



## THE COLLECTION OF VALUE ADDED TAX BY STATES IN NIGERIA AND ITS UNDERMINING EFFECT ON NATIONAL UNITY, ECONOMY AND INTEGRATION

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### ABSTRACT

The agitation for fiscal federalism in Nigeria has been alive since time immemorial. Until recently, the agitations were focused on control of natural resources by States, particularly oil. With the judgment of the Federal High Court in *Attorney-General of Rivers State v. Federal Inland Revenue Service and Another*,<sup>1</sup> attention has been shifted from oil and natural resources to the collection of value-added tax (VAT). This article briefly describes the legal framework for taxation and tax collection, the agitation of states for the collection of value-added tax, and the implication of the collection of value-added tax on the national economy, integration, and unity. The work adopts a doctrinal research methodology which relies heavily on the availability of primary and secondary sources of materials. The research concludes by making recommendations for the national and central collection of value-added tax.

**Keywords:** Tax, Economy, Integration, Value, States

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<sup>1</sup> No FHC/PH/CS/149/2020

## 1. INTRODUCTION

Taxes are an integral source of revenue for governments across the world.<sup>2</sup> Most countries rely solely on taxes as a source of revenue.<sup>3</sup> In Nigeria, taxes are also a source of revenue for the government, particularly at the federal level.<sup>4</sup> The Nigerian Constitution gives the National Assembly the power to impose taxes on incomes, profits and capital gains.<sup>5</sup> The National Assembly has, under its constitutional powers to impose taxes, enacted the Companies Income Tax Act<sup>6</sup>, Personal Income Tax Act<sup>7</sup>, Stamp Duties Act<sup>8</sup>, Capital Gains Tax Act<sup>9</sup>, etc. The National Assembly also enacted the Valued Added Tax Act,<sup>10</sup> which aims to impose tax on the consumption of all goods and services unless the law exempts such goods and services<sup>11</sup>.

The Valued Added Tax Act was first enacted by the Military Government in 1993.<sup>12</sup> Initially, it was referred to as the Sales Tax Act.<sup>13</sup> It was then amended and named the Valued Added Tax Act 2004. An agency of the Federal Government collects the Federal Inland Revenue Services tax from providers of goods and services who, in turn, dissolve it in the cost of goods and services it supplies to the final consumer. Though this tax is collected at the federal level, it is not used by the Federal Government alone as it is included in the Consolidated Revenue Fund.<sup>14</sup>

<sup>2</sup> V Tanzi, H Zee 'Tax Policy for Developing Countries' Economic Issues No. 27, available at <https://www.imf.org/external/pubs/ft/issues/issues27/> accessed on 16 November 2024.

<sup>3</sup> World Bank group 'Taxes & Government Revenue' available at <https://www.worldbank.org/en/topic/taxes-and-government-revenue> accessed on 16 November 2024.

<sup>4</sup> C G Odum 'Impact of Federal Collected Taxes on Economic Growth of Nigeria' available at <https://joa.anan.org.ng/article-details.php?article=53> accessed on 16 November 2024.

<sup>5</sup> Section 4 of the Constitution of the Federal Republic of Nigeria, 1999 As Amended gives the National Assembly the power to legislate on items in the Exclusive Legislative List. In the Second Schedule to the Nigerian Constitution, the 59th item in the Exclusive Legislative List gives the National Assembly the power to impose taxes on incomes, profits and capital gains.

<sup>6</sup> The Company Income Tax Act was first enacted as the Company Income Tax Ordinance (Ordinance No. 14, 1939). It was, in 1961 replaced with the Income Tax Management Act No 22 1961. The Income Tax Management Act No 22 of 1961 was re- enacted in 1976 as Company Income Tax Act and in 1979 as the Company Income Tax No. 28. It also underwent amendments in 2002, 2004 and 2007. The present and subsisting law is the Companies Income Tax Act Chapter C21 No. 11 of 2007. See also Ozue Clement Chuks 'Companies Income Tax Compliance and Enforcement Behaviours in Nigeria: An Empirical Study 2022(3)3 ANAN Journal of Contemporary Issues at 173-192.

<sup>7</sup> Personal Income Tax Act Cap. P8 2004 and Personal Income Tax Amendment Act, No.20, 2011.

<sup>8</sup> Stamp Duties Act (SDA), CAP S8 LFN 2004 (AS AMENDED).

<sup>9</sup> Capital Gains Tax is governed by Capital Gains Tax Act, Cap C1 LFN 2004 (as amended).

<sup>10</sup> Value Added Tax Act 1993 No. 102. Today it is the Value Added Tax Act 2007 No. 53.

<sup>11</sup> Section 2 and 3 of the Value Added Tax Act 2007/

<sup>12</sup> Olaoye Clement Olatunji 'Value Added Tax (VAT) and Inflation in Nigeria (1990 to 2003)' 2013(1)1 *Asian Journal of Humanities and Social Sciences (AJHSS)* at 123.

<sup>13</sup> Ibid.

<sup>14</sup> By the combined reading of sections 163 of the constitution of the Federal Republic of Nigeria 1999 as amended and section 40 of the value added tax act, the value added tax is distributed between the three tiers of government hence it is part of the consolidated revenue funds of the federal and state Governments.

Hence, it forms part of the total revenue in the Federation Account shared with all the tiers of government, including federal, state, and local governments.

Recently, there have been agitations by states like Lagos and Rivers for States to collect value-added tax on the basis that the Constitution did not empower the Federal Government to collect the same. These States that agitate for the collection of value-added tax are doing so because they know that large amounts of money are collected in their territories by the Federal Inland Revenue Services as value-added tax; when shared, the percentage that comes back to them is little compared to what was collected by the Federal Government. However, their clamour to collect value-added tax appears not to have taken into consideration:

- a) the need for integration and national unity,
- b) the possibility of double taxation and
- c) the implication that such taxation will have on national development.

Their agitation has been boosted by the judgment of the court in *Attorney General of Rivers State v Federal Inland Revenue Service and Another*<sup>15</sup> where it was held that the National Assembly does not have the power to legislate on VAT consequently, VAT is a residual matter within the legislative competence of the state Houses of Assembly which also means only the States can collect it. In addressing the value-added tax issues in Nigeria and how collection of value-added tax by states in Nigeria will undermine efforts towards national integration, unity, and national development this work makes reference to the judgment of the Federal High Court in *Attorney General of Rivers State v Federal Inland Revenue Service and Another*<sup>16</sup>.

## 2. CONCEPTUAL CLARIFICATION

### a) Tax

A definition of the term tax would go a long way in shaping the subject matter under discourse. What, then, is tax? Tax is a compulsory charge by the Government on the income of an individual, corporation or trust and the value of an estate or gift.<sup>17</sup> It is imposed by an organ of government for public purposes.<sup>18</sup> The Oxford Dictionary of Languages defines tax as: “[a] compulsory contribution to state revenue, levied by the government on workers’ income and business profits, or added to the cost of some goods, services, and transactions.”<sup>19</sup> The Federal Inland Revenue Services defines value-added tax as:

<sup>15</sup> No: FHC/PH/CS/149/2020

<sup>16</sup> No: FHC/PH/CS/149/2020

<sup>17</sup> Investopedia ‘taxes definition: types, who pays, and why’ available at <https://www.investopedia.com/terms/t/taxes.asp#:~:text=Taxes%20are%20mandatory%20contributions%20levied,local%2C%20regional%2C%20or%20national> accessed on the 17 November 2024.

<sup>18</sup> G Morse & W G Davies *Principles of Tax Law*, London: Sweet & Maxwell, (2004) at 3.

<sup>19</sup> The University of Adelaide ‘Income Tax law III.pdf - What is Tax? Oxford Dictionary’, available at <https://www.coursehero.com/file/103663807/Income-Tax-law-IIIpdf/> accessed on the 17 November 2024.

“Value Added Tax is a consumption tax paid when goods are purchased and services rendered. It is a multi-stage tax. Valued Added Tax is borne by the final consumer. All goods and services (produced within or imported into the country) are taxable except those specifically exempted by the Valued Added Tax Act. Valued Added Tax is charged at a rate of 7.5%.”<sup>20</sup>

All the above definitions are true of value-added tax hereinafter referred to as “VAT”. The keywords in the definitions are:

- a) It is a consumption tax,
- b) Levied on consumable goods and services exempt goods and services exempted,
- c) It is charged at all stages of the value chain hence, a multi-stage tax,
- d) The charge is at a specified rate,
- e) It is borne by the final consumer.<sup>21</sup>

b) Integration

The integration combines smaller components into one system that functions as one.<sup>22</sup> Integration is defined as the bringing of people of different racial or ethnic groups into an unrestricted and equal association, as in society or an organization; desegregation.<sup>23</sup> In the context of our discussion, it is the bringing of all Nigerians of different religions and ethnic groups as one nation bound together.

### 3. HISTORICAL OVERVIEW OF VAT AND THE FRAMEWORK FOR TAXATION IN NIGERIA

Valued Added Tax Act<sup>24</sup> “VAT Act” was first enacted in 1993 to replace the Sales Tax Act,<sup>25</sup> which was operational and enacted in 1986. The idea of the VAT came from the study group’s report set up by the Federal Government in 1991 to review Nigeria’s tax system.<sup>26</sup> The Committee proposed VAT, and the same was enacted in 1993. The aims of repealing the Sales Tax Act and enacting the VAT Act include, widening the scope and applicability of the Sales Act, which was narrow and limited to only

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<sup>20</sup> Federal Inland Revenue Services, available at <https://firs.gov.ng/value-added-tax-vat/> accessed on 05 April 2022.

<sup>21</sup> Ibid.

<sup>22</sup> Search consumer experience available at <https://www.techtarget.com/searchcustomerexperience/definition/integration> accessed on 05 April 2022.

<sup>23</sup> Your dictionary, available at <https://www.yourdictionary.com/integration> accessed on 05 April 2022.

<sup>24</sup> Value Added Tax Act 2007 No.53

<sup>25</sup> Enacted in 1986 by the Military Government hence known as Sales Tax Decree No.7 of 1986, Cap 399, Laws of Federation, 1990. But its nomenclature changed to Sales Act cap 399, laws of the federation 1990

<sup>26</sup> M T Abdulrazaq *Introduction to VAT in Nigeria* 2 ed (2011) at 1 – 2.

some goods; to widen the class of goods taxable to include imported goods; and to have a law in place that targets the consumption behaviour of the people.<sup>27</sup> The Committee also observed that many countries had embraced VAT and contributed substantially to the tax regimes of countries and revenue raised. Since the VAT Act was enacted, it has been enforced and is a good source of revenue for all the tiers of government in Nigeria.

The VAT Act was enacted during military rule as a federal legislation and still applies as a federal enactment.<sup>28</sup> From 1993 till date, a lot has happened; many things have changed, particularly as regards the Constitution and constitutional basis for enactments. During the military rule that ended on the 29th of May 1999, the Federal Military Government had broad powers to legislate, particularly on matters on the Exclusive Legislative List of the 1979 and 1989 Constitution. This, however, did not stop the Federal Military Government, being a government without limits on its powers, from making enactments on matters that were not on the Exclusive Legislative List. In 1999, however, a new Constitution came into place.

The Constitution of the Federal Republic of Nigeria 1999, which came into place on the 29th of May 1999, shared legislative powers to the tiers of Government. The Federal Government, through the National Assembly, could only legislate on matters on the Exclusive Legislative List, Concurrent List to the extent defined in the said list, and on any other matter in respect of which the Constitution expressly empowers the National Assembly to make laws. The National Assembly, by items 58 and 59 on the Exclusive Legislative List, retains the powers to make laws on Stamp Duties, Taxation of Incomes, Profits and Capital Gains except as otherwise prescribed by the Constitution. However, the Constitution did not sustain the continuous implementation and enforcement of the VAT Act at the federal level; hence, the categories of matters taxable by the Federal Government did not include the Value Added Tax. In other words, the Constitution did not cover the consumption of goods and services as a legislative item. This then created a *lacuna* or missing ground or basis for the continuous collection of VAT by the Federal Government. This *lacuna* has been spotted by state governors whose states the Federal Inland Revenue Services records high VAT collection. Notable among these states are Lagos, Rivers States, etc. Recently, the Rivers State Government instituted an action against the Attorney-General of the Federation and the Federal Inland Revenue Services

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<sup>27</sup> See section 1 & 2 of the Value Added Tax Act 2007 No.53.

<sup>28</sup> Kelechi Okparaocha 'Nigeria: Validity of the VAT Act' available at <https://wts.com/global/publishing-article/20210914-nigeria-vat-nl~publishing-article> accessed on 17 November 2024.

challenging the collection of VAT by the Federal Government.<sup>29</sup> The judgment is discussed hereunder.

#### **4. AN OVERVIEW OF ATTORNEY-GENERAL OF RIVERS STATE V FEDERAL INLAND REVENUE SERVICE AND ANOTHER**

The judgment in the above suit was predicated upon the originating summons dated and filed on the 24<sup>th</sup> of September 2020, wherein the plaintiff formulated and sought the determination of four questions and sought eleven (11) reliefs. The first two issues are very relevant to this research and these are:

- a) “whether upon the correct interpretation of the provisions of items 58 and 59, part 1 of the second schedule of the Constitution, the correct appreciation of the scheme of the constitution and the residual powers of the states of the federation to make laws as well as section 4(7) of the Constitution of the federal republic of Nigeria 1999 ( as amended), the Federal Government of Nigeria is entitled to make laws for taxation other than for stamp duties, taxation of incomes, profits and capital gains, and if not, whether the 1<sup>st</sup> defendant is entitled to enforce and administer laws inconsistent with or over the powers of the Federal Government of Nigeria to make laws”.
- b) “whether upon a proper construction and interpretation of the provisions of items 58 and 59 of the second schedule part I ( exclusive Legislative List) of the 1999 constitution of the Federal Republic of Nigeria 1999 as amended and item 7(a) & (b) of part II (Concurrent Legislative List) of the said Constitution, the legislative Competence of the Federal Government of Nigeria through the National Assembly to impose duties and taxes and to delegate the powers to collect taxes, include power to levy or impose any form of taxes such as Value Added Tax or any other levy”.<sup>30</sup>

The Plaintiffs went further to seek a declaration that the further collection of VAT by the Federal Government through the 1<sup>st</sup> defendant is null and void. The court held:

“Coming to the 1<sup>st</sup> Defendant’s argument, the Court has carefully looked through section 4(1)-(4)(a) & (b), 315 (1) (a), 318(1) and item 62, 67, and 68 of the Second Schedule Part I of the Constitution and sections 1,2 (a) of part 3 Supplemental and Interpretation of the 1999 Constitution to see where the Federal Government is given wide powers to make tax laws beyond the limits of items 58 and 59 of part 1 of the Second Schedule as argued by the 1<sup>st</sup> Defendant, but the Court cannot find one.”<sup>31</sup>

The Court went further to hold thus: “The 1999 constitution has specifically designated the taxes that the Federal Government is empowered to impose and collect in items 58 and 59 of part I of the Second Schedule thereof and this must be

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<sup>29</sup> *Attorney-General of Rivers State v Federal Inland Revenue Service and Another* No: FHC/PH/CS/149/2020.

<sup>30</sup> *Ibid* at 1

<sup>31</sup> *Attorney-General of Rivers State v Federal Inland Revenue Service and Another*, note 28 at 40

read to exclude other species of taxes like Value Added Tax, Withholding Tax, Education Tax and Technology Tax. If the framers of the 1999 Constitution intended, to allow the Federal Government to impose and collect these taxes, they would have specifically mentioned them in the Constitution. Since this was not done, this court lacks the power to do otherwise.”<sup>32</sup> The judgment appears sound, and the proper position of the VAT law tested against the Constitution of the Federal Republic of Nigeria 1999 as amended. However, the judgment undermines the Fundamental Objectives and Directive Principles of State Policy enshrined in Chapter II of the Constitution, particularly the economic and political objectives of unity, national integration and economic growth. Our opinion is informed by the reality of the nationhood challenge that Nigeria, as a state, is facing and the nature of VAT, particularly its nexus with economic development. What is Nigeria’s challenge in nationhood building, and what is the nature and nexus between VAT and economic development?

#### 4. THE NIGERIAN NATIONHOOD QUESTION AND THE CHALLENGES OF NATION-BUILDING

It is indisputable that Nigeria’s question of nationhood and the problem of nation-building are some of the biggest challenges that undermine Nigeria’s growth and development in all ramifications. The key factors that beset Nigeria’s quest for nationhood are ethnicity, nepotism and slow level of integration, religiosity and religious intolerance, and lopsided and vast differences in the level of socio-economic development between the North and the South. These three factors will be discussed hereunder.

##### a) *Ethnicity, nepotism and the slow level of Integration*

Nigeria is a multi-ethnic country. In the North are Hausas and Fulani as the majority; in the South East are the Igbo people; in the South West are the Yoruba people; and in the Middle Belt and South-South are the minority Tribes/Ethnic Groups. The integration between these ethnic groups is slow. This diversity has, since independence, been more of a burden than an asset to Nigeria.<sup>33</sup> The impact of this negativity is felt more in the world of politics than in the world of business.<sup>34</sup> Politically, the diversity has enhanced nepotism and corruption as well as bred animosity between the nationalities.<sup>35</sup>

##### b) *Religion and religious intolerance*

Nigerians are generally known to be very religious.<sup>36</sup> A major portion of Nigeria’s population constitutes persons who are either adherents of the Christian faith or

<sup>32</sup> *Attorney-General of Rivers State v Federal Inland Revenue Service and Another* No: FHC/PH/CS/149/2020

<sup>33</sup> E O Oni & A P Adebisi ‘Ethnicity and the challenge of nation-building in Nigeria’ In E O Oni, O M Fagbadebo and D A Yagboyaju (eds) in *Democratic Practice and Governance in Nigeria* (2021) Routledge at 100.

<sup>34</sup> Ibid.

<sup>35</sup> Oni & Adebisi (n 32 above).

<sup>36</sup> Ibid.

Muslim faith. This has increased religious consciousness and, in some cases, resulted in religious intolerance, which has, in turn, undermined unity and integration efforts in Nigeria. This height is manifest in the ethno-religious crisis.<sup>37</sup>

*c) Wide and uneven level of Socio-Economic Development between the North and South*

The difference in the socio-economic development between the North and the South is vast.<sup>38</sup> This difference existed long before independence and still subsists for the following reasons: British missionaries and colonial companies began their operations in Southern Nigeria, and economic activities also gained impetus in Southern Nigeria a long time before they moved to the North.<sup>39</sup> It is said that education spent a hundred years in the southern part of Nigeria, particularly Lagos State before it reached the North. As early as 1842, the missionaries had brought education to Southern Nigeria.

The advantage of an early start accounts for the early economic developments in states like Lagos, Rivers, etc. The availability of ports in these States through which goods were imported also enhanced economic development and attracted business-oriented people from all parts of the country to come and do business. Lagos State, Nigeria's first capital city, enjoyed the advantage of being a capital hosting expatriates and foreigners who came in to invest.

Given these challenges in nation-building, the Constitution has, in chapter two, particularly Sections 15 and 16, made it the objective for governments at all levels to promote national integration and control the economy in a manner that secures maximum welfare, freedom and happiness for all citizens. The question then is: how does the collection of VAT by states promote national unity, integration and development? We can only understand this if we understand the nature of VAT and its relationship with the economy.

## **5. THE NATURE OF VAT AND ITS RELATIONSHIP WITH ECONOMIC DEVELOPMENT**

VAT is an indirect tax collected and charged at each stage of the value chain in producing goods and services but is finally borne by the consumer.<sup>40</sup> In other words, VAT is a consumption tax levied at each stage of the consumption chain and borne by the final consumer of the product or service. Each person or producer of goods

<sup>37</sup> E N and A.Y. K Babale 'Religious Intolerance and The Quest for Progressive Change In Nigeria' (2021) Vol 18. *LWATI: A Journal of Contemporary Research* 200-220

<sup>38</sup> Ibrahim A. Gambari's 'The Challenges of Nation Building: The Case of Nigeria' paper presented at Sheraton Hotel Abuja, Nigeria on the 7th of February 2008 on the occasion of the First Anniversary Lecture. Mustapha Akanbi Foundation, available at [https://www.mafng.org/anniversary/challenges\\_nation\\_building\\_nigeria.htm](https://www.mafng.org/anniversary/challenges_nation_building_nigeria.htm), accessed on 5 April 2022.

<sup>39</sup> H Imam 'Educational Policy in Nigeria from the Colonial Era to the Post-Independence Period', available at [http://ijse.padovauniversitypress.it/system/files/papers/2012\\_1\\_8.pdf](http://ijse.padovauniversitypress.it/system/files/papers/2012_1_8.pdf), accessed on the 05 April 2022.

<sup>40</sup> A Sanni 'Current Law and Practice of Value Added Tax in Nigeria' 2012(5)2 *British Journal of Arts and Social Sciences* at 186.



and services must charge and collect VAT at a flat rate of 7% on all goods and services produced in Nigeria except those exempted.<sup>41</sup> The tax collected by the producer is dissolved into the cost of goods and services paid by the final consumer. Goods subject to tax include imported goods and goods produced in Nigeria<sup>42</sup>. The VAT Act requires producers of goods and services to register with the government for VAT payments<sup>43</sup>. Non-resident companies that transact business in Nigeria must also register for VAT and render VAT returns using the company's address in Nigeria, with whom they have a subsisting contract.<sup>44</sup> A taxable person, whether a Nigerian resident outside Nigeria who fails or refuses to register for VAT administration within six months of engaging in any economic activity in the territory of Nigeria, is liable to pay a penalty.<sup>45</sup>

VAT is a tax that reflects economic growth.<sup>46</sup> The more economic activities a state has, the more VAT will be generated. Since it is a consumption tax, it also reflects the level of consumption by people, particularly in the desire for luxurious goods and services.<sup>47</sup> For example, Lagos State, which has a lot of economic activities, is more likely to collect more money as VAT than States like Plateau or Sokoto. More companies produce goods in Lagos than in Plateau or Sokoto; hence, more companies are liable to pay VAT in Lagos than in Plateau or Sokoto. As regards service, more Nigerians who have left their states of origin to Lagos to do business and, in search of opportunities, contribute to the economy of Lagos State through VAT for services rendered to them in Lagos. For example, services from telecommunications companies for calls made and browsing data bought, television companies for adverts and channels accessed, banks for transactions made, etc. The following question is: given Nigeria's peculiar challenge of nationhood and nation-building, will it be fair for a state like Lagos that hosts business people, technocrats and entrepreneurs drawn from other states to collect VAT for its use alone? In Nigeria, it is collected by the Federal Government and shared with the three tiers of Government, with the Federal Government collecting 15 %, states collecting 50% and Local Governments collecting 35%.<sup>48</sup>

## 6. THE NEGATIVE IMPLICATIONS OF THE COLLECTION OF V.A.T BY STATES ON NATIONAL INTEGRATION, UNITY AND ECONOMIC DEVELOPMENT

a) *Discourages Nigerian indigenous businessmen from investing in states other than their states of origin*

As it is today, where one comes from, and one's religion does not matter as far as investment and business are concerned. Unlike in politics, where one cannot go to

<sup>41</sup> Ibid.

<sup>42</sup> FIRS 'Value Added Tax' available at <https://www.firs.gov.ng/vat> accessed on the 19 November 2024.

<sup>43</sup> Sections 8,9,10 of the Value Added Tax Act, 2007.

<sup>44</sup> Ibid.

<sup>45</sup> Section 32 of the Value Added Tax, 2007.

<sup>46</sup> A N Chiamogu, and U C Nzewi 'Value added tax and Nigerian economy: An empirical analysis' 2020(6)4 *International Journal of Advanced Academic Research* at 53.

<sup>47</sup> Ibid.

<sup>48</sup> See section 40 of the Value Added Tax Act, 2007.

another state other than his or her state of origin to contest elections, when it comes to business and investments, non-indigenes who have the money and ability to invest and add value are all welcomed to the 36 States. Domestic investors who have seen better opportunities to invest outside their states of origin have seized them.<sup>49</sup> This has enhanced the integration of Nigerians. Most Nigerians that have left their states to other states have done that to do business. For example, Aliko Dangote, a business mogul originally from the North and Kano State precisely, has more business enterprises in the southern part of the country than in his State of origin or the North.<sup>50</sup>

Part of the reasons why business people and entrepreneurs are not too worried about insisting on investing in their states and region alone is because they are aware that any tax they pay to the Federal Government on value added in the production of goods and services in any state indirectly benefits their states of origin.<sup>51</sup> The total VAT collected by the Federal Government in all states is eventually shared with all the states and tiers of Government, including their states of origin. The host states may appear to enjoy extra benefits like corporate social responsibility, ground rent on land occupied and others, but states of origin of these business moguls also share in the VAT on value-addition, collected in any part of the country.

We are of the opinion that allowing states to collect will discourage entrepreneurs from investing in states other than their states of origin, as their indigenous states will not benefit from any tax on value added in any other state economy. More to this point, these local investors will come under heavy pressure from their states to invest in their states of origin. As it is today, the Constitution of the Federal Republic of Nigeria encourages social integration<sup>52</sup>. Section 15 of the Constitution makes it an objective for the Government at all levels to encourage national integration. To promote national integration, the Constitution makes it a state's duty to provide adequate facilities for and encourage free mobility of people, goods, and services throughout the Federation<sup>53</sup>. Collection of VAT by states in contemporary Nigeria battling the challenge of nationhood will not encourage free mobility of goods and services through the Federation.

*b) Introduce ethnic sentiments or considerations as one of the major considerations for doing business in any place*

<sup>49</sup> Dennis Isong 'Obasa's Controversial Speech: Are Non-Indigenes At Risk Of Losing Their Properties In Lagos?' June 24, 2023 available at <https://landproperty.ng/obasas-controversial-speech-are-non-indigenes-at-risk-of-losing-their-properties-in-lagos-by-dennis-isong/> accessed on the 17th November 2024.

<sup>50</sup> Bennett Oghifo 'Dangote Injects over N63bn to Boost South-east Economy' available at <https://www.thisdaylive.com/index.php/2020/02/24/dangote-injects-over-n63bn-to-boost-south-east-economy/> accessed on the 17 November 2024

<sup>51</sup> Section 40 of the Value Added Tax 2007 requires that all tax collected as value added tax be collapsed into a pool and shared to tiers of government as per the formula stated therein. i.e In the said section 40 of the value added tax act 2007

<sup>52</sup> See section 15 of the Constitution of the Federal Republic of Nigeria 1999 As Amended

<sup>53</sup> Ibid.

Ethnic, state or regional sentiments and other considerations today are not material in determining where a domestic investor will invest. Dangote's investments in southern Nigeria flourished because ethnic, regional, or state considerations or sentiments were not material when considering where he would invest. Investors are driven by the availability of opportunities to add value and make maximum profit. The collection of VAT by states will consequently result in the fall of revenue to other states with low economic activities.<sup>54</sup> Pressure will be mounted on the citizens to invest and only invest in their home states. While it may be easy to argue, under the present arrangement, which allows the Federal Government alone to collect tax. Value-added tax will be shared with all states, including the investor's state of origin; hence, investing in other states is as good as investing in home states.<sup>55</sup> It will be difficult to sustain such an argument when VAT on goods produced or supplied and services rendered are collected and enjoyed by the host states alone. This circumstance undermines the state's duty to ensure national integration as it will not encourage the unrestricted mobility of people, goods and services throughout the Federation.

*c) May place huge tax burdens on the common man*

We further opine that subjecting the collection of VAT to the control of states may place a huge tax burden on citizens in economically backward states. As it is today, a good number of goods and services that directly affect citizens' lives are exempted from tax nationwide.<sup>56</sup> For example, VAT is not paid on pharmaceutical products, educational materials, medical services, agricultural goods and services, etc.<sup>57</sup>

Everyone needs these essential goods and services, mainly the commoner. Making VAT or consumption tax subject to control and legislation by the states may tax some or all of these exempted goods and services. In some states, the resultant effect would be that the commoner on the street who struggles to put food on the table, foot medical bills, and provide education for his children will suffer more as they pay more for these essential goods and services. More likely than not, states whose economies are not strong and do not account for a significant percentage of the VAT may be forced to supplement the shortfall by imposing VAT on goods presently exempted from tax. This reality will undermine the efforts and the constitutional duty of the states to direct their policies towards ensuring the promotion of a planned and balanced economic development, an economic system that is not operated in such a manner as to permit the concentration of wealth or the means of production and exchange in the hands of few individuals or a group.<sup>58</sup>

<sup>54</sup> Ifeanyi Omokwe 'Why Status Quo on VAT Collection Must Be Maintained' available at <https://www.thisdaylive.com/index.php/2021/09/22/why-status-quo-on-vat-collection-must-be-maintained/> accessed on the 17 November 2024

<sup>55</sup> Since section 40 of the Value Added Tax Act 2007 requires that all taxes collected at value added tax be collapsed and shared to the three tiers of government based on then all states get equal amount

<sup>56</sup> See sections 2 & 3 and the First Schedule to the Value Added Tax Act, 2007.

<sup>57</sup> See Part 1 of the First Schedule to the value Added Tax Act.

<sup>58</sup> See section 16 of the Constitution of the Federal Republic of Nigeria 1999 As Amended.

*d) May result in multiple taxation*

Since every state will be allowed to enact its law on VAT if the judgment of the Federal High Court above stands, every state may make a law that will end up levying tax on goods that enter its territory whether or not it is in transit to another state to be sold. Such tax will be collected at the borders of states and entry points to the state, just like VAT on imported goods is collected at entry points for goods at the ports. This may result in double or multiple taxation and may hamper inter-state trade. For example, goods produced in Lagos destined for sale in Jos Plateau State will attract VAT in Lagos State, in Ogun State, Oyo State, Osun State, Ondo State, Kogi State, Abuja -FCT; Nasarawa, Kaduna State; and finally, in Plateau State. One individual involved in the distribution of goods ends up paying VAT in the origin state, transit states and destination states; hence, they will find it challenging to maintain the same price for the goods in all the states or will find it hard to continue distributing goods to states. As it is now, with the central collection of VAT, there is hardly any multiple taxation. The evidence of the VAT payment in Lagos State may suffice and be valid in all states. This stability will help control the prices of goods and ensure uniform or reduced differences in prices of the same goods in all states.

*e) Ineffective collection of VAT*

The companies, banks, telecommunications companies, insurance companies, etc., that provide services to individuals know what they have imposed on customers and how much they remit as VAT. Ironically, tax from these companies should constitute a large percentage of VAT. The Federal Government is well positioned to collect VAT from these companies for services rendered because the Federal Government also has the power to regulate the activities of these companies.<sup>59</sup> The Central Bank regulates commercial banks, the Nigerian Communications Commission regulates telecommunications companies, etc. The powers to control and regulate these service provider helps the Federal Government collect VAT. The Government can access information from these companies to help ascertain the proper and accurate VAT payable. Where these companies fail to remit VAT, the Federal Government may not need to go to court to enforce the law since it has other ways of control.<sup>60</sup> It will only use the regulatory agencies against these companies.

In the case of the VAT collection by states, these service providers are more likely to shortchange states and evade tax as it will be easier to hide information from states on VAT collected from customers than from the Federal Government. States may only have the remedy of going to court to ensure VAT payment as opposed to the

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<sup>59</sup> Companies as a subject matter of legislation is an item in the Exclusive Legislative List of the Constitution of the Federal Republic of Nigeria 1999 As Amended. This subjects all companies under the powers of the Federal Government of Nigeria. The national assembly has pursuant to this provision enacted many laws that govern the activities of a company as well as established agencies that regulate the Affairs of Companies. These laws include: Companies and Allied Matters Act, Nigerian Deposit insurance corporation act etc while the agencies established include the companies and allied matters act, Nigerian Deposit Insurance Corporation, Nigerian Communications Commission, etc.

<sup>60</sup> The above listed agencies will be used to effectively compel the companies to pay the tax.

Federal Government which has other remedies of accessing information and compelling the service providers to pay the appropriate VAT.

The collection of VAT by states may result in different regimes of consumption law and different prices of goods and services in the various states, worsening the already bad business environment.<sup>61</sup> Allowing states to legislate on and collect VAT will result in different versions and regimes of laws on VAT. Every state will enact what it feels should be the state's VAT. The present 7% collected as VAT may be increased by some states or decreased by others. In some states, VAT may be collected on some essential goods and services presently exempted; in others, it may not.<sup>62</sup> This scenario may affect a foreign investor's decision to come to Nigeria to do business. It is alleged that there are a lot of bottlenecks and difficulties in doing business in Nigeria. With the collection of VAT by states, which may result in different regimes of laws on VAT, foreign investors who want to produce either goods or services with broad reach all over the country will find the collection of VAT by states to be a huge setback. This is because the investor will worry about how to comply with the VAT law of every State- the VAT laws of 36 states. The stress of doing so is likely to discourage investors from investing in Nigeria. This will affect not only foreign investors but local or domestic investors as well. The investors might prefer to go and invest overseas with friendly business environment. This envisaged problem will work against the economic policy and growth of the nation.

*f) Will widen the gap already existing between economically developed states and undeveloped states*

Today, there is a wide gap between rich and poor states even though poor states benefit from VAT collected by the Federal Government and prosperous states. This is because VAT from rich states is dissolved into a pool and shared with all tiers of Government. Collection of VAT by states will make poor states poorer in the following ways:

First, the VAT collected in poor states is insignificant, and consequential endorsement of the collection of VAT by states, states with poor economic activities will collect less and insignificant amounts as VAT. The revenue will drop, affecting the ability to provide basic infrastructure within their territories, essential to attracting foreign and local investments. Secondly, states with a poor potential to collect VAT may, in a bit to augment revenue drop, look inwards and collect VAT on exempted goods and

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<sup>61</sup> Trending Economics 'Ease of Doing Business in Nigeria' available at <https://tradingeconomics.com/nigeria/ease-of-doing-business#:~:text=Nigeria%20is%20ranked%20131%20among,2019%20from%20146%20in%202018>. Accessed on the 17 November 2024

<sup>62</sup> Kelechukwu Iruoma 'Nigerian states launch VAT tax grab' available at <https://african.business/2021/11/finance-services/nigerian-states-launch-vat-tax-grab> accessed on the 17 November 2024

services, which will bite hard on the commoner.<sup>63</sup> The poor states may begin to collect VAT on pharmaceutical products, medical services, agricultural products and exempted goods like educational goods. The cost of living in these states will rise which will negatively affect the citizens.

*g) Possible effects on the growth of small and medium enterprises*

In affluent states with the potential to collect much more money as VAT, small and medium enterprises may be exempted from the collection of tax, or less will be collected.<sup>64</sup> However, in poor states with their economies comprised more of small and medium enterprises, VAT is most likely to be collected, and high amounts on goods and services rendered by such enterprises as poor states will like to augment the shortfall of revenue. The collection of VAT or high amounts as a tax on small goods and services rendered by small and medium enterprises may affect the operation and the growth of these enterprises which may force them to move to rich states where they are likely to survive or to close down.

## 7. SOLUTION TO THE IMBROGLIO

*a) Legislative Remedy*

All the problems associated with the collection of VAT by states can be avoided if the National Assembly amends the Constitution and empowers the Federal Government to collect VAT. The Federal Government, through the Federal Inland Revenue Services, has collected VAT for a long time. Over the years, it has exhibited great capacity and ability to collect the tax.<sup>65</sup> The National Assembly, at the last constitutional amendment sitting, appears to have yet to appreciate the challenges that come with the collection of VAT by States when it jettisoned the proposal to empower the Federal Government to collect the tax.<sup>66</sup> The National Assembly needed to avert its mind to some of these problems identified above, particularly how the collection of VAT by states will undermine efforts towards national integration, unity and development. The National Assembly has the primary duty to direct its efforts in law-making towards ensuring Nigeria is united. Section 13 of the Constitution makes

<sup>63</sup> Taiwo Oyedele 'How to fix Nigeria's broken VAT system' Pwc.  
<https://www.pwc.com/ng/en/assets/pdf/how-to-fix-nigeria-broken-vat-system.pdf> accessed on the 17 November 2024.

<sup>64</sup> Affluent states will collect less vat because they already have other good and effective sources of revenue which they will leverage on while the poor states that don't have any important source of revenue will impose more value added tax to augment their source of income.

<sup>65</sup> The Court of Appeal in affirming the power of the Federal Inland Revenue Services to collect Value Added Tax stated that doing otherwise would not be good for Nigeria. See also, Pwc 'Court of Appeal upholds the FIRS' powers to collect VAT on goods and services consumed in hotels, restaurants and event centres' available at [https://pwcngigeria.typepad.com/tax\\_matters\\_nigeria/2022/07/court-of-appeal-upholds-the-firs-powers-to-collect-vat-on-goods-and-services-consumed-in-hotels-rest.html](https://pwcngigeria.typepad.com/tax_matters_nigeria/2022/07/court-of-appeal-upholds-the-firs-powers-to-collect-vat-on-goods-and-services-consumed-in-hotels-rest.html) accessed on the 17 November 2024.

<sup>66</sup> E Akinkuotu, L Baiyewu, S Odeniyi, et al 'FG loses out, NASS Affirms States' Power to Collect VAT' available at [https://punchng.com/fg-loses-out-nass-affirms-states-power-to-collect-vat/#google\\_vignette](https://punchng.com/fg-loses-out-nass-affirms-states-power-to-collect-vat/#google_vignette) accessed on 17 November 2024.

it the duty of all arms of government, including the National Assembly, to be guided by the fundamental objectives and directive principles of State Policy.<sup>67</sup> The political and economic objectives embodied in sections 15 and 16 of the Constitution require all arms of Government, including the National Assembly to comply with all the fundamental objectives and directive principles of state policy—~~of?~~. The political objective requires all government organs Government to encourage national integration.<sup>68</sup> To promote national integration, the government is expected to provide adequate facilities for and encourage free mobility of people, goods and services throughout the Federation.<sup>69</sup> Consequent to the forgoing, every government is encouraged to secure full residence rights for every citizen in all parts of the Federation. Section 16 of the Nigerian Constitution requires the government to harness the nation's resources, promote national prosperity, etc.

In recognition of these objectives, the military Government enacted the VAT Decree, now the VAT Act, to operate at the federal level. Though lawmakers in the National Assembly come from different states and regions to protect the interests of their states and regions, they also have the responsibility to act in a manner that will promote national integration and development.<sup>70</sup> It may have weighed heavily on the minds of the lawmakers at the National Assembly when rejecting a proposal for an amendment to empower the Federal Government to collect the Tax, the need to adhere to true federalism by devolving powers to the states, including the powers to legislate on value-added Tax. It is also argued by those from Southern Nigeria that the Northern Muslims who are in the habit of destroying alcoholic beer and wine yet benefit from VAT collected from beer and alcoholic beverages in the South do not deserve to benefit from VAT collected from beer or any alcoholic drink.<sup>71</sup> Southern States assert that tolerant states that consume alcohol should benefit from taxes on alcoholic drinks.<sup>72</sup>

Devolving the power to collect VAT to states would prove counter-productive.<sup>73</sup> This will push states far apart and undermine national integration, unity and development. The essence of federalism in a multi-national state is to allow for unity in diversity and not to eliminate factors that will unite the people. In most states that practice federalism, VAT is collected at the center.<sup>74</sup> Nigeria cannot, in a bit to ensure true

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<sup>67</sup> The section provides: "It shall be the duty and responsibility of all organs of government and all authorities and persons, exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of this Chapter of this Constitution."

<sup>68</sup> Section 15 (2) of the Constitution of the Federal Republic of Nigeria 1999 As Amended

<sup>69</sup> Section 15 (3) of the Constitution of the Federal Republic of Nigeria 1999 As Amended

<sup>70</sup> See sections 13, 16 & 17 of the Constitution.

<sup>71</sup> A Akintade 'States destroying alcoholic drinks cannot continue to enjoy Rivers VAT receipts: Wike' available at <https://gazettengr.com/states-destroying-alcoholic-drinks-cannot-continue-to-enjoy-rivers-vat-receipts/> accessed on 17 November 2024.

<sup>72</sup> *ibid.*

<sup>73</sup> Thisday 'FIRS: Why We Are Against States' Collection of VAT' available at [https://www.thisdaylive.com/index.php/2021/09/09/firs-why-we-are-against-states-collection-of-vat/#google\\_vignette](https://www.thisdaylive.com/index.php/2021/09/09/firs-why-we-are-against-states-collection-of-vat/#google_vignette) accessed on the 17 November 2024

<sup>74</sup> In France, India United Kingdom etc., VAT is collected by the Central Government. See Avalara 'French VAT rates and VAT compliance' available at <https://www.avalara.com/vatlive/en/country-guides/europe/france/french-vat-rates.html>

federalism, shoot itself in the foot by making laws that undermine unity and national development. For instance, developed states like the United States do not have a VAT law, but have sales and other tax laws collected by other states<sup>75</sup>. The circumstances in the United States are different from the circumstances in Nigeria. The United States does not have a wide gap in the level of development between states; it does not have ethnicity and challenges to nationhood like Nigeria. Every state in the United States is developed. Nigeria cannot risk devolving to states' powers to collect VAT. Other powers can be delegated to states, but they should not be the powers to collect VAT.

### 8.2 Judicial Remedy

The Supreme Court can save the day by interpreting the powers of the National Assembly to make laws in a liberal manner and in a manner that is consistent with the fundamental objectives and directive principles of State Policy. Section 13 of the Constitution, which is the first section in chapter two, makes it the duty of all organs of government to comply with the objectives in chapter two of the Constitution. The combined reading of items 60, 67 and 68 of the Exclusive Legislative List in the second schedule of the Constitution permits the National Assembly to, by way of legislation, give effect to the provisions of chapter two of the Constitution. Part iii of the same schedule gives the National Assembly incidental and supplemental powers. In the past, the Supreme Court saved the day when the states went to court to challenge the powers of the National Assembly to enact the Economic and Financial Crimes Commissions Act as there was no any item on the Exclusive List that supported the powers of the National Assembly to enact the Economic and Financial Crimes Commission Act<sup>76</sup>. The Supreme Court, in the case of the *Attorney-General of Ondo State v Attorney-General of the Federation & Others*,<sup>77</sup> held, on the powers of the National Assembly to enact the Economic and Financial Crimes Commission Act, that:

“Item 67 under the exclusive legislative list read together with the provisions of section 4, subsection (2) provides that the National Assembly is empowered to make law for the peace, order and good government of the federation and any part thereof. It follows, therefore, that the National Assembly has the power to legislate against corruption and abuse of office even as it applies to persons not in authority under public or government office. The aim of making law is to achieve the common good. The power of the National Assembly is not therefore residual under the constitution but might

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accessed on 5 April 2022. See also Value-added tax in the United Kingdom available at [https://en.wikipedia.org/wiki/Value-added\\_tax\\_in\\_the\\_United\\_Kingdom#:~:text=It%20is%20administered%20and%20collected,20%25%20since%204%20January%202011](https://en.wikipedia.org/wiki/Value-added_tax_in_the_United_Kingdom#:~:text=It%20is%20administered%20and%20collected,20%25%20since%204%20January%202011). Accessed on the 4 may 2022

<sup>75</sup> US Treasury Department Internal Revenue Service 'the value added tax in the United States' available at [https://www.ciat.org/Biblioteca/Revista/Revista\\_4/value\\_added\\_tax\\_irs\\_usa.pdf](https://www.ciat.org/Biblioteca/Revista/Revista_4/value_added_tax_irs_usa.pdf) accessed on 17 November 2024.

<sup>76</sup> *Attorney-General of Ondo State v Attorney-General of the Federation & Others* (2002) LPELR-623(SC)

<sup>77</sup> Ibid.



be concurrent with the powers of the State House of Assembly and local government council, depending on the interpretation given to the word "state" in section 15 subsection (5) of the constitution."<sup>78</sup>

The court, in the same case, affirmed its holding that the powers of the National Assembly and State Houses of Assembly to legislate on Corruption are concurrent:

"It has been argued by the plaintiff that the reference to "state" in section 15 (5) can be ascertained by reference to the definition in section 318 subsection (1) of the constitution. The latter section provides that the word "when used other than about one of the parts of the federation, includes government."<sup>79</sup>

The same section of the constitution defines "government" to include the government of the federation, or any state, or of a local government council or any person who exercises power or authority on its behalf." Going by these definitions the directive under section 15 subsections (5) of the Constitution will apply to all the three tiers of government, namely, the federal government, state government and local government. In that case, the power to legislate, to prohibit corrupt practices and abuse of power is concurrent and can be exercised by the federal and state governments by the provisions of section 4 subsections (2), (4) (b) and (7) (c) of the Constitution. It is doubtful however if the third tier, viz the local governments can legislate on the subject. There is no provision in section 7 and the fourth schedule to the Constitution that empowers the local government to do so. Although the power to legislate on the subject is given to the National Assembly and State House of Assembly when both exercise the power, the legislation by the National Assembly will prevail by section 4(5) of the Constitution which provides:

"If any law enacted by the House of Assembly of a State is inconsistent with any law validly made by the National Assembly, the law made by the National Assembly shall prevail, and that other law shall to the extent of the inconsistency be void."<sup>80</sup>

Though courts do not make laws, the Supreme Court is not guided by judicial precedent, but guided by public conscience, public policy and public good in the delivery of her judgments.<sup>81</sup> Just like it did in the case of *Attorney-General of Ondo State v A- G. Federation* above, the Supreme Court can save the day by averting all the attendant ills that would likely come with a decision allowing states to legislate on and collect VAT.

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<sup>78</sup> *Attorney-General of Ondo State v Attorney-General of the Federation & Others* (2002) LPELR-623(SC) at 53.

<sup>79</sup> *Attorney-General of Ondo State v Attorney-General of the Federation & Others* (2002) LPELR-623(SC) at 55.

<sup>80</sup> See also the cases of *the Military Governor Ondo State v Adewumi* (1988) 3 NWLR (Pt.82) 280 at 283.

<sup>81</sup> *Chief Tamunoemi Idoniboye-obu v Nigerian National Petroleum Corporation* (2003) Ipeir-1426(sc).

## **8 CONCLUSION AND RECOMMENDATION**

This article has successfully analysed the legal effects of VAT in Nigeria, its administration, application and the recent clamour for its collection by the States. Given all the possible problems associated with the collection of VAT by the states and the fact that it will undermine present efforts towards national unity, development and national integration, it is recommended that the National Assembly should amend the Constitution and vest in the Federal Government of Nigeria alone the power to implement the Value Added Tax Act. In the interim, however, the courts, particularly the Supreme Court can save the day and validate the collection of VAT by the Federal Government.

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