. Naiyeju, *op. cit.* p. 18.

<sup>42</sup> Paragraph 3 of a Bill to amend the Value Added Tax Act which is pending before the National Assembly has received stiff opposition from the Chartered Institute of Taxation of Nigeria, Organised Private Sector, the Nigerian Labour Congress and even the State Governments who are the major beneficiaries of the revenue from VAT. See “Hike in VAT rate will be devastating to Industries say CITN Chief” Daily Independent, Friday, January 27<sup>th</sup> 2006, p. C7.

rate the implementation has proved to be Herculean and unachievable so far due to social and political environment. The arguments of those who are opposed to the rate increment have always been that FIRS should strive to expand the coverage of VAT to those who are presently out of the tax net and generally increase the compliance level.

### **2.3. Taxable person Registration for VAT**

VAT is collected through registered persons who are known as “taxable persons”. A taxable person is obliged to register with the FIRS for VAT collection “within six months of the commencement of the Act or within six months of the commencement of business, whichever is earlier.”<sup>43</sup> Failure to register attract a penalty of N10, 000.00 for the first month in which the failure occurs; and N5,000.00 for each subsequent month.<sup>44</sup> Since a period of six months has elapsed after the promulgation of the Act, it presupposes that every taxable person is now obliged to register as soon as it commences business. There has been a suggestion that all new businesses should be granted a period of six months’ grace after the commencement of business to register for VAT.<sup>45</sup> If the suggestion were to be adopted, it might lead to the unintended effect of denying taxable persons the opportunity to set off their inputs against the output VAT. Since VAT can only be lawfully collected after registration it means that until then the taxable person will not have any output VAT against which the input tax can be offset.

Although, the Act imposes an obligation on every taxable person to register, there was the initial concession, which allowed retailers a period of three years to register. Going by the bare statutory provisions, every retailer is obliged to register for VAT be collecting tax due upon the supply of goods and services to its customers since 1996 after the expiration of the concession period. This however, seems to be a tall order judging by little or no formal regulation of commercial activities of the retail level in Nigeria. The futility of collecting sales tax at the retail level in Nigeria was underscored by the Supreme Court in the case of *Aberuagba v A.G. Ogun*<sup>46</sup> State thus:

“In developed countries where retail trade is carried on in departmental stores, supermarkets, drug stores and shops where all sales are accounted for and the business addresses registered, it is convenient and save for any government to appoint retailers as its agents for the collection of Saes Tax. Every penny collected will ordinarily reach the government. The position is entirely different in Nigeria. T is notorious fact that except in few departmental stores, shops and drug-stores, where accounts of sales are kept, the bulk of the retail trade is carried on by swam of amorphous trades in the market places and in their homes, on our streets and highways, under our bridges and trees. They do not keep record or account of their business dealings and they cannot be reached by any Government. It would be a bonanza t those retail traders to appoint them as agents for the collection of any sales tax. Except in the case of the few retailers that I have mentioned, not a kobo would reach the government. Consequently, for any meaningful sales tax to reach the government, it must be collected by agents, such as distributors, whose accountability to the government for the tax collected is assured”.<sup>47</sup>

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<sup>43</sup> See section 8 (1) , VAT Act.

<sup>44</sup> Section 8(2), VAT Act.

<sup>45</sup> B. Balogun, “Issues in Value Added Tax”, (Unpublished) paper presented at a National Seminar on Critical Issues on Tax and Tax Management, May 14 1997, p.5

<sup>46</sup> [1995] NWLR (Pt.3) 385

<sup>47</sup> Per Bello, J.S.C. (As he then was). *Id* at p.399.

Although section 9 of the VAT Act simply requires a taxable person to register for VAT collection which presupposes a single registration,<sup>48</sup> in practice, the FIRS has however directed that where a taxable person has more than one branch, each branch should register separately at the nearest tax office to it. The implication of this is that such a business entity is obliged to have a multiple registration and maintain independent records of its VAT transactions at each branch. This directive has been severely criticized as imposing avoidable hardship on affected taxable persons.<sup>49</sup>

The VAT Act has been quite dynamic in the area of registration of taxable person. The initial policy was to exclude public authorities from being taxable persons.<sup>50</sup> In a bid to accelerate the rate of registration, the VAT Act was amended to impose obligation on all Government Ministries, Statutory bodies and Agencies at the Federal, State and Local Government levels to act as VAT collecting agents.<sup>51</sup> A taxable person is defined as “a person who independently carries out in any place an economic activity as a producer, whole a trader, supplier of goods, supplier of services (including mining and other related activities) or person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business and includes an agency of government acting in that capacity.”<sup>52</sup>

Section 10 mandates a non-resident company, carrying on business in Nigeria to register for VAT by using the address of the person with whom it has a subsisting contract.<sup>53</sup> A non resident company shall include the tax in its invoice while the person to whom the goods and services are supplied shall remit tax in the currency of the transaction.<sup>54</sup> As laudable as the provisions may be, they however pose certain administrative challenges in practice. For instance, where a foreign company has business dealing with more than one person, who are located in different places across the country, the foreign company will be required to register with the tax office at different locations where its customers are located which may be administratively burdensome and discouraging. A better approach, in our view, may be to require each local supplier to disclose such transaction and withhold the requisite VAT rather than requesting the foreign company to register. This is more so when in practice, the trading activities of such foreign companies usually became known to through either a voluntary compliance or during the audit of the local companies with which the foreign company had contracted.

It is remarkable that the obligation to remit tax in the currency of transaction applies only to transactions involving non-resident companies. The basis for these discriminatory provisions is not clear. While, transactions involving foreign companies are usually denominated wholly in foreign currency or partly in foreign currency and partly in naira, Nigerian companies may, and sometimes do, request payment in foreign currencies whether partly or wholly. Against this background, it is suggested

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<sup>48</sup> Section 8, VAT Act.

<sup>49</sup> R.O. Ojukotola, *Value Added Tax in Nigeria: A critical Appraisal of its Legal and Administrative Framework*, (Unpublished) Project Presented in partial fulfillment of the Requirements for the Award of Bachelor of Laws Degree (LL.B) of the University of Lagos, August, 2000. pp. 41-42.

<sup>50</sup> “Taxable persons” was initially defined as “a person (other than a public authority acting in that capacity) who independently carries out in any place an economic activity as a producer, whole a trader, supplier of goods, supplier of services (including mining and other related activities) or person exploiting tangible or intangible property for the purpose of obtaining income therefrom by way of trade or business. See section 42 of Decree 102,

<sup>51</sup> Section 8A, VAT Act.

<sup>52</sup> See section 46, VAT Act.

<sup>53</sup> Section 8B, VAT Act.

<sup>54</sup> Section 8B (2) , VAT Act.

that the provision should be extended to all taxable persons as it is done under the Companies Income Tax and the Petroleum Profits Tax.<sup>55</sup>

#### 2.4. Rendering of Account

Taxable persons are obligated to keep such records and books of all transactions, operations, imports and other activities relating to taxable goods and services as are sufficient to determine the correct amount of the tax due.<sup>56</sup> No particular accounting standard is prescribed. Hence books and records which a taxable person is expected to keep will depend on the nature and size of its business provided that they are “sufficient to determine the correct amount due”. A writer had opined that it is sufficient if a taxable person keeps the usual account books such as Cashbook, Sales and Purchase Daybooks, Trial Balances, Profit and Loss Accounts and Balance Sheets.<sup>57</sup> A taxable person shall render a monthly return of all the taxable goods and services to the FIRS on or before the 30th day of every month.<sup>58</sup> Failure to render a return within the stipulated period of time attracts a penalty of 5 per cent of the sum due per annum plus interest at the commercial rate in addition to the tax.<sup>59</sup>

A taxable person who fails to render a return or renders an inaccurate return is liable to be assessed by the FIRS based on its best of judgement (BOJ).<sup>60</sup> VAT is largely a self-assessed tax. Assessment by the FIRS will only be made as a last resort. Although no specific time is prescribed within which a taxable person is required to respond to the BOJ, it is submitted that the taxable person is nevertheless entitled to reasonable notice failing which the assessment may be voided.<sup>61</sup>

#### 2.5. Computation of tax due

The question of how much VAT is payable may be straightforward for the final consumer (who simply pays without obligation to do anything else) but this is not so for a taxable person who is an agent of collection. While a taxable person has obligation to collect tax on taxable goods and services he is also under obligation to pay VAT on taxable goods and services supplied to him. The tax collected by a taxable person is called output<sup>62</sup> VAT while the tax paid by him is called input VAT.<sup>63</sup> The VAT system is structured in such a way that a taxable person is able to take credit for the VAT paid by it on its inputs. The processes are contained in sections 12, 13, 14, 15 &-16 of the VAT Act.<sup>64</sup> There are three steps leading to the ascertainment of the VAT due or refundable. First, a taxable person will ascertain the VAT collected by him on his supplies during the reporting period. Second, he will ascertain the VAT paid by him on purchases used by him to provide the taxable goods during the same reporting period. Third, find out the difference between the VAT on supplies made and VAT paid on purchases made towards such supplies to determine the amount of VAT either payable to FIRS or refundable to the registered person.<sup>65</sup> The taxable person is thus allowed to indemnify itself against any loss and the rate

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<sup>55</sup> See section 54(1) *Companies Income Tax Act*, LFN C21, LFN, 2004 and section 40(1) *Petroleum Profits Tax Act*, Cap P13, LFN, 2004.

<sup>56</sup> Section 11, VAT act.

<sup>57</sup> Naiyeju, J.K, p.56, *supra* note 5.

<sup>58</sup> Section 15(1).

<sup>59</sup> See Section 19 (1)

<sup>60</sup> See Section 18 (1)

<sup>61</sup> See section 35 (1) Constitution of the Federal Republic of Nigeria, 1999. See also. *FBIR v Joseph Rezcallah* 1 N.T.C 78, *FBIR v Animashaun* 1 NTC 278, *FBIR v Nkob & F.N.M.G.B.A.B. Stores Ltd.* 1 N.T.C. 260.

<sup>62</sup> See section 14(2) VAT Act.

<sup>63</sup> See section 12(2) VAT Act.

<sup>64</sup> See sections 12, 14, 15 &16.

<sup>65</sup> Naiyeju, J.K, p.55., *Supra* at note 5

of VAT that is ultimately borne by the final consumer is kept at 5 percent. In this way, the registered person acts as a mere unpaid agent of the FIRS without bearing the tax burden.<sup>66</sup>

One of the areas that have generated serious controversy in practice is the provision of section 16 which entitles a registered person to deduct its input VAT from its output VAT and claim refund if the input VAT exceeds the output VAT. At the preparatory stage for the introduction of VAT in Nigeria, the refund system was adumbrated as one of its unique features designed to ensure that registered persons do not bear the burden of the new tax. After the commencement of the tax it was said that a *VAT Refund Account* had been opened with the Central Bank of Nigeria where definite provision were made every month to take care of verified fund claims.<sup>67</sup> Section 16 simply provides that:

“16-(1) A taxable person shall, on rendering a return under subsection (1) of section 12 of this Act –

- (a) If the output tax exceeds the input, remit the excess to the Board; or
- (b) If the input tax exceeds the output tax, be entitled to a refund of the excess tax from the Board produce then of such documents as the Board may, from time to time require”.

Section 12(2) simply defines input tax as “the tax paid by a taxable person to his supplier on the taxable goods and services purchased by or supplied to him”. Going by the literal interpretation of this provision, a taxable person should be entitled to claim all the VAT paid on all his inputs. Hence, the provision can be said to enact the classical approach to the treatment of refund. Consequently, there was a floodgate of applications for refund. The FIRS responded by setting out the guidelines and requirements for claiming refund in the Information Circular ostensibly to curb abuses. The circular stated that there were three ways of claiming refund viz: (i) as credit method; or (ii) direct cash method; or (iii) a combination of (i) and (ii). Unless a person indicates, his preference for cash refund, the FIRS would presume a preference for the credit method after the necessary audit has been carried out.<sup>68</sup> While the audit requirement could have discouraged some taxable person with skeleton in their cupboard, this is, however, not for those with genuine claims and fairly good tax records.

It is submitted that the practice of granting credit is a violation of the express provision of the law that prescribes a refund. Although the word “cash” refund was not employed by the Act, the literal meaning of “refund” is “to pay back or repayment of money”. Therefore, a refund cannot by any imagination be said to include a credit system. What the FIRS ought to have done was to propose an amendment to the Act to incorporate a credit system.

In 1998, the VAT Act was amended by delimiting the scope of allowable and unallowable input vide Section 6 of the *Finance (Miscellaneous Taxation Provisions) Act No 18 1998* which introduced 13(A) (now section 17 LFN, 2004) as follows:

“17(1) For purpose of Section 13 (1) of this Act, the input tax to be allowed as a deduction from output tax shall be limited to the tax on goods purchased or imported directly for resale and goods which form the stock-in-trade used for the direct production of any new product on which the output tax is charged.

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<sup>66</sup> If VAT system is in reality as simple as shown in the above example, each taxable person would sustain no economic burden on the goods and services purchased by it, and all the tax burden would be shifted down the chain to the ultimate consumer. However, due to the immense complexity of transactions, inadequate record keeping, dishonesty and lack of adequate knowledge of its operations, VAT may not be as simple as it seems, I.A. Balogun, p. 2, *supra* note 45.

<sup>67</sup> See generally the FIRS Information Circular 9501 on “VAT Refund”.

<sup>68</sup> Naiyeju, J.K., at p.81, *supra* note 5.

- (2) Input Tax:
- (a) On any business, service and general administration of any business which otherwise can be expended through the income statement (profit and loss accounts) and
  - (b) On any capital item and asset which is to be capitalized along with cost of the capital item and asset; shall not be allowed as a deduction from output tax”.

For the avoidance of doubt, an input tax will only be allowed under section 13 when it is on:

- (i) goods purchased or imported directly for resale; or
- (ii) goods which form stock-in-trade; or
- (iii) goods used for the direct production (raw materials) of any good.

The above provisions, thus, limit allowable input VAT to VAT on goods purchased or imported directly for resale or and goods which form stock in trade. Input VAT on overhead, services and fixed assets are not allowed. By allowing input VAT to be expensed through the profit and loss account only provides a taxable person with a 30% relief. Taxable persons in such situations, therefore, bear some hidden VAT contrary to the principle that the final consumers bear the entire VAT burden.<sup>69</sup>

## 2.6. VAT on Exports

Non-Oil exports are zero-rated by virtue of the VAT (Amendment) Act, 2007.<sup>70</sup> Originally, the FIRS granted exported goods and services “zero-rated status” as a form of concession<sup>71</sup> ostensibly to enhance the competitive advantages of Nigerian goods and services in the international market.<sup>72</sup> The FIRS, became inundated with applications for refund, particularly from the oil producing companies who were involved in exportation of petroleum products. The inability of granting all the applications for refund in such cases eventually made the FIRS to rethink the expediency of the concession and consequently amended the First Schedule by including “all exports” and “all export services” in the list of exempted goods and services.<sup>73</sup> Considering that exemption status puts a taxable person somewhat at a disadvantage in claiming its input VAT, the position was eventually reviewed by making non-oil exports zero rated with the hope that it will make Nigerian products more competitive in the international market. For the laudable objective to be achieved, other resources of the nation will have to be harnessed to create an overall enabling environment that will reduce cost of doing business.

## 2.7. Distribution of VAT Proceed

VAT was introduced in Nigeria in 1993 mainly as a Federal intervention to help the State Government to modernize their sales tax and consequently enhance their revenue. The initial policy on the distribution of the revenue from VAT was that 80 percent of it would be shared among the States

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<sup>69</sup> The argument of the FIRS is that the taxpayer is the final consumer for the goods and services other than those used directly for resale or which form stock in trade. For an extensive treatment of the VAT refund System in Nigeria, see Sanni, A.O., “VAT Refund System – A Critique”, Chattered Institute of Taxation of Nigerian (CITN) Tax Practice Series No. 3. pp. 1-23.

<sup>70</sup> See Section of the Value Added Tax (Amendment) Act which inserted a new Part III in the First Schedule.

<sup>71</sup> See FIRS Circular of 29/8/93. There is no specific provision in the VAT Act which accord a zero- rated status to any good or services.

<sup>72</sup> J.K. Naiyeju, p. 26. Supra note -

<sup>73</sup> See section 35 of *Finance (Miscellaneous Taxation Provisions) Act No. 31, 1996*.

and the Federal Capital Territory while the Federal Government will retain 20 percent as administrative charges. However, when VAT turned out to be quite successful, the distribution formula was altered in favour of the Federal Government and also extended to the local government councils in the ratio of 50, 25 and 25 per cents to the federal, state and local governments respectively. Due to protest by State Governments, the distribution formula has been reviewed on several occasions<sup>74</sup> in favour of the States and Local Government Councils to arrive at the present formula which is 15, 50 and 35 percents to the Federal, States and Local Governments.<sup>75</sup>

In spite of the review of the sharing formula, Lagos State, has always expressed concern about the fairness of the formula for the distribution of VAT revenue<sup>76</sup> which eventually caused the Lagos State Government to re-introduce its Sales Tax Law vide the *Sales Tax (Schedule Amendment) Order 2000 of Lagos State*. Hence, Lagos State commenced the collection of Sales Tax within Lagos State from retailers and manufacturers notwithstanding that it continues to share from the VAT revenue. In an attempt to address the demand for a more equitable sharing formula, the VAT Act was recently amended vide *Value Added Tax (Amendment) Act No 12 of 2007* such that not less than 20% of the revenue distribution among the States and Local Government shall reflect the principle of derivation. Although the amendment has significantly increased the share of the Lagos State, it has not sufficiently addressed its concern about equity in the distribution.

Meanwhile, aggrieved taxpayers in Lagos State had instituted a number of actions to challenge the constitutionality of the Sales Tax Law in about 10 different suits at both the Lagos High Court and the Federal High Court Lagos Division. Remarkably, virtually all the suits instituted in the Lagos High Court upheld the constitutionality of Sales Tax Law of Lagos State and assessments raised there under, while the VAT Act was declared *null and void*. This development caused some taxpayers to institute their action in the Federal High Court against the Lagos State and the FIRS. At least, two of the concluded suits in the Federal High Court upheld the constitutionality of VAT Act and declared the Sales Tax Law of Lagos State null and void while others are still pending. Lagos State appealed unsuccessfully to the Court of Appeal in *Attorney-General, Lagos State v. Eko Hotels*<sup>77</sup> which affirmed the decision of the Federal High Court that Sales Tax Law of Lagos State was *null and void*. In view of the adverse decision of the Court of Appeal in *Attorney-General, Lagos State v. Eko Hotels (Supra)* Lagos State recently invoked the original jurisdiction of the Supreme Court pursuant to section 232(1) of the Constitution of the Federal Republic of Nigeria, 1999 (1999 Constitution) seeking the determination of the constitutionality of VAT as a federal tax.

Meanwhile, while the VAT case is pending at the Supreme Court, the Lagos State House of Assembly passed the Hotel Occupancy & Restaurant Consumption Law (popularly known as “tourism tax”) which imposes a five per cent tax on goods and services purchased from hotels, restaurants and event centres in the State which again had sparked off chains of litigation.

## 2.8. Recovery

VAT operates on the basis of self assessment. A taxable person is required to remit tax collected not later than the 21<sup>st</sup> day of the following that in which the purchase or supply was made, a return of all

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<sup>74</sup> The formula has been changed six times in 1994, 1995, 1996, 1997, 1998 & 1999

<sup>75</sup> Section 40 VAT Act.

<sup>76</sup> It has been contended, that some States are getting a far more disproportionate share of the aggregate revenue relative to the amount of VAT being collected within their territories, to the detriment of other States where the bulk of VAT is being collected. This development has made the Lagos State Government to introduce sales tax at the rate of 5% on selected goods and services within Lagos State simultaneously with VAT.

<sup>77</sup> CA/L/428/2005

taxable goods and services made by him during the preceding month.<sup>78</sup> The period for filing return was reduced from 30 days to 21 days by the 2007 Amending Act.<sup>79</sup>

A taxpayer who is aggrieved by an assessment made him may file an objection to the FIRS<sup>80</sup> which shall be determined within 30 days.<sup>81</sup> Appeal lies from the decisions of the FIRS to the Tax Appeal Tribunal established under the Federal Inland Revenue Services<sup>82</sup> and thereafter to the Federal High Court. Originally, section 16 of the VAT Decree vested jurisdiction in the Federal High Court for the recovery of any tax, penalty or interest which remains unpaid after the period stipulated for payment.<sup>83</sup> The Federal High Court is one of the Superior Courts established under the Constitution.<sup>84</sup> Section 251(a) of the 1999 Constitution vests the Federal High Court with exclusive jurisdiction to hear and determine causes and matters relating to the revenue of the Federal Government in which the Federal Government or any of its organs or agency is a party.

In 1996, the Value Added Tax Tribunal was established.<sup>85</sup> Section 16 of the Decree provides thus:

- 16 (1) Any tax, penalty or interest which remains unpaid after the period specified for payment may be recovered by the FIRS through proceedings in the value Added Tax Tribunal.
- (2) A taxable person who is aggrieved by an assessment made on the person may appeal to the Value Added Tribunal.
- (3) Appeal from the Value Added Tax Tribunal shall be made to the Federal Court of Appeal.

Although the above provisions derogated from section 251(a) of the Constitution which vested jurisdiction on the Federal High Court, the power of the Military Government to overreach the provisions of the Constitution pursuant to the Constitution (Suspension and Modification) Decree No 1 of 1984 was not in doubt. Hence, the jurisdiction of the VAT Tribunal prevailed over that of the Federal High Court by virtue throughout the period of the Military rule.

Sequel to the commencement of civilian rule under the 1999 Constitution, some taxpayers leveraged on the supremacy of the Constitution to challenge the jurisdiction of the VAT tribunal to entertain action by the FIRS for recovery of taxes due. The Court of Appeal held in *Stabilini v FBIR*<sup>86</sup> and *Cadbury v FBIR*<sup>87</sup> that the establishment of the VAT Tribunal violated the provisions of section 251(1)(a) of the 1999 Constitution which vests exclusive jurisdiction on the Federal High Court on causes or matters relating to federal taxation and revenue of the Federal Government and therefore null and void.

A Tax Appeal Tribunal has now been established with power to settle disputes arising from the operations of all the federal tax statutes listed in the First Schedule to Federal Inland Revenue Service (Establishment) Act<sup>88</sup> including the VAT Act thus abolishing the jurisdiction of VAT Tribunal by

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<sup>78</sup> See section 15, as amended by 2007 Amending Act.

<sup>79</sup> See section 7(a) 2007 Amending Act.

<sup>80</sup> See section 10(2), 2007 Amending Act.

<sup>81</sup> See section 10(3), 2007 Amending Act.

<sup>82</sup> 10(4) 2007 Amending Act.

<sup>83</sup> See section 16 of the VAT Decree.

<sup>84</sup> The superior courts in Nigeria are established under section 6(5) of the *Constitution of the Federal Republic of Nigeria*, 1999, Cap C23, LFN, 2004.

<sup>85</sup> See section 31 of the *Finance (Miscellaneous) Tax provisions Decree No. 3 2 of 1996*

<sup>86</sup> (2009) 13 N.W.L.R. (pt. 1157) 200; (2009) 1 T.L.R.N.1.

<sup>87</sup> (2010) 2 N.W.L.R. (pt. 1179) 561; (2010) 2 T.L.R.N. 16

<sup>88</sup> See section 59(2) FIRS Act.

necessary implication.<sup>89</sup> The FIR Act has cured the mischief which caused the Court of Appeal to invalidate the jurisdiction of the VAT tribunal by providing that appeal shall go from the decisions of the Tax Appeal Tribunal to the Federal High Court.<sup>90</sup> The Tax Appeal Tribunal was recently inaugurated and will hopefully commence sitting in no distant future.

### 2.9. Offences

Various offences were created under the VAT Act in order to punish defaulters and minimize evasion. These are contained in Chapter V.<sup>91</sup> The offences range from furnishing of false document,<sup>92</sup> evasion,<sup>93</sup> failure to make attribution,<sup>94</sup> failure to notify change of address,<sup>95</sup> failure to issue tax invoice,<sup>96</sup> resisting an authorized officer of the FIRS,<sup>97</sup> issuing of tax invoice by an unauthorized person,<sup>98</sup> Failure to register,<sup>99</sup> failure to keep proper record and accounts,<sup>100</sup> failure to collect tax,<sup>101</sup> failure to submit returns,<sup>102</sup> aiding and abetting commission of offences,<sup>103</sup> Where an offence is committed by a body corporate every director, manager or secretary and in the case of partnership, every partner is severally guilty and liable.<sup>104</sup> Each offence attracts penalties such as a fine and or imprisonment depending on the gravity. The offence of evasion of VAT payment carries the severest penalty of “a fine of N30.000 or two times the amount of the tax being evaded, whichever is greater, or to imprisonment for a term not exceeding three years.”<sup>105</sup> The premises of a taxable person can be sealed up where he knowingly or intentionally fails to register for VAT after one month of being convicted for the offence of non-registration.<sup>106</sup>

### 3.0. ADMINISTRATION

VAT is administered and managed by the FIRS, a federal agency responsible for the administration of federal taxes with power to do such things as may be deemed necessary and expedient for the assessment and collection of the tax due.<sup>107</sup> At the planning stage, some reservations were expressed about the competence and desirability of the FIRS to effectively administer VAT. The Federal Government, rightly in my view, rejected the recommendation that a fully independent and self-sustaining Commission should be established to administer VAT. Rather, a VAT Directorate was

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<sup>89</sup> There is no express provisions in the 2007 Act which specifically abolishes the VAT tribunal. However, the section which hitherto established the Tribunal had been substituted with a new section which makes reference to the Tax Appeal Tribunal.

<sup>90</sup> See section 59 and para 17(1) of the Fifth Schedule to the FIRS Act.

<sup>91</sup> Section 21-33 of the VAT Act.

<sup>92</sup> Section 21 of the VAT Act.

<sup>93</sup> Section 22, *id*

<sup>94</sup> Section 23, *id*

<sup>95</sup> Section 24, *id*

<sup>96</sup> Section 25, *id*

<sup>97</sup> Section 26, *id*

<sup>98</sup> Section 27, *id*

<sup>99</sup> Section 28, *id*

<sup>100</sup> Section 29, *id*

<sup>101</sup> Section 30, *id*

<sup>102</sup> Section 31, *id*

<sup>103</sup> Section 32, *id*

<sup>104</sup> Section 33, *id*

<sup>105</sup> Section 22, *id*

<sup>106</sup> Section 28, *id*

<sup>107</sup> Section 7(2), *id*

established as one of the six Directorates of FBIR<sup>108</sup> while Local VAT Offices (LVOs) were established in all the State capitals and some major towns in each States with the ultimate plan to have an LVO in each of the 774 Local Government Councils. Each of the LVO was under the supervision and control of the Zonal Office in the area.<sup>109</sup> The Zonal Co-ordinator on his part reports regularly the activities and performances of the LVOs in his zone to the VAT Director in Abuja. In terms of physical location, the Local VAT offices are separated from the Income Tax Area Offices of the FIRS but the same Zonal Co-ordinator was maintained for both the Income Tax and VAT.<sup>110</sup> Furthermore, a separate VAT Technical Committee was established by the Act<sup>111</sup> and vested with powers to consider all matters that may require professional and technical expertise and make recommendation to the FIRS.<sup>112</sup>

The administration of VAT has undergone significant changes in the wake of the ongoing tax reform of the Federal Government of Nigeria. The campaign for restructuring and grant of administrative and financial autonomy for the Federal Inland Revenue Services (FIRS) has been a long drawn battle. The triumph came with the promulgation of the Federal Inland Revenue Service (Establishment) Act<sup>113</sup> which establishes the FIRS under a separate statute dedicated for that purpose. Hitherto, the Federal Board of Inland Revenue (FBIR) was established under the Companies Income Tax Act. The Establishment of the Federal Inland Revenue Service (FIRS) under a separate statute of its own now makes for easy reference for administrators, practitioners and researchers. The FIRS Act has granted array of powers and a measure of autonomy to the FIRS to enable it discharge its statutory roles. For instance, FIRS is now able to recruit, discipline and determine the terms and other conditions of service of its staff outside the civil service structure. Since the take off of the new structure, the FIRS has been re-invented in terms of dynamism and professionalism.<sup>114</sup>

Hitherto, taxpayers were required to approach different offices- sometimes situated far apart – for different tax needs, thus making the process of assessment and collection of tax cumbersome and distinctly tortuous.<sup>115</sup> To address this concern, the FIRS had created 77 Integrated Tax Offices (ITOs) as one-stop shops for all tax payments including VAT. This development therefore drew a curtain on the existence and functionality of Local VAT Offices. Towards this end, section 2 of the VAT (Amendment) Act 2007 provides that the word “VAT Office” should be substituted with ‘Tax Office’ wherever it appears in the Principal Act.<sup>116</sup>

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<sup>108</sup> The other five Directorates are the Directorate for Human Resources, Directorate of Management, Planning, Research and Statistic, Directorate of Finance and Related Operational Matters and Investigation, Directorate for Tax Collection and Accounting for Tax Collected and Directorate for petroleum Profit Tax and Related Operations.

<sup>109</sup> For instance the LVOs in *Osogbo, Ile-Ife, Ibadan, Benin, Akure, Warri, Ilorin* and *Asaba* are under Western Zonal Co-ordinator (ZC) located in *Ibadan*.

<sup>110</sup> This is apart from the Technical Committee of the erstwhile FBIR. See section 17 of the VAT Decree No. 102, 1993 and section 1A of the Companies Income Tax Act, as amended by *Finance (Miscellaneous Taxation Provisions) Decree No. 3 of 1993*.

<sup>111</sup> Section 17

<sup>112</sup> Section 18

<sup>113</sup> Arogundade, J.A., *Nigerian Income Tax & Its International Dimensions*, 2<sup>nd</sup> edn., (Ibadan: Spectrum Books Ltd, 2010) , p.1

<sup>114</sup> In its long history, the public perception of the FIRS have been mixed. From a notoriously corrupt, inefficient and lame bureaucracy, the agency has recently received recognition as one of the few public institutions that are doing relatively better. This Day Newspapers gave it the Government Agency of the Year 2008 Award for spearheading ‘a revolutionary tax collection system that has helped increasing the revenue profile of the Federal Government. See Ukeje, C & Olayode, K., “The Federal Inland Revenue Service as a Pocket of Effectiveness: Evidence and Contradictions of Tax Administration in Nigeria, (Unpublished), p. 5.

<sup>115</sup> *Id.*, p.18.

<sup>116</sup> See section 2 of *Value Added Tax (Amendment) Act, 2007*

#### 4.0. CONCLUSION

The legal framework for VAT in Nigeria is quite simple and easy-to-understand. The simplicity of the VAT Act is commendable considering that VAT is not only the concern of lawyers and accountants but also that of ordinary businessmen and women who are under obligation to register and collect VAT as agent of the Government. The VAT administration has been pursued so far in a manner devoid of political and civil upheavals, which heralded its introduction and administration in some other countries.<sup>117</sup>

The VAT Law and administration had witnessed some significant growth since inception in 1993. The above discussion has revealed that more changes have taken place in the areas of expanding the base of the tax for instance through the restriction of exemption, expansion of registered persons, restricting the scope of refund, and curbing evasion by making the issuance of invoice mandatory. The VAT administration has also been streamlined with that of other federal taxes under the *Federal Inland Revenue Service (Establishment) Act*<sup>118</sup> (FIRS Act). For instance, the Local VAT Offices (LVOs) which were hitherto separated from Income Tax Offices now form part of the Integrated Tax Office (ITO).<sup>119</sup> Also, the dichotomy in appeal process under the VAT Act through the establishment of the VAT Appeal Tribunal has been abolished while all appeals in respect of federal taxes (including VAT) now lie to the Tax Appeal Tribunal. Notwithstanding, these changes, there are a number of areas which are of concern to the taxpayers which are yet to be reviewed. Such areas include the need to make the scope of VAT more definite rather than open-ended, abolition of branch registration, the need to redefine input VAT in a manner that will ensure that businesses do not bear any burden of VAT by making it possible for them to net off their input VAT. It may also be expedient to exempt the retail stage in the informal sector of the economy until the commercial activities at this level become fairly well regulated and streamline the gap between law and practice. In the final analysis, the future growth of VAT will, to a large extent, depend on the outcome of the case that is pending before the Supreme Court<sup>120</sup> on the competence of the Federal Government to continue to administer VAT under the 1999 Constitution. Should the case be decided in favour of the Federal Government, it is hoped that future amendments would address some of these concerns. However, if the Plaintiff should succeed, it will draw the curtain on VAT in Nigeria and give birth to State Sales Tax or State modified VAT.

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<sup>117</sup> Such as Ghana.

<sup>118</sup> No. 13, 2007.

<sup>119</sup> *Supra* note 118.

<sup>120</sup> The Attorney General of Lagos State recently invoked the original jurisdiction of the Supreme Court to determine the jurisdictional competence of the Federal Government to administer VAT in suit SC/20/2008.