



Factors: A Discussion on Property Tax Delinquency and Allied Issues in Nigeria

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“Property taxes are generally considered by economists to be good taxes...”

-Enid Slack and Richard M. Bird²

Abstract

Real estate (RE), or land and attachments thereon is the primary (*substratum*) host of humanity and inextricably linked to all economic activities, being an indispensable factor of production. The continuous value increment and appreciation of RE laden it with exceeding economic potentials that continues to arouse the interest, curiosity and actions of diverse stakeholders: private and public. It is trite that property tax (PT) is one of the most significant ways to harness the benefits of RE for national prosperity, or the public good.

Whilst Nigeria has a fairly elaborate tax policy framework; sadly, the phenomenon of property tax delinquency (PTD) has been diagnosed as one of the chief impediments to optimal revenue generation via RE taxation. Public sector budgetary deficits impels the government to be as creative as ever in meeting funding gaps; thus offering a wake-up call to tax policymakers, tax administrators, stakeholders in private and public sectors and all citizens to prioritise PT, without weighing down the RE sector.

The foregoing is the rationale for this article. It analyses the different dimensions of PTD and underlying factors within the context of the PT regulatory framework, recognises some policy and implementation strides that have been made, highlighting gaps and proffering solutions for increased PT yields, commensurate with the economic performance of the Nigerian RE sector.



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2. ‘How to Reform the Property Tax: Lessons from Around the World’, IMFG Papers on Municipal Finance and Governance No. 21, 2015, p.1 (Abstract): https://munkschool.utoronto.ca/imfg/uploads/325/1710_imfg_no.21_online_sept17.pdf (accessed 15.09.2021).

Introduction

Issues around domestic revenue mobilisation has, in recent years, stirred considerable interest in prospective changes to Nigerian public revenue sources, and this has *inter alia*, “spotlighted” the lingering problem of tax delinquency (TD). It is hardly surprising that government is intent on raising Nigeria’s tax to GDP ratio.³ Whilst there has been some successes, one of the Federal Government (FG)’s recent strategic initiatives, the **Voluntary Assets and Income Declaration Scheme (VAIDS)**, a tax amnesty programme, delivered dismal results.⁴ Besides the oil sector that accounts for about 95% of foreign exchange earnings and 80% of budgetary revenues,⁵ tax is doubtless a significant source of fiscal revenue in Nigeria.⁶

The Federal Inland Revenue Service (FIRS)’ Chairman, **Muhammad Nami**, recently noted that: “Indirect taxes

such as stamp duty remain the viable and sustainable alternative revenue source for funding budgetary requirements by the Nigerian



government.”⁷ The nexus between taxation and economic growth is real; and exemplified by the dictum of the US Supreme Court, *per Justice Rufus W. Peckham in Nicol v. Ames*⁸ that taxation “is one great power upon which the whole national fabric is

based.”

However, the current reality is that Nigeria is underperforming tax-wise in some key sectors of her economy;⁹ and anecdotally, there is low enthusiasm for tax compliance by the general populace.¹⁰ There is no doubt that the Revenue is under great pressure to continually keep trending its collections profile, upwards.¹¹ This article considers these issues, looking at the real estate (RE) sector and argues that it is high time that RE related tax contributions to the economy were optimised, albeit without stifling the sector. Whilst conceding that it appears there is no authoritative data on the contribution of property taxes to overall Nigerian tax collections, the general perception is that such is low.¹² Irrespective, transactors’ rights to appropriately structure their RE transactions and minimise related transaction costs, within the ambits of the law, remains sacrosanct.

3. “The tax-to-GDP ratio in Nigeria increased by 0.6% from 5.7% in 2017 to 6.3% in 2018. In comparison, the average for the 30 African countries ... was 16.5% in 2018. Since 2010, the average for the 30 African countries has increased by 1.4% ... from 15.1% in 2010 to 16.5% in 2018. Over the same period, the tax-to-GDP ratio in Nigeria has decreased by 1.0% from 7.3% to 6.3%. The highest tax-to-GDP ratio in Nigeria was 9.6% in 2011, with the lowest being 5.3% in 2016.” Also, “Nigeria’s tax-to-GDP ratio in 2018 (6.3%) was lower than the average of the 30 African countries in *Revenue Statistics in Africa 2020* (16.5%) by 10.2% and also lower than the Latin America and the Caribbean (23.1%).” See OECD, et al, *Revenue Statistics in Africa 2020 - Nigeria*: <https://www.oecd.org/tax/tax-policy/revenue-statistics-africa-nigeria.pdf> (accessed 20.09.2021).

4. “... Sadly, the revenue generated through the VAIDS platform fell far short of the US\$1bn target as only liabilities of US\$268.3m were declared, and payments received amounted to just US\$103.3m, leaving US\$165m outstanding.”. See Charles Olise and Emech Ikechukwu, ‘*Interrogating the Impact of Voluntary Asset and Income Declaration Scheme (VAIDS) on Tax Administration in Nigeria*’, *ResearchGate, Macrothink Institute Journal*, (2020), Vol. 10, No.3, 27.07.2020, p.38 at p.43: https://www.researchgate.net/publication/343261022_Interrogating_the_Impact_of_Voluntary_Asset_and_Income_Declaration_Scheme_VAIDS_on_Tax_Administration_in_Nigeria (accessed 25.06.2021). For more commentary on the VAIDS, see Gabriel Fatokunbo, ‘*Executive Order on Voluntary Assets and Income Declaration Scheme (VAIDS)*’, *LeLaw Newsflash*, 04.07.2017: https://lelawlegal.com/add11pdfs/LELAW_NEWSFLASH_4_07_2017.pdf; and ‘*RE: Widening The Tax Net Is Osinbajo’s Executive Order Correct?*’, *LeLaw Thought Leadership*, 05.09.2017: [https://lelawlegal.com/add11pdfs/VAIDS-EO-Rejoinder-Article-\(Widening-the-Tax-Net\).pdf](https://lelawlegal.com/add11pdfs/VAIDS-EO-Rejoinder-Article-(Widening-the-Tax-Net).pdf) (both accessed 25.06.2021).

5. See ‘*Nigeria: Economy*’, *GlobalEdge*: <https://globaledge.msu.edu/countries/nigeria/economy> (accessed 24.02.2021).

6. In 2018 and 2019, the FIRS’ total tax collections were N5.32 trillion and N5.26 trillion respectively. Nigeria also recorded total tax collection of about N8.8 trillion in 2020, translating to 6.1% of GDP. The latter represents both Federal and States’ oil and non-oil taxes, ranking Nigeria’s tax to GDP ratio as one of the lowest in the world. See ‘*Nigeria’s Records 6.1 Percent Tax to GDP as Tax Base for VAT Increase to N23.7 Trillion*’, *Nairametrics*, 22.07.2020: <https://nairametrics.com/2020/07/22/nigerias-records-6-percent-tax-to-gdp-as-tax-base-for-vat-rise-to-n23-7-trillion/> (accessed 28.02.2021); Wole Obayomi, ‘*National Budget 2020*’, *KPMG*, 13.02.2020: <https://home.kpmg/ng/en/home/insights/2020/02/national-budget-2020.html> (accessed 26.02.2021); and ‘*FIRS Collects N5.26trn in 2019; Equivalent to 59.8% of N8.80trn Target*’, *Proshare*, 03.12.2020: <https://www.proshareng.com/news/Taxes%20&%20Tariffs/FIRS-Collects-N5-26trn-in-2019-Equival-e-49835> (accessed 29.04.2021).

7. Samson Toromade, ‘*A Total of N66 Billion from All Relevant Agencies Has Been Remitted to the Federation Account in 2020*’, *Pulse.ng*, 07.01.2020: <https://www.pulse.ng/business/fg-has-collected-n20bn-in-stamp-duty-from-banks-in-2020/yc4gctch> (accessed 04.03.2021).

8. *173 U.S. 509 (1899)*, at 515.

9. There is also the point that some sectors appears to be ‘over-taxed’ than others. A commentator had opined that: “Again, it is noteworthy that the telecoms sector already pays some taxes that are not applicable to many other sectors”. See Afolabi Elebiju, ‘*Connections, Collections: Issues Arising from the Imposition of Excise Duties on Telecommunications Services in Nigeria*’, *LeLaw Thought Leadership*, April 2021, p.3: https://lelawlegal.com/add11pdfs/Connections_Collections_.pdf (accessed 17.09.2021). See also, the related footnote 10 discussion therein about non-generally applicable tax obligations such as National Information Technology Development Agency (NITDA) Levy; and Annual Operating Levy (AOL), payable to sectoral regulators. The real estate sector is fortunate not to be subject to these additional levies (and for the avoidance of doubt, the authors are not making a case for heavier tax burden on the sector).

10. The responsible factors include absence of pro-masses inspirational/empathetic leadership, corruption, misappropriation cum wasteful public spending, scarce and/or poor quality infrastructure, poor public service delivery, regulatory challenges, political struggles and inadequate apparatus to aid tax collection efforts. Notwithstanding, there is no valid justification for non-compliance with tax laws as the impositions are mandatory (with sanctions), rather than optional.

11. See Chuku Okoriekwe, ‘*Actualisations: Blockchain Technology Utilisation and Nigerian Tax Optimisation*’, *LeLaw Thought Leadership Perspectives*, December 2020, at p. 1, where he displayed a table showing shortfalls between FIRS targets and actual tax collections between 2015 and 2019. Recently, the Senate Committee on the Federal Capital Territory (FCT) expressed strong displeasure at the poor performance of FIRS-FCT, partly due to its weak capacity despite robust enabling legislation. See Viable TV, ‘*FULL VIDEO: FCT-IRS Chief Under Fire In Senate Over N1bn Salary Payment to 117 FIRS Staff*’, 01.04.2021: <https://www.youtube.com/watch?v=uO88h6VJQJQ>; and Kingsley Joshua, ‘*Angry Senate Committee Grills FCT Management Over Revenue Discrepancies*’, *Independent*, 01.04.2021: <https://independent.ng/angry-senate-committee-grills-fct-management-over-revenue-discrepancies/> (both accessed 01.10.2021). According to the latter news report, “Also lampooning the IRS boss, Senator Smart Adeyemi said ‘I’m disappointed in your very poor performance which is enough to throw you out of the window’”.

12. This could be partly because property related taxes may already be comprised under other heads such as *companies income tax ((CIT)*, for RE companies/property transactions by regular companies), *personal income tax ((PIT)*, same as for CIT), *capital gains tax ((CGT)*, without analysing CGT into RE related and otherwise), *value added tax ((VAT)*, same as for CGT); and *stamp duties ((SD)*, same as for VAT and CGT, since SD is not limited to RE instruments alone.

A. Concepts: Property Tax Delinquency in Nigeria

TD is understandably a worrisome phenomenon in the Nigerian tax system. In ordinary parlance, “delinquency”, derived from “delinquent” is synonymous with misconduct, wrongdoing, lawlessness, etc. **Black’s Law Dictionary**¹³ describes “delinquency” as “a failure or omission; a violation of a law or duty.” One notorious manifestation of TD is tax evasion. Tax evasion is “a contravention of the tax laws whereby a taxable individual or company neglects to pay the tax due, or reduces the tax liability by making fraudulent or untrue claims on the income tax form.”¹⁴

Thus: TD could manifest as failure to pay tax, reduction of tax liabilities via illegal/improper means, failure to file returns timeously, deliberate furnishing of incorrect information regarding taxable transactions, failure to keep tax records or accounts for audits and several other tax compliance defaults, etc.¹⁵ Many of these may also approximate to tax evasion which is criminally sanctioned. Although TD is a global

issue,¹⁶ it is of particular significance in developing nations, because of the opportunity cost of the lost public revenue; and often times, the incapacity, corruption, or lack of political will to fix systemic gaps that enables TD to fester.¹⁷

In recent years, the Nigerian RE sector has bucked the macro recessionary trend, experiencing tremendous growth, and continues to be very attractive to local and foreign investors, despite Nigeria’s macro-economic and other challenges. Amongst countless variations of RE investments are greenfield property development, renovations and repurposing for residential, commercial, industrial or other special use, land banking, land flipping (short-term speculation),¹⁸ assignments, leases, joint ventures, facilities management, and other forms of RE transactions. The vibrancy of the RE market has tax implications; and whilst subsisting tax laws provide for taxes payable on what and when, one cannot say with certainty that associated delinquency is minimal.

For instance, under the **Companies Income Tax Act**¹⁹ (CITA), companies are to pay CIT on their taxable profits, with actual rates based on yearly turnover: resulting in classification as small, taxable profits, with actual rates based on yearly turnover: resulting in classification as small, medium-sized and large companies.²⁰ Likewise, by the **Stamp Duties Act**²¹ (SDA) stamp duty (SD) is payable on instruments executed in Nigeria, or relating to any property in Nigeria. Obviously, government budget deficits, especially at Federal and State levels, call for more creativity in amendments and enforcement of tax laws to widen the tax net and curb TD.²²



13. Bryan A. Garner (ed.), (Thompson Reuters, 9th ed. (2009)), p. 493.
 14. Prof. M. T. Abulrazaq, ‘Nigerian Tax Offences and Penalties’, (Batay, 1993), p. 2. Cited in: Saka M. Olokooba, et al, ‘Tax Offences: Clogs in the Wheel of Progress and Development of Nigeria as a Nation’, AJOL, Vol. 9 No. 1, 2018, 228: <https://www.ajol.info/index.php/nauij/article/view/168822> (accessed 25.02.2021).
 15. “One of the greatest challenges of tax administration at all levels in Nigeria is non-compliance. Taxpayers are said to comply with tax laws when they: register as required; file the required returns on time; report complete and accurate information; and remit the amounts owed as and when due. Noncompliance occurs when any of these obligations are not met. Dr Okonjo-Iweala ... [in April 2013], said the objective of the diagnostic study of Nigeria’s tax system, which was carried out with the support of McKinsey & Co in 2012, was to establish a solution to improve compliance in the system. The key findings of the study were: -75% of registered companies were not in the tax net. -65% of active corporate taxpayers registered with the FIRS tax offices did not file returns or pay any tax in either 2010 or 2011. -30% of corporate taxpayers who got tax exemptions in the form of Pioneer Status misused those exemptions.” See Andrew Onyeankwe, et al, ‘Mainstreaming Good Governance into Nigerian Tax Reform’, Good Governance Africa Report (GGA), 2017, p.41.
 16. For instance, in the United States of America (USA), where debt collection tools are believed to be effective, “delinquent taxes still comprised more than 25% of the total gross tax gap in 2006: the US Treasury reported US\$46 billion in underpayment of declared taxes and US\$65 billion in enforced and other late payments as of 2006. The tax gap amounts to US\$450 billion dollars, which in addition to the previous items includes non-filing and underreporting.” See Ricardo Perez-Truglia and Ugo Troiano, ‘Shaming Tax Delinquents’, National Bureau of Economic Research, 06.2016, p. 2: https://www.nber.org/system/files/working_papers/w21264/w21264.pdf (accessed 22.03.2021). In a bid to boost fiscal returns, there are also efforts to champion a new global minimum tax rate that seeks to curb tax losses from ‘offshoring’. See for example, David J. Lynch, ‘Biden Set for G-7 Boost in Bid for All Nations to Impose Minimum Global Corporate Tax’, The Washington Post, 01.06.2021: <https://www.washingtonpost.com/us-policy/2021/05/31/global-minimum-corporate-tax-biden-g7/> (accessed 16.08.2021).
 17. Of high significance is the impact of Illicit Financial Flows (IFFs) on public revenue losses in developing countries. According to OECD, “every year huge sums of money are transferred out of developing countries illegally. These illicit financial flows strip resources from developing countries that could be used to finance much-needed public services, from security and justice to basic social services such as health and education, weakening their financial systems and economic potential.” See ‘Illicit Financial Flows from Developing Countries: Measuring OECD Responses’, OECD, 2014, p. 15: https://www.oecd.org/corruption/Illicit_Financial_Flows_from_Developing_Countries.pdf (accessed 27.06.2021). See also Afolabi Elebiju, ‘Rendezvous: Implications of Tax Provisions of Nigeria’s Finance Act (No.2) 2020 for Non-Residents’, LeLaw Thought Leadership Reflections, p.9: https://lelawlegal.com/add111pdfs/TLR_AE_-_FA2_2020.pdf (accessed 01.10.2021).
 See also, Andrew Onyeankwe, Oladiran Bello and Ugochukwu Ekezie et al., ‘Mainstreaming Good Governance into Nigerian Tax Reform’, Good Governance Africa Report, Lagos, 2017, at p. 41: “Finance Minister Kemi Adeosun, speaking ... in April 2016, said the VAT compliance rate for Nigeria stood at 10%. Several factors account for the low tax compliance in Lagos State and Nigeria. Some are technical in nature, but most are governance-related and embedded in the weak institutional structure and enforcement processes of Nigeria’s tax administration. These factors are discussed below, with emphasis on the governance factors that drive non-compliance.” https://media.africaportal.org/documents/Mainstreaming_good_governance_into_Nigerian_tax_reform_vw5GjO5.pdf (accessed 27.06.2021), emphasis supplied. For a fuller discussion, see Section 3.5, Factors Accounting for Low Tax Compliance in Nigeria’, at pp. 41-46.
 18. Land flipping typically involves buying land at low prices in rapidly developing areas and selling at higher prices for profit. It is a smart investment option, since bare lands require minimal maintenance, unlike buildings that may need periodic renovations.
 19. Cap. C21, Laws of the Federation of Nigeria (LFN) 2004.
 20. See section 40 CITA.
 21. Cap. S8, LFN 2004.
 22. It would suffice to achieve some salient provisions of the **National Tax Policy 2017** issued 1st February 2017 <https://pwnigeria.typepad.com/files/fec-approved-ntp-feb-1-2017.pdf> (accessed 01.10.2021). For example, provisions on diversification of tax sources, convergence of tax rates, creating competitive edge by reducing the number of taxes and eradicating multiple taxation. See **Paragraphs 2.2.2 - 2.2.4, and 2.2.6 NTP 2017**.

B. RE -Based Taxes/Charges in Nigeria: The Basics for Cognisance

Various taxes apply to RE transactions in Nigeria; albeit property taxation is one aspect of RE transaction that people find confusing, take for granted, see as unnecessary, or are least aware of. Factors like residence of the taxpayer, nature of the taxpaying entity (natural or juristic person), and nature of the RE transaction inform the rates of PT in Nigeria. Summarily, the key property related transaction taxes in Nigeria today include:

a. **Capital Gains Tax (CGT):** CGT is imposed at 10% on net gains accruing on disposal of capital assets, including RE, by the **Capital Gains Tax Act²³ (CGTA)**. All chargeable assets²⁴ are

subject to CGT when disposed at a gain, except those specifically exempted by the **CGTA**.²⁵

Section 2 Finance Act 2020²⁶ (FA2 2020) introduced a new **section 2(4) CGTA** mandating computation, filing of half-yearly CGT returns and payment (by 30th June and 31st December), on disposals of chargeable assets during the periods. *This fast tracks CGT payments (compared to previous regime of onetime CGT filing and payment at year end), ensuring that the FIRS enjoys the benefits of time value of money, albeit this increases compliance burden on taxpayers.* In line with Nigeria’s federal system, the

FIRS deals with CGT on the disposal of property by corporates, whilst the respective State Internal Revenue Service (SIRS) deals with gains on disposals by individuals and partnerships.²⁷

b. **Stamp Duty Tax (SDT):** RE transactions to which SDs apply include conveyances by sale, lease, sub-lease, mortgage or assignment, powers of attorney, licenses, etc; albeit SD is not restricted to only RE instruments.²⁸ Upon payment, the related instruments are stamped by the appropriate authority as evidence of compliance.



23. Cap. C1, LFN 2004.

24. See section 3, CGTA.

25. See sections 26-42 CGTA for CGT exemption and relief provisions.

26. This legislation which was the second Finance Act to receive presidential assent in 2020, became law on 31st December 2020. Its predecessor, (erroneously called Finance Act 2019, see section 57 thereof), was signed into law on 13th January 2020. Accordingly, the predecessor can also be properly called Finance Act 2020; in this article, the two Finance Acts 2020 are respectively referred to as FA1 2020 and FA2 2020; or collectively, as FAs 2020.

27. In addition to other substantive tax legislation and the 1999 Constitution of the Federal Republic of Nigeria (as amended), see also sections 2 and 12 CGTA as part of basis for established practice that the FIRS administers income taxes/CGT for companies, whilst SIRS does same for individuals.

28. A comprehensive list of chargeable instruments is provided in the Schedule to the SDA – which also prescribes the respective chargeable amounts for every transaction (including RE), either at flat or ad valorem rates. The FAs 2020 expanded the scope of the SDA to include technology, e-commerce and cross-border transactions, in line with global practice and current economic realities. Traditionally, SD as taxes levied on executed transaction documents/instruments was denoted by revenue or postage stamp or an impressed die on the instrument: Section 5 SDA. In determining the nature of the relevant transaction, the court will consider the substance of the instrument and its legal effect: Oughtred v. IRC (1958) 1 Ch 678. However, FAs 2020 has widened the means of denoting stamp duties, as well as instruments to electronic versions. The argument that SD is charged on instruments and not on transactions is now moot, given the new section 89A(4) SDA (insertion by FA2 2020, or its immediate predecessor, section 89(3) introduced by FA1 2020).



Incidentally, Nigeria's SD regime had remained static; enshrined in the *SDA*, it was bereft of any significant legislative attention, until recently. Pre-*FAs 2020* amendments, the *SDA*'s last substantive amendment was in 1956.²⁹ Government recently began to look at SD as a potential source of significant revenue; and after initial missteps, have now decisively picked up the gauntlet by enacting the *FAs 2020 SDA* amendments.³⁰

Nonetheless, a lot still needs to be done - a brand new *SDA* representing a more comprehensive effort than the recent amendments, and which is more in tune with business realities, is required. In the process, errors in the *FA1 2020* amendments can be corrected.³¹

One of the significant but controversial reforms to the *SDA* is the replacement of "the Federal Government" with the FIRS as the party entitled to "impose" SD.³² Subsequently, the FIRS issued Circulars and public notices purporting to increase the SD rates in the *SDA Schedule*, much to the chagrin of the general public. Following public outcry (especially on the purported new *ad valorem* rates), the FIRS retraced its steps.³³ Another more recent development is the 36 States' Attorneys-General suing the Federal Government at the Supreme Court (SC) regarding entitlement to

collect SD on transactions involving individuals in their respective States, and seeking *pro rata* refunds as applicable.³⁴

By *section 23 SDA*, any unstamped or insufficiently stamped instrument may be stamped within 40 days from the first execution, save where the *SDA* expressly provides otherwise; for example where the instrument is chargeable to *ad valorem* duty which must be stamped within 30 days. The *SDA*'s very low penalty regime *vis-a-vis* current day realities is reflective of the long legislative neglect that the *SDA* has historically suffered from.³⁵ *Section 22* provides also that unstamped instruments executed in and relating to any property situate in Nigeria shall not be given in evidence, with exceptions thereto. Apart from its economic impact, SD enables government to have records of certain types of transactions.

29. The *SDA* was consolidated into *LFN 2004* as *Cap. 58, LFN 2004*; it was previously *Cap. 411, LFN 1990*. See notations evidencing *SDA*'s legislative history in the *SDA*. Some other evidence of 'historic neglect or inattention' include stipulations (by current standards) of negligible penalty amounts. For example, *Sections 91* and *92* prescribe penalties of between ₦4 to ₦20 in respect of receipts, ₦100 in *sections 96* and *98* regarding share warrants and stock certificates to bearer respectively, and ₦40 in *section 99* relating to warrant for goods. *Section 15* provides for an application fee of ₦0.26k for denoting a second instrument, the chargeable duty on which, is subject to the duty paid on another instrument, etc. Also, because the penalties are relatively light, there is no incentive for prompt compliance - people can defer stamping until it is absolutely necessary (for example if required as evidence in litigation), in the hope that the situation necessitating stamping (litigation) will not arise.

30. Whilst the *FAs 2020* amendments have expanded the breadth of Nigerian SDs (see for example, the amended *Section 2 SDA* definitions of "stamp", "stamped" and "instruments" respectively), prior attempts inconsistent with the law, were successfully challenged. The *Section 89(3) SDA* amendment (*vide Section 54 FA1 2020*) that imposed ₦50 SD on receipts and bank transfers is illustrative. Prior to *FA1 2020*, the Central Bank of Nigeria (CBN) tried to achieve an equivalent result on deposits of ₦1,000 and above through a January 2016 circular (the CBN Circular) it issued to all banks and financial institutions in Nigeria. Upon challenge, the CBN Circular was invalidated by the Court of Appeal (CA) in *Standard Chartered Bank Nigeria Ltd (SCBNL) v. KIS Ltd & 22 Ors (2016) 27 TLRN 1*; the CA overturning the Federal High Court (FHC) decision in *KIS Ltd v. 22 DMBs Suit No: FHC/LCS/1462/2013* held that it was improper to charge SDs on cash deposits or electronic transactions. The CA further held that the provisions of the CBN Circular being inconsistent with the *SDA Schedule* was null and void. For further discussion, see for example, Ayooluwatunwase Fadeyi, 'CBN Stamp Duty Charges on Deposits - Can Something be Built on Nothing?', *LeLaw Thought Leadership*, August 2017: https://lelawlegal.com/add111pdfs/Stamp_Duty_Article.pdf (accessed 08.08.2021). Apparently, the lessons learnt must have informed the enactment of *section 89(3) SDA* that charged ₦50 SD on electronic transfers of ₦10,000 and above. Incidentally, *section 89(3)* has now been substituted with more detailed *section 89A* (*vide Section 48 FA2 2020*), imposing Electronic Money Transfer Levy (EMTL) on electronic receipts or transfers of ₦10,000 and above. It also includes a sharing formula (on the basis of derivation) of the proceeds, at 15% and 85% between FG and SGs respectively (*section 89A(4)*).

31. For example, *section 4(1) and (2) SDA* as amended by *section 53 FA1 2020* empowers the FIRS and the SIRS to "impose" SDs in place of the FG and State Governments (SGs). The extant *section 4(1) SDA* reads: "The [FIRS] shall be the only competent authority to impose, charge and collect duties upon instruments specified in the Schedule to this Act if such instrument relates to matters executed between a company and an individual, group or body of individuals." Emphasis supplied. Apparently, whilst amending *section 4(1)*, the draftsman substituted the FG with the FIRS, thereby conferring on the FIRS, power to also "impose" SD. In our view, the National Assembly (NA) has arguably exceeded its legislative powers under the 1999 Constitution by purporting to vest the FIRS with power to "impose" SD. Assuming the new *section 4(1) SDA* was not enacted, provisions of the *FIRS Establishment Act, Cap. F36, LFN 2004 (FIRSEA)* listing the *SDA* amongst the tax laws to be administered by the FIRS still showed without doubt that the FIRS was the collection agency for FG's SDs. See also *NLNG Limited v. FBIR (2011) 5 TLRN 97*, at 110-111, where the FHC held that pursuant to *Section 2(1) and Item 7, Part 1, Schedule of the Taxes and Levies (Approved List for Collection) Act, Cap. T2, LFN 2004 (TLA)*, the FIRS is the "appropriate tax authority" for the administration of SDs involving corporates, and also residents of the FCT. *Section 4 1999 Constitution* vests federal legislative powers in the NA to make laws for "the peace, order and good government of the Federation or any part thereof" on matters in the *Exclusive and Concurrent Legislative Lists (Parts I and II, Second Schedule)*, and on any other matter over which the NA is constitutionally empowered to make laws. SDs is *Item 58 in Part I, Second Schedule (the Exclusive List)*, thereby strongly calling into question, the ability of the NA to clothe the FIRS with power to impose SD. Contrast however, *Section 1(2) TLA* vesting the Minister of Finance with power to vary the *TLA Schedule* (listing taxes collectible by the three tiers of government). Its military era origin is typified by *Section 2(1)* that purports to make *TLA* superior to the 1999 Constitution, a clear invalidity under present dispensation, given the *grundnorm* status of the Constitution. Unsurprisingly, *Section 1(2) TLA* was recently held unconstitutional by *Fajji J (Lagos Division, FHC) in Registered Trustees of Hotel Owners and Managers Association of Nigeria v. AGF and Minister of Finance (2020) 52 TLRN 01*. See also review of the CA decision holding the *TLA* unconstitutional: Chimeirim Echendu, 'Impacts: Issues Arising from Invalidation of the Taxes and Levies (Approved List for Collection) Act in Uyo Local Government Council v. Akwa Ibom State Government & Anor (2020) LPELR-49691 (CA)', *LeLaw Thought Leadership Insights*, March 2021: https://lelawlegal.com/add111pdfs/LELAW_IMPACT1.pdf (accessed 07.06.2021).

33. See Chinedum Uwaegbula, 'Outrage Over Stamp Duty Charges in Real Estate Sector', *The Guardian*, 29.07.2020: <https://guardian.ng/news/outrage-over-stamp-duty-charges-in-real-estate-sector/> (accessed 11.06.2021). Evidencing the 'walkback' from its earlier posture, FIRS website still displays, and the FIRS in practice collects, real estate related property SD rates consistent with the *SDA Schedule*: https://stampduty.gov.ng/stamp_duty_charges (last accessed 12.08.2021).

34. Dapo Akinrefon, et al, 'Tax War Worsens As 36 States Sue FG Over Stamp Duty', *Vanguard*, 10.09.2021: (accessed 18.09.2021).

35. See footnote 30 above. For further details, see generally Afolabi Elebiju (ed.), 'Questions and Pathways: Recent Issues in Nigerian Stamp Duties' Regulatory Framework ("LeLaw on Stamp Duties"), December 2020 (unpublished 36 page primer available on request).

c. *Companies Income Tax (CIT)*: CIT is regulated by the **CITA** and administered by the FIRS on behalf of the FG in respect of taxable profits of companies, on preceding year basis, including RE players. CIT is chargeable on turnover threshold basis at 30%, 20% and 0% for “large”, “medium-sized” and “small” companies respectively. It is instructive that the government considers RE such a critical sector that it is a “pioneer industry” eligible for pioneer status tax incentive under the **Industrial Development (Income Tax Relief) Act³⁶ (IDITRA)**.

The **FA5 2020** amendments to the **CITA** also provided additional incentives to the sector, especially regarding tax treatment of Real Estate Investment Trust Scheme (REITS) and Real Estate Investment Companies (REICs).³⁷ In line with general provisions, dividends from real estate companies are *franked investment income* that are not subject to further taxation, after suffering 10% WHT deduction at source.³⁸ The much welcomed recent amendment of **CITA’s** erstwhile strict excess dividend tax (EDT) provisions, will also benefit the RE sector.³⁹

d. *Personal Income Tax (PIT)*: The **Personal Income Tax Act⁴⁰ (PITA)** imposes tax on incomes of individuals, families, communities, executors, trustees and partnerships.⁴¹ **PITA** prescribes rules for treating various taxable or tax exempt income; whilst partnership profits is taxable in the hands of the partners, trust income is also taxable in the hands of the trustees. **Section 81 PITA** tasks employers with computation, deduction and remittance obligations through the Pay-As-You-Earn (PAYE) system in respect of their employees’ PIT. Also, RE-related income from rents, leases, assignment, licenses, mortgage, etc. would be reportable outside PAYE as “other income”. As under **CITA**, dividends from RE companies are franked investment income.⁴²

PIT is paid in the State where the taxable person resides at a progressive rate from 0% for individuals earning the National Minimum Wage or less in any year of assessment,⁴³ and up to 24% for individuals earning ₦3.2 million and above.⁴⁴ Theoretically, the WHT on rent of a property in one State must

be remitted to the Relevant Tax Authority (RTA) where the landlord is resident (or deemed resident), since WHT is advance payment of the landlord's tax who is outside the PIT oversight of the State where the property is located.⁴⁵ Unsurprisingly, determination of the residence of taxpayers could become contentious between RTAs, as exemplified by the recent case of **A-G Bayelsa State & BSBIR v. FIRS**,⁴⁶ a PAYE dispute that related to the “residence” of employees on an offshore platform.



36. Cap. I7, LFN, 2004. See for example, the **Industrial Development (Additional List of Pioneer Industries) Notice (S.111, 2008)**, published pursuant to section 1 IDITRA.

37. See section 23 CITA as amended by sections 9 FA1 2020 and section 10 FA2 2020 respectively. See section 193 Investments and Securities Act Cap. I24, LFN 2004, for the attributes of REICs and REITS. Per Rule 510, Securities and Exchange Commission Rules and Regulations 2013, “Real Estate Investment Scheme (REIS) may be constituted as a: a. company; or b. trust.”

38. See section 80 CITA, as amended by section 20 FA1 2020.

39. For some high level discussions, see Afolabi Elebiju, “Nigeria’s Finance Act 2020: Tax Amendments- Should the Oil and Gas Sectors be Nervous?”, *LeLaw Thought Leadership*, March 2020: <https://lelawlegal.com/index.php/page/blogs/36>; and “Rendezvous: Implications of Tax Provisions of Nigeria’s Finance Act (No. 2) 2020 for Non-Residents”, *LeLaw Thought Leadership*, January 2021: <https://lelawlegal.com/index.php/page/blogs/289> (both accessed 12.06. 2021).

40. Cap. P8, LFN 2004.

41. See section 3 (Income chargeable) PITA. Per section 19 (Income exempted), and the related 3rd Schedule PITA, income from RE is not listed as exempt for PIT purposes. See also the new definition of “gross income” as introduced by section 29 FA2 2020’s amendment of section 33 PITA.

42. Section 71 PITA.

43. See section 108 PITA as amended by Section 31 FA2 2020.

44. To lessen the PIT burden on individuals, Section 33(1) PITA (as amended by sections 27 FA1 and 29 FA2, 2020) provides for Consolidated Relief Allowance (CRA) of which is computed as the higher of: ₦200,000 subject to a minimum of 1% of Gross Income; and 20% of Gross Income. The CRA shields or excludes the relevant portion of the taxpayer’s income from PIT.

45. See section 2(2) PITA; thus any attempt by the RTA where the property is located to purportedly enforce WHT deduction and remittance obligation against the tenant, can be successfully challenged. See also Schedule 1 PITA (Determination of residence), particularly Paragraph 1’s definition of “place of residence” and “principal place of residence”. Cf. with section 15 PITA which prescribes that dividends or interest payable by a Nigerian company “shall be deemed to be derived from the territory in which the recipient... resides...”

46. (2021) 62 TLRN 1 (FHC) and (2021) 63 TLRN 1 (CoA). See also *Ecodrill Nigeria Limited v. Akwa Ibom SBIR*, 11 All NTC 13 at 31-32, where Nweze, JCA (as he then was) held that: “Under our tax law regime, one of the bases of tax liability, on the part of a taxpayer, and the power of the appropriate tax authority to collect [PIT] is ‘residence’. Simply put, the principle of residence relates primarily to the existence of sufficient connection between a [RTA] and a taxable person. If it is shown that the taxpayer resides in any State in Nigeria, that State’s Board of Internal Revenue is the appropriate authority conferred with the power to collect [PIT] from such taxpayers resident in that State: section 2(2) PITA. These taxpayers i.e. resident taxpayers are expected to give account of their worldwide earnings to the State tax authority: section 3(1) PITA”. Emphasis supplied.

e. **Withholding Tax (WHT):** The essential statutory provisions for WHT are found in **sections 69-75 PITA, 78-84 CITA, 54 and 56 Petroleum Profits Tax Act (PPTA)**⁴⁷ and **WHT Regulations** made pursuant to **PITA** and **CITA** respectively. WHT is not a different specie of tax; according to a commentator:

“Nigerian tax legislation provides for the WHT system to function as an advance payment of tax upon pain of criminal sanctions for breach. There are essentially in *pari materia* provision in the ...PITA, sections 69-75), ... (CITA, sections 78-84), Petroleum Profits Tax Act (PPTA, sections 56 & 54); and the Federal Inland Revenue Service (Establishment) Act 2007 (FIRSA, sections 30 & 40), together with the WHT Regulations made pursuant to CITA and PITA respectively.

Parties (e.g. recipients of service) making payments on listed transactions are required to deduct tax on such payments at either 5% or 10% depending on the transaction or status of the payee. WHT can only be deducted from income liable to tax, but is available as credit against future tax liability and potentially entitle taxpayer to refund under section 23 FIRSA. The policy underpinning of

WHT, apart from facilitating tax collection on a “as you go” basis, is widening the tax net to capture transactions that would have otherwise escaped tax, especially in the informal sector.”⁴⁸

In property transactions, especially on rents, WHT “gross up” arrangements are common – being employed to transfer the WHT burden from the landlord (the recipient of the rental income), to the tenant, thereby increasing the latter's transaction cost. Unsurprisingly, this practice has generated a lot of controversy.⁴⁹ **FA1 2020** amendments has further disincentivised gross-ups by disallowing taxes paid on behalf of third parties for deductibility purposes.⁵⁰

Although WHT is charged on rents (at 10% per **sections 69 PITA** and **79 CITA**), it is not applicable to outright assignment or sale of property. Given that no RTA has in practice sought to enforce WHT compliance on sale or assignment of property, it is moot to consider whether such is “sales in the ordinary course of business” per the **WHT Regulations**.⁵¹ WHT is to be remitted within 21 days (**section 82 CITA**) or 30 days (**section 74(1) PITA** as

amended) after deduction or accrual to the RTA (the FIRS or SIRS), depending on whether the payee is a corporate or natural person/partnership.

f. **Value Added Tax (VAT):** VAT is primarily regulated by the **Value Added Tax Act**⁵² (**VATA**). VAT is charged at 7.5% on supply of goods and services not listed as VAT exempt in **First Schedule VATA**.⁵³ Until recently, applicability of VAT in RE transactions generated a lot of controversy, arising from imprecise definition of “goods” and “services” in the original and amended **VATA** provisions. For example, in **Momotato v. UACN Property Dev. Co. Plc.**⁵⁴ the Court held that whilst land transactions *simpliciter* was not subject to VAT; sale of a serviced plot, since same included improvements/developments (being value addition or RE services), was VATable.



47. Cap. P13, LFN 2004.

48. **Withholding Tax: A-Z of Grossing-up**, ‘Taxspectives by Afolabi Elebiju’, *ThisDay Lawyer*, 12.02.2010, p.xiv; also available at LeLaw Thought Leadership page: <https://lelawlegal.com/index.php/page/blogs/106> (accessed 18.05.2021).

49. See for example two rejoinder articles by Drs. Olumide Obayemi and Bode Oyetunde respectively, ‘**RE: Withholding Tax: A-Z of Grossing-up**’, ‘Taxspectives’, *ThisDay Lawyer*, 30.12.2010, pp. vi and vii; also available at: <https://lelawlegal.com/index.php/page/blogs/296>, and [https://lelawlegal.com/add111pdfs/WHT-Grossing-Up-\(Oyetunde-Rejoinder\)2.pdf](https://lelawlegal.com/add111pdfs/WHT-Grossing-Up-(Oyetunde-Rejoinder)2.pdf) (both accessed 01.10.2021).

50. See **section 11 FA1 2020**'s amendment of **section 27 CITA**. **Sections 7, 10 and 12 FA2 2020** also contain some gross-up impacting provisions. It has been rightly opined that despite the current state of law, “there is no express prohibition against [RE transaction] gross-ups.” See Afolabi Elebiju, ‘**Addendum-“Withholding Tax: The A-Z of Grossing Up”**’, *LeLaw Thought Leadership*, April 2021, p.2: https://lelawlegal.com/add111pdfs/Afolabi_-_Addendum_updated.pdf; and Afolabi Elebiju, ‘**Relationships and Scrutinisations: The Companies and Allied Matters Act 2020 and Transfer Pricing in Nigeria**’, *LeLaw Thought Leadership*, April 2021, p.4: (both accessed 01.10.2021). The latter discusses how the **CAMA** is ahead of tax legislation in prohibiting gross-up of directors' fees; such prohibition will obviously affect RE sector corporate operators.

51. See the TAT Lagos Zone decision, **Tetra Pak West Africa Limited v. FIRS (2021) 58 TLRN**, 1 for tests of whether and how a sale is in the ordinary course of business and therefore exempt from WHT.

52. **Cap. V1, LFN 2004 (as amended)**. Meanwhile, **Sections 33-47 and Sections 40-45, FA1 2020 and FA2, 2020** respectively, make amendments to the initial **VATA**.

53. From inception of the VAT regime until **section 34 FA1 2020**'s amendment of **section 4 VATA** in 2020, the VAT rate (currently 7.5%), was 5%. **Section 42 FA2 2020** affirmed the (ministerial regulation on the) commencement of the increase as February 2020 by further amending **section 4 VATA** accordingly. See Oluseyi Awojulgbe, ‘**7.5% VAT to be Implemented From February 1, Says Finance Minister**’, *The Cable*, 01.16.2020:

54. **6 All NTC 37**. Also, the VAT Tribunal in **FBIR v. Ibile Holdings Limited 6 All NTC 1**, held that VAT is applicable on commercial rents. According to the Tribunal, sale of buildings also involves transfer of property in goods, and therefore, constitutes a supply of goods which is liable to VAT.

Thankfully, **section 46 VATA**, as amended by **section 44 FA2 2020**, has now confirmed the exclusion of land and building from “goods”, and also transfer of same, from “services” upon which VAT is chargeable; leaving only secondary RE transactions like professional services (by lawyers, estate agents, facility managers, etc), liable to VAT.⁵⁵ Incidentally, the Tax Appeal Tribunal (TAT) Lagos Zone, in the recent case of **Ess-Ay Holdings Limited v. FIRS**⁵⁶ (which predated **FAS 2020** but is in tandem with their position), held that rental income/RE leases cannot be subjected to VAT.⁵⁷

Perhaps more fundamental is the question mark of whether the **VATA** itself is constitutional, and therefore *invalid, null and void, if it is unconstitutional*. In **A-G Rivers State v. FIRS & A-G Federation**,⁵⁸ **VATA** was held to be *ultra vires* the legislative competence of the National Assembly, since consumption tax was neither on the **Exclusive** nor

Concurrent Legislative Lists of the **1999 Constitution of the Federal Republic of Nigeria as amended**.⁵⁹

g. **Tenement Rate/Land Use Charge (TR/LUC): Paragraph (j), 4th Schedule, Constitution of the Federal Republic of Nigeria 1999 (as amended)**, saddled Local Governments with “assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the Houses of Assembly of a State.”

TR was originally a tool used by LGs for municipal funding. While some States still maintain the TR regime, its revamped successor, “**Land Use Charge**” is preferred by some other States.⁶⁰ TR/LUC is an annual levy imposed on occupiers of developed and undeveloped properties in a locality within a State. The LASG’s LUC regime was originally developed *vide Lagos State Land Use Charge Law 2001*⁶¹ as part of initiatives to “generate additional revenue needed

to enhance the standard of the State in terms of physical and social infrastructure”⁶² in the face of dwindling federal revenue allocations.

Its successor, the **Lagos State Land Use Charge Law 2018 (as amended)** was enacted to consolidate property and land-based charges, and in the process, reviewed them upwards. It was amended in 2020⁶³ to ease the financial burden of the residents by reversing the rates to the pre-2018 amounts; however the 2020 amendment left the valuation basis as prescribed in the **2018 Law**.⁶⁴

Under the **LUCLs**, the LG is the only tier empowered to levy and collect the LUC, whilst power for collection of rates and assessment of privately-owned houses or tenement may be delegated to the LASG by a written agreement.⁶⁵



55. Through this means, VAT could apply to the informal sector through billing by relevant professional services firms. For some discussion, see Afolabi Elebiju and Ayooluwatunwase Ewebiyi, ‘**Value Added Tax and the Informal Sector**’, in Samagbeyi and Otusanya (eds.), ‘**Value Added Tax in Nigeria: Policy, Legal, Administrative Issues and Options for Reform**’, CITN (November 2021), pp. 170-179.

56. 6 All NTC 37.

57. Cf. **Ellah, Sons & Company Ltd v. FIRS (2020) 53 TLRN 58, at 79-80** where the South-South Zone of the TAT held that “from the above definitions, supply of goods includes the letting out of goods on hire and leasing”; “this means that all the goods or services that are not expressly exempted as listed in the First Schedule are VATable”. This is a reflection of interpretation discrepancy caused by the slim definition of “goods” and “services” in **VATA**. Historically, FIRS was insisting on VAT on rent of commercial property but did not enforce on residential leases. Thankfully however, **section 44 FA2** (amendment of **section 46 VATA**) has provided clarity by its express exclusion of “land and building” from chargeable goods and “interest in land and building” from services.

58. (2021) 61 TLRN 1.

59. See also prior cases of **Ukala v. FIRS (2021) 56 TLRN 1** and **The Registered Trustees of Hotel Owners and Managers Association of Lagos v. A-G Lagos State & FIRS (2019) 47 TLRN 1**. According to news reports, **A-G Rivers** is currently on appeal at the Court of Appeal (CoA); the FIRS also filed application for stay of execution by the CoA pending appeal, same having been refused by the trial court. Following application by Lagos State to be joined as a Respondent in the Appeal, the CoA ordered that **status quo ante bellum** be maintained to enable other States that may so wish, also apply to join, and thereafter for the application of stay of execution to be heard. Dissatisfied, Rivers has appealed against the CoA decision to the SC. See Mary Ugboadaga, ‘**Court Stops FIRS, Says State Government Should Collect VAT, Income Taxes in Rivers**’, *The Cable*, 09.08.2021: <https://www.thecable.ng/court-stops-firs-says-state-government-should-collect-vat-income-taxes-in-rivers>; Lesi Nwisagbo, ‘**Lagos Applies to Join Rivers as Respondents in FIRS Appeal**’, *Punch*, 10.09.2021; Ameh Ejekwoniyilo, ‘**Rivers State Govt Takes VAT Collection Battle to Supreme Court**’, *Premium Times*, 15.09.2021: <https://www.premiumtimesng.com/news/top-news/484900-rivers-state-govt-takes-vat-collection-battle-to-supreme-court.html> (accessed 17.09.2021). Incidentally, in **A-G Lagos v. A-G Federation & Ors. [2014] 9 NWLR (Pt. 1412), 217**, the SC upheld the 1st Respondent’s preliminary objection against Lagos State’s invocation of its original jurisdiction pursuant to **section 232(1) 1999 Constitution** for reliefs, including declaration that the **VATA** was unconstitutional on the basis that Lagos was involved in other litigation at the lower courts (about the validity of its **Sales Tax Law**) where some of these reliefs were directly or indirectly in issue.

60. In Lagos, the incumbent government in 2001 repealed the **Lagos State Tenement Rates Law of Lagos State 1989** and introduced the **Land Use Charge Law of 2001** (discussed further below), in its stead. For years, only Lagos State operated the LUC system, but in recent years, other States like Anambra (2010), Edo (2012), Enugu (2016) and Ogun (2012) have enacted their LUC Laws. See Ndubisi Onwuanyi, ‘**Tenement Rates and the Land Use Charge: A Comparative Evaluation of Suitability for Sustaining Municipal Funding**’, *ResearchGate*, 05.2020: https://www.researchgate.net/publication/341614855_TENEMENT_RATES_AND_THE_LAND_USE_CHARGE_A_COMPARATIVE_EVALUATION_OF_SUITABILITY_FOR_SUSTAINABLE_MUNICIPAL_FUNDING (accessed 26.03.2021).

61. No.11, 2001 (Cap. L79, *Laws of Lagos, 2015*).

62. See Adebayo M. Adedayo and T.A. Arimoro, ‘**Administration of Land Use Charge in Lagos State, Nigeria**’, *ResearchGate*, 06.2018: https://www.researchgate.net/publication/335790879_Administration_of_Land_use_Charge_in_Lagos_State_Nigeria (accessed 18.05.2021).

63. See O. Olasunkanmi, ‘**LASG Reviews Land Use Charge Rates**’, *Lagos State Official Government Web Portal*, 05.08. 2020: <https://lagosstate.gov.ng/blog/2020/08/05/lasg-reviews-land-use-charge-rates/> (accessed 26.08.2021).

64. See ‘**Lagos State Reverses Land Use Charge to Pre-2018 Rates**’, *BRC*, 07.08.2020: (accessed 17.05. 2021).

65. **Section 1 LUCL 2001; Sections 2 and 3 LUC 2018**.



The **LUCL 2018** (as amended by the **LUCL 2020**) is the extant **LUCL** in Lagos State. By its provisions, chargeable properties include buildings, improvements on land, and undeveloped, reclaimed or waterlogged parcels of land that are not exempted under **section 12 LUCL**.⁶⁶ Likewise, chargeable persons are owners and occupiers of chargeable properties, as well as holders of leaseholds above ten (10) years.⁶⁷ Many other States, taking a cue from Lagos, have subsequently enacted their respective **LUCLs**.⁶⁸

LASG's practice of posting defaulter notices on prominent parts of

buildings to show that the owner/occupier is owing LUC and other taxes is a form of 'reputational pressure', which could make would-be defaulters have a rethink or actual defaulters pay up promptly, in order to avoid the stigma of having such post on their walls or gates, for long periods.⁶⁹ Recently, complaints against exorbitant charges of tenement rates in the FCT made headlines,⁷⁰ exemplifying how 'collection pressure' can sometimes make the Revenue act *ultra vires*.

h. *Consent and Registration fees*: Apart from the foregoing, States impose fees on property registration or

perfection of titles to land. These fees (covering consent and registration respectively) vary from State to State, and are discussed below.

Consent fee arises from the statutory requirement of **sections 21 and 22 Land Use Act**⁷¹ (**LUA**), mandating prior consent of the State Governor to RE transactions/alienations of interest in land in the State (for urban areas) and land to be sold by order of the Court, and of the LG Chairman for rural areas, respectively.⁷² The procedure for obtaining Governor's consent is as prescribed by the relevant authority as deemed fit, in exercise of the primary power to grant consent.⁷³

66. Section 4, **LUCL, Lagos State, 2018**.

67. Section 9, *Ibid*.

68. Such as Ondo (2014), Anambra (2010), Oyo (2012), Ekiti (2013), Edo (2012), Abia (2014), Osun (2016), Ogun (2012) and Enugu (2016).

69. See 'LIRS Arrests Four Alleged Tax Defaulters for Breaking Seals to Offices', *The Guardian*, 30.09.2009: <https://guardian.ng/business-services/business/lirs-arrests-four-alleged-tax-defaulters-for-breaking-seals-to-offices/> (accessed 31.08.2021).

70. See Ameh Ejekwoniyilo, 'Abuja Residents Lament 'Outrageous' Tenement Charges', *Premium Times*, 16.09.2021: <https://www.premiumtimesng.com/news/headlines/485144-abuja-residents-lament-outrageous-tenement-charges.html> (accessed 02.10.2021). Excerpts from the news report: "Residents of District Centre Layout Extension Phase IV, in Kubwa, a satellite town in the [FCT] are groaning over 'humongous tenement rates' imposed by the [LG]. ... Some residents ... said the charges were arbitrarily levied without valuation of property as provided for in the [Tenement Rate Collection Bye-Law (No. 20) 2016]... Some of them also complained about among other issues, imposition of retrospective charges for 2019 to 2020, with demand notices backdated to 2019, even on those who were not living in the area at the time. ... As a follow-up to the demand notices, officials of the Area Council [AC] have also served residents with civil defaulter's civil summonses issued by the FCT magistrate's revenue court at the instance of the [AC]... the summonses seek an order of the court to seal off the premises of defaulters pending the payment of their debts to the [AC]. They wondered why they should be burdened with such 'exorbitant' fees despite their efforts at improving dilapidated infrastructure in their locality through community efforts without support from the [AC]. They lamented that they were just recovering from the hardships occasioned by the coronavirus pandemic, only to be slammed with 'arbitrary, humongous and outrageous amounts. It is important to reiterate the work singlehandedly handled by the estate which includes but are not limited to: Road mapping, landscaping, drainage system, sand filling of roads, purchase of electricity poles, purchase of recline wires/other cables, and contribution for transformer purchase, the above were done without the input of the [AC]. The aggrieved residents appealed to the Council Chairman to review the collection of tenement charges in line with statutory provisions. ... 'We are not opposed to the payment of tenement charges, but the rates have to as stipulated in the [AC] Bye-Law,' ... Residents cited the provision, which stipulates that 'valuation office shall carry out assessment of all rateable properties in the Area Council.' Another issue in contention said to be in breach of the law is the levying of individual occupants of a property instead of imposing only one charge on a property. 'Some residents were charged as much as N200, 000 as tenement rates for apartments that are being rented at the cost of N600, 000. This is clearly above the [4%] provision in the Bye-Law'".

71. Cap. L5, LFN 2004.

72. The LUA itself does not mandate payment of consent fee, but it is reasonable foreseeable as an administrative fee for processing land transactions' consent applications.

73. Details of requirements for obtaining Governor's consent in Lagos State are as stipulated on the Land Bureau's website: <https://landsbureau.lagosstate.gov.ng/2017/05/17/governors-consent/> (accessed 15.05.2021). It is trite that all powers incidental to the exercise of a principal right shall be presumed or inferred. In *Akapo v. Hakeem-Habeem* [1992] 6 NWLR (Pt. 247), 266 at 297F, it was held that "Thus a thing is incidental if it follows naturally, appertains to or as a matter of course from the primary matter or depends upon the principal matter."

In Lagos State, the consent fee is 1.5% of the fair market value (FMV),⁷⁴ whereas in neighbouring Oyo State, consent fee is 10% of the consideration.⁷⁵ Perfecting title by obtaining Governor's consent and the resultant Certificate of Occupancy (C of O, or Customary Certificate of Occupancy (CC of O) for rural areas) is not only good risk management, it puts the transferee in a position to use the property to raise capital. Ominously, **section 26 LUA** instructively provides that: "any transaction or any instrument which purports to confer on or vest in any person any interest or right over land other than in accordance with the provisions of this Act shall be null and void."⁷⁶

Registration fee⁷⁷ is the statutory cost of registration and recording title to land (after obtaining Governor's consent) at the relevant State's Lands Registry.⁷⁸ For example, **section 113(1), Lagos State Lands Registration Law 2015⁷⁹ (LRL)** and its **Schedule 2**, prescribes 3% of the FMV for registering a deed of assignment, lease, sub-lease, certificate of purchase, transfer, etc.⁸⁰ Likewise, Oyo State prescribes a fee of N20,000 for registration of a deed.⁸¹

Some fiscal prerequisites of the perfection process (like Tax Clearance Certificates (TCCs) especially those evidencing PIT compliance status of individuals (including of directors of corporate parties), assessment and payment of related CGT on sale/assignment of property, and of SD on transaction documentation/registrable instruments), provide some tax enforcement leverage to government.⁸² They positively illustrate how RE transactions can help to incentivise compliance that contribute revenue to government coffers.

Also, applications for planning approvals (which would also have involved payment of application fees) will not be signed off, if the applicant has not received Governor's consent on the property. Since building is not meant to proceed without planning approval (and breach being punishable with sanctions, including financial), these prerequisites ensure that government has direct financial benefit from RE transactions.

By operation of **sections 2 and 12(3) LRL**, every document creating an interest in land must be registered and such registrable instrument must be accompanied by a survey plan describing and delineating the particular land. Registration succeeds grant of Governor's consent, within 60 days.⁸³ The Registrar may refuse to register documents declared to be void or prohibited by law, documents not in compliance with the **Law**, and a power of attorney transferring interest in land, on which the consent of the Governor has not been endorsed.⁸⁴ The power to refuse registration is another effective leverage, which ensures that desirous parties fulfill requisite transaction perfection requirements, including payment of applicable fees.



74. The FMV in Lagos State is a reflection of the "current actual sales prices" of property within a given area, as determined by relevant professionals engaged by the State and published from time to time in LASG's *Official Gazette*; the current one being in *Lagos State of Nigeria Official Gazette No. 10, Vol. 48, of 5th February 2015*. For instance, the detailed scale of fees/rates/charges are also displayed online - see the 'Schedule of Fees', Land Use and Allocation Committee, at: <https://landsbureau.lagosstate.gov.ng/schedule-of-fees/> (accessed 13.06.2021).

75. See more details of the Oyo State rate at: <https://oyostate.gov.ng/ministry-of-lands-housing-survey-and-urban-development/requirements-for-government-approval-on-land-transactions/governors-consent-to-assign/> (accessed 15.05.2021).

76. Thus **section 26 LUA** gives teeth to the provisions of **sections 21 and 22**; and this rule has been consistently upheld in a plethora of cases. See *Savannah Bank (Nig) Ltd. v. Ajilo* [1989] NWLR (Pt. 97), 305; *Awojugbagbe Light Industries v. Chinukwe* (1995) 4 SCNJ, 162; (1995) 5 NWLR (Pt. 390), 409; *Union Bank of Nigeria Plc & Anor v. Ayodare & Sons (Nig.) Ltd.* (2007) LPELR-3391 (SC). Cf. **section 32 LRL**.

77. In practice and in most jurisdictions, registration fee is usually assessed together with consent fee and other distinct charges (like charting fee, endorsement fee, etc.) in the course of perfecting title to land. See Lagos State's *Schedule of Fees* (op cit).

78. Individual States in Nigeria has a division of Land Registry. In 2003, the FG established Abuja Geographic Information Systems (AGIS) with intention to computerise the cadastral and land registry of the Federal Capital Territory (FCT). The AGIS amongst other functions oversees verification and registration of lands; preparation and issuance of C of O and other documents evidencing titles within the FCT. The Federal Lands Registry is governed by the *Federal Lands Registry (Miscellaneous Provisions) Act Cap. F15, LFN 2004*, with mandate "to register all titles to Federal Government lands and for matters connected therewith."

79. No. 1 of 2015.

80. States have their distinct, albeit sometimes similarly worded, *Land Instruments Registration Laws*. Examples include: *Land Instruments Registration Law, Vol. 3, Laws of Ogun State, 2006*; *Land Instruments (Preparation and Registration) Law, Cap. 100, Revised Laws of Anambra State, 2004*.

81. See 'Cost Implication on Various Land Transactions' in Oyo State at: <https://oyostate.gov.ng/ministry-of-lands-housing-survey-and-urban-development/requirements-for-government-approval-on-land-transactions/cost-implication-on-various-land-transactions/> (accessed 10.09.2021).

82. See **sections 10(4) - (6) CITA**; and **85 PITA** [as amended by **PIT (Amendment) Act No. 20 of 2011**]. See also **sections 44(3) and 45 CGTA**: "(3) Without prejudice to the provisions of the [SDA], the Minister with responsibility for matters relating to stamp duties shall demand tax clearance certificates when checking documents on sale by any company of landed properties and other assets before accepting such documents for stamping." "45. The production of evidence of tax payments shall be a condition for effecting change of ownership of property including shares and stocks". Per **sections 101 CITA and 85 PITA**, TCC covers tax payments, the FIRS/SIRS is obliged to issue TCC upon demand (within two weeks) by eligible taxpayer; refusal can trigger a tax dispute if the taxpayer appeals to the TAT against the decision. In *pari materia sections 101(2) and (4) CITA and PITA* expressly mandates: government ministries, departments and agencies (MDAs) and commercial banks to request applicant's TCC (for three years preceding the current year of assessment), for specified transactions including: applications for certificate of occupancy, approval of building plans, transfer of real property, and plot of land.

83. **Section 26(1) LRL, Lagos State**. Documents for planning approval or Governor's consent must be accompanied by surveys, which are also expected to be lodged with the Surveyor-General and attracting requisite fees, amongst others. See for example, 'Schedule of Survey Fees', Lagos State Government Office of the State Surveyor-General: http://surveyorgeneral.lagosstate.gov.ng/wp-content/uploads/sites/208/2017/11/schedule_of_survey_fees.pdf (accessed 20.09.2021).

84. **Sections 7 and 9(1), Ibid.**

i *Miscellaneous RE charges, rates and levies*: These include for example, business premises registration fees, naming of street registration fees, and market taxes and levies.⁸⁵ Others may be environmentally related such as Environmental Development Charges (EDCs) or other environmental permit fees on businesses by LASEPA in Lagos State.⁸⁶ For this purpose, we exclude penalties and fines payable for contravention of environmental requirements; as such are not generally applicable RE tax exposure, but only applicable to defaulters. However fees payable for say erection and operation of telecom masts are properly included under this subheading.

C. The Whys of Property Tax Delinquency in Nigeria

The result of a 2018 representative survey conducted by the Nigeria Economic Summit Group (NESG) on tax perception reveals that more than 20% of Nigerians believe it is “not wrong at all” not to pay income taxes. Whilst a majority (about 54.3%), admit that tax evasion is wrong, they believe same is “justifiable” and “understandable” in the Nigerian context.⁸⁷ Given Nigeria's deficit budget scenario, a robust PT system

could be one of the pathways to gain some leverage, underlying the imperative to minimise RE tax delinquency. Some of the contributory factors to TD include:

a. *Poor record-keeping and data collection*: The importance of records and data cannot be overstated, in tax administration. It is still perceived that Nigeria's tax system is bedeviled by human and material capacity gaps; undeniably, this picture also affects optimal RE sector taxation. There is the challenge of tracking, and maintaining accurate records of RE transactions and parties. It is still the case that many, if not most, RE transactions involving individual parties have high chances for escaping the RE tax net especially when done informally, in rural locations, or based on trust – whereby parties decide to proceed without documentation and/or perfection.

Lack of formality makes assessment, estimation, and collection of tax difficult for RTAs.⁸⁸ During Governor Amosun’s administration, Ogun State took giant strides in launching a *Homeowners’ Charter* meant to encourage individuals to perfect titles

to their RE assets. The discounted rates on offer was greatly instrumental to success of the Scheme which also brought in substantial funds to Ogun’s coffers.⁸⁹ Unfortunately, there is no record that many States copied the Ogun State example.⁹⁰ This is moreso that title perfection represent change of legal status of RE assets – from being previously “dead capital”, to collateral that could be used to obtain finance for other economic activities, with significant cumulative spillover effects, at scale.



85. See *Items 7, 9 and 11 Part II, Schedule TAL Act*. Item 7 prescribes in respect of: (a) “urban areas as defined by each State”, maximum of ₦10,000 for registration, and ₦5,000 per annum for renewals; and ₦2,000 for registration in rural areas, and ₦1,000 for annual renewals, respectively. Exposure to street naming charges would only be for property owners desirous of having naming rights. Shop owners or tenants in markets are subject to any applicable rates charged by SGs or Lgs.

86. See LASEPA, ‘2020 LASEPA Environmental Reviewed Law, Environmental Development Charge’, 27.02.2020: <https://www.lasepa.gov.ng/2020-lasepa-environmental-reviewed-law/>; and ‘Environmental Permits’: (both accessed 20.09.2021). See also generally, Okemute Erumbeba, ‘Challenges & Prospects: Environmental Law Framework for Sustainable Development in Lagos State’, LeLaw Thought Leadership Insights, June 2019: https://lelawlegal.com/add111pdfs/Environmental_Article_by_Mute.pdf (accessed 20.09.2021).

87. Adeniyi Adeyemi and Adedapo Adeduro, ‘Insight: Tax Revenue Mobilization in Nigeria’, Bloomberg Tax, 07.10. 2020: <https://news.bloombergtax.com/daily-tax-report-international/insight-tax-revenue-mobilization-in-nigeria> (accessed 05.03.2021). See also ‘The NESG Nigeria and Subsidy Perception Dataset’, ICTD, 11.03.2019: <https://www.ictd.ac/dataset/nesc-nigeria-tax-subsidy-perception-dataset/> (accessed 02.05.2021).

88. Nobert Osemeké, et al, ‘The Challenges Affecting Tax Collection in Nigerian Informal Economy: Case Study of Anambra State’, *Journal of Accounting and Taxation* Vol. 12(2), pp. 61-74, 04.06.2020: <https://academicjournals.org/journal/JAT/article-full-text-pdf/17D269564051> (accessed 13.05.2021).

89. ‘Homeowners’ Charter: Amosun Attributes Success to Quality Leadership’, *The Guardian*, 28.04.2019: <https://guardian.ng/news/homeowners-charter-amosun-attributes-success-to-quality-leadership/>; According to news report, “The Governor... said property owners in the state were given opportunity to obtain legal land title documents at a discounted rate, adding that a stakeholder’s committee saddled with the responsibility of monitoring the progress of the scheme has been working round the clock to ensure that documents were processed on time. The Director, Planning, Research and Statistics, Ministry of Urban and Physical Planning ... congratulated the beneficiaries, urging them to go and show the documents to people in their communities that the scheme is real. Speaking on behalf of the beneficiaries, Mr. Ikechukwu Okpala from Aregbe, Obantoko, Odeda [LGA], thanked the State Government for putting the scheme in place and making it available for both indigenes and non-indigenes.” See also Sesan, ‘Amosun Hails Homeowners’ Charter’, *Punch*, 16.05.2019: <https://punchng.com/amosun-hails-homeowners-charter/> (accessed 02.10.2019). Per the report, “Governor Ibikunle Amosun of Ogun State has expressed optimism that many States of the Federation will produce more legal property owners, if they take a cue from its Homeowners Charter programme. The Governor said this during the presentation of Certificates of Occupancy and Building Plan Approval, to the 39th batch of beneficiaries at ... Abeokuta on Wednesday. ... Amosun promised to organise the 40th edition of the programme to enable more successful applicants to have their land title documents.”

90. Oyo State is a notable example that copied the Ogun State Homeowners’ Charter template. See Modupe Gbadeyanka, ‘Ajimobi Launches Electronic C of O, N120k Home Owners Charter’, <https://businesspost.ng/general/ajimobi-launches-electronic-c-o-n120k-home-owners-charter/> (accessed 02.10. 2021). “Speaking ... at the official flag off ceremony of the enumeration and assessment of properties in the state ... the Governor also said his administration was introducing the homeowners charter policy designed to enable home owners in the State to regularize their land documents with as low as ₦120,000. Mr. Ajimobi explained that this was one of the measures being put in place by the government to lessen the pains of the current economic downturn. According to him, the scheme was created to enable home owners in Oyo State who currently have no title documents like survey and building plans to obtain titles with great ease and at very affordable rates of ₦120,000, assuring that every measure has been put in place to ensure the scheme is transparent and devoid of unnecessary bottlenecks. The Governor noted that, “This is one of the measures being put in place by our government not only to lessen the pains of the current economic downturn on our people but to empower them for greater economic possibilities.”

This optimises RE value creation from the same asset, the only difference being that it is now backed up by valid title.

A related issue is that all the State IRS are not at the same level of capacity development and optimisation; accordingly, *per capita* tax value leakage could be greater in some States, than others.

The FIRS launched an Integrated Tax Administration System (ITAS) project in 2013, amongst other electronic tax services (E- services) to enhance tax administration and simplify the taxpayer compliance process through technology.⁹¹ Likewise, in June 2021, the FIRS introduced a new (homegrown) digital tax administration solution, *TaxPro-Max*, to further ease tax administration and compliance, respectively.⁹² Since improving tax to GDP ratio is a journey and not a destination, obviously Nigerian tax authorities will keep focusing on establishing more innovative methods and reliable machineries for assessing, collecting and managing data of all taxable entities and transactions in the RE sector.⁹³ Many tax legislative amendments in the **FA5 2020** have provided a boost in this regard; whilst the FIRS' intent on more aggressive

enforcement of **SDA** and TP provisions is another reinforcement.

b. Digitisation: Real property, being one of the crucial factors of production in Nigerian economy, requires a robust data bank system and same must be reliable, accessible



and accurate.⁹⁴ The critical problem with property data bank system is not unavailability of data but collection, analysis and uniformising the seemingly overwhelming property

data. Lack of accuracy and heterogeneity of property market data are evidence of drawbacks, affecting RE revenue. Making Tax identification Number (TIN) a prerequisite for opening and operating bank accounts by corporates and Bank Verification Number (BVN) by individuals is envisaged to close some gaps, and enabling tax authorities better keep track of compliance for enforcement purposes.⁹⁵

According to Oseni Elamah, former Chairman of Edo SIRS (EIRS), as at May 2015: “80 percent of taxable Nigerians have not yet keyed into TIN developed to boost the Nigeria’s Tax System... There is huge and massive leakages in Nigeria’s Tax system due to lack of TIN. All taxable Nigerians must be made to acquire TIN and this must go with immediate enforcements.”⁹⁶ However, according to a recent notice by the CAC, the certificates of newly incorporated companies will bear TINs issued by the FIRS, and thus: “This has dispensed with the need for companies to apply for the issuance of [TINs] from the FIRS after incorporation.”⁹⁷ In reality though, there were instances where some companies did not get TINs as part of their incorporation, and had to apply for it thereafter.

91. Details available at: <https://firs.gov.ng/e-filing/> (accessed 13.05.2021). However, it appears the ITAS has not performed maximally since it was launched. This, according to a critique, is due to low level of knowledge about ITAS and lack of understanding of the system – See Uchenna Efobi, et al., ‘Small Businesses and the Adoption of Integrated Tax Administration System in Nigeria’, Summary of ATAP Working Paper 8 (ICTD Research in Brief, Issue 40), 05.2019, <https://core.ac.uk/download/pdf/237087097.pdf> (accessed 01.19.2021).

92. *TaxPro-Max*, was deployed by the FIRS effective 7th June 2021 to enable “seamless registration, filing, payment of taxes and automatic credit of withholding tax as well as other credits to the Taxpayer’s accounts among other features. *TaxPro-Max* also provides a single-view to Taxpayers for all transactions with the Service.” See FIRS website: <https://www.firs.gov.ng/public-notice-introduction-of-firs-tax-administration-solution-taxpro-max/> (accessed 01.09.2021); VAT Update, ‘Nigeria Issues Public Notice on Requirement to File Returns via TaxPro-Max e-Filing Solution’ <https://www.vatupdate.com/2021/06/17/nigeria-issues-public-notice-on-requirement-to-file-returns-via-taxpro-max-e-filing-solution/> (accessed 18.09.2021); and Juliet Umeh, ‘Interswitch Renews Partnership with FIRS on Seamless Payment Processes’, *Vanguard*, 10.07.2021: <https://www.vanguardngr.com/2021/07/interswitch-renews-partnership-with-firs-on-seamless-payment-processes/> (accessed 18.09.2021).

93. “Availability of and accessibility to accurate, reliable and timely data is germane to the operation of the property market, in the field of estate surveying and valuation either for valuation/appraisal, management and agency purposes.” See Ajibola M.O., and Ogunbemi O.A., ‘Importance of Accessibility to Reliable Data for Real Estate Practice’, *Mediterranean Journal of Social Sciences* Vol.2, No.2, (May 2011), p.1 (Abstract): <https://core.ac.uk/download/pdf/32225064.pdf> (accessed 12.05.2021).

94. “Property has a combination of special characteristics which differentiate it from other commodities; to wit; physical, legal, market and costs”: Ajibola M.O., and Ogunbemi O.A. (Op. cit), p.5.

95. **Section 8(1)(q) FIRSEA** empowers the FIRS to issue TIN to every company, enterprise and individuals in collaboration with SIRS and LGs. Likewise **Section 10 CITA (as amended by section 3(1) and (2) FA1 2020)** mandates that companies have a TIN and same shall be required by banks or other financial institutions as a precondition for opening a bank account or operating extant accounts.

96. ‘80% Nigerians Do Not Have Taxpayers Identification Numbers’, *Vanguard*, 17.05.2015: <https://www.vanguardngr.com/2015/05/80-nigerians-do-not-have-taxpayers-identification-numbers-edo-tax-boss/> (accessed 10.03.2021).

97. CAC, ‘Tax Identification Number’, 29.06.2020: <https://www.cac.gov.ng/tax-identification-number/> (accessed 13.09.2021). According to the CAC Notice, “This is to inform our esteemed customers that as part of the Ease of Doing Business Initiatives, Certificates of Incorporation of companies registered under Part A of CAMA will henceforth bear the ... (TIN) issued by the ... (FIRS) to such companies.”

A complement to establishing vibrant legal and administrative strategy for compilation of both quantitative and qualitative data of taxable properties, title holders and transactors to enable effective check on compliance, is by digitising all land registries in Nigeria.⁹⁸ According to a commentator, there should be a shift of land registries from databases stored on physical servers to blockchain.⁹⁹ Another commentator opined that “[blockchain] backed land registries will reduce the procedures, time and cost involved in property registration and greatly scale the ranking of Nigeria in the ease of doing business.”¹⁰⁰

While digitisation is highly desirable, it may be more reasonable to encourage both electronic and manual data management, for risk management reasons, such that the modes provide back up for each other. Adequate funding of its data

system, is essential to any prospective robust revenue drive through transactions in the RE sector. Unfortunately, as at date, the digitisation journey of various State registries are not at the same level.¹⁰¹ Whilst Lagos, Ogun and FCT appear to have been far advanced,¹⁰² at the extreme end may be some States might have not even started the digitisation journey.¹⁰³

Suffice to say that RE sector will benefit from any systemic tax reform



in Nigeria.¹⁰⁴

c. Multiplicity of taxes: Multiple taxation occurs where two or more similar taxes are levied on the same person in respect of the same liability by same or different levels of government.¹⁰⁵ Until recently, Nigeria was rife with “compulsory” fees, levies and charges, demanded and collected by or on behalf SGs and (especially) LG authorities mostly with use of threats, intimidation or actual violence, despite doubtful legal basis for such demands.¹⁰⁶ Construction depends on logistics – using movement of men and materials as an example; often times, the same trucks (conveying cement/building materials for instance) could be subjected to pay various rates, charges and levies as they pass through different LGs. This will affect the price of input, and likely result in more expensive projects.

98. See for example, the Abuja Geographic Information Systems (AGIS) reportedly “established to provide a comprehensive, all-inclusive, state-of-the-art, fool-proof and computerized geospatial data infrastructure for the FCT”: <https://myfctagov.ng/index.php/person-category/abuja-geographical-information-system/> (accessed 15.09.2021). See also Hassan Muaz, ‘Ogun GIS: Global Best Practice in Land Administration, by Morolayo Fadairo’, *The Eagle Online*, 31.07.2021: <https://theeagleonline.com.ng/ogun-gis-global-best-practice-in-land-administration-by-morolayo-fadairo/> (accessed 15.09.2021). See excerpts: “In view of the evolving digital technology, most countries of the world have begun the computerisation of their land records, thereby creating a sound land information system with the capacity of providing on-line access to a comprehensive set of land and property information. States in Nigeria such as Oyo, Kaduna, Lagos, Edo, Benue, Niger, Bauchi, Cross River, Nasarawa States and Abuja among others have keyed into the establishment of GIS. The adoption of GIS technology in land administration and management by the Ogun State Bureau of Lands and Survey was intended to provide adequate and reliable information on land that is captured into the system for it to effectively perform the land documentation task in the State.”

99. Frank Okeke, ‘Digitisation Imperatives for Nigerian Real Estate Registries’, *LeLaw Thought Leadership*, 03.2020, p.2: <https://lelawlegal.com/add11pdfs/Frank-Digitisation-Imperatives.pdf> (accessed 21.05.2021). “a technology that enables the secure and permanent storage of a digital ledger of transactions, contracts, agreements and other information collectively by a network of users. Blockchain promises secure and immutable record-keeping using a distributed ledger technology.”

100. Samuel Ngwu, ‘Redefinitions: Blockchain Potentials for Real Estate Ecosystem in Nigeria’, *LeLaw Thought Leadership Reflections*, December 2020: https://lelawlegal.com/add11pdfs/TLR_Blockchain_by_Sam_Ngwu_edited.pdf (accessed 02.09.2021).

101. In August 2017, Oyo State launched her electronic Certificate of Occupancy (e-CofO): “Also, Oyo State Government is changing from the current use of the paper-based Certificate of Occupancy to ‘e-C of O’... with features to make it a lot more secure and copy proof. The electronic C of O will contain the following elements: a scanned photograph of the Owner printed on a copy-proof security paper; an encrypted and enhanced 2D bar code that is unique to the owner; an additional embedded security characteristic containing vital security information that can only be viewed with an enabled barcode reader that is unique to the Owner only; and a distinctive Certificate of Occupancy number that will be very legible for all to see.” See Modupe Gbadeyanka, ‘Ajimobi Launches Electronic C of O, ₦120k Home Owners Charter’, *The Guardian*, 21.08.2017: <https://businesspost.ng/general/ajimobi-launches-electronic-c-o-n120k-home-owners-charter/> (accessed 02.10.2021).

102. See for example, ‘Ogun to Implement GIS and LAMS Projects’, *Geospatial World*, 21.07.2014: <https://www.geospatialworld.net/news/ogun-to-implement-gis-and-lams-projects/>; Dayo Ojerinde, ‘Ogun to Improve Ease of Doing Business’, *Punch*, 05.07.2021: <https://punchng.com/ogun-to-improve-ease-of-doing-business/> (both accessed 02.10.2021). Per the latter report, “The Ogun State Government has said it is upgrading its survey systems, services and data to improve ease of doing business. The State Commissioner for Industry, Trade and Investment, Mrs Kikelomo Longe, in a statement on Sunday, said the move was a key policy thrust to boost service delivery. She was quoted to have said this in Abeokuta during a stakeholders’ workshop organised by the Bureau of Lands and Survey. Longe, who is also the Ogun State Economic Transformation Project Business Enabling Environment Sector Lead, noted that the reforms would institutionalise best practices in survey, generate revenue in a fair and sustainable manner, as well as improve land administration which would further attract private sector investments into the State. ‘A key thrust of this approach to improving service delivery is standardisation of survey systems, services and data to accelerate the sustainable transition to a modern, electronic and automated system that has proven to have significant revenue potentials in other climes, ... The Commissioner added that the government in collaboration with the Surveyor-General, the World Bank-funded OGSTEP and its consultant on the project, would focus on delivering on production of a five-year maintenance and training plan for the survey department, review of existing action plan for collating survey data from private surveyors, review of survey operations and production of a business plan that would improve survey revenue.” According to erstwhile Ogun Lands Bureau Director-General, “the State remained the best in the country in terms of issuance of Certificate of Occupancy (C of O) to land owners without undue delay.” See ‘Ogun Bureau of Lands Generates ₦4bn in 7 Months -D-G’, *Vanguard*, 11.10.2017: <https://www.vanguardngr.com/2017/10/ogun-bureau-lands-generates-4bn-7-months-d-g/> (accessed 02.10.2021).

103. See also ‘States to Get \$2m Each to Accomplish GIS -NGF’, *Vanguard*, 29.10.2020: (accessed 15.09.2021). According to the news report: States able to capture at least 50 per cent of their property that have electricity connections in urban areas before June 30, 2021 using Geographic Information Systems (GIS) will get World Bank’s \$2million each. ... The states able to update their property records would each unlock the performance grant under the World Bank-funded States Fiscal Transparency, Accountability and Sustainability (SFTAS) programme. “However, it is imperative that these property records reflect accurate information about the name of the owner/occupier, size of the land parcel, size of the building, use of the land/property amongst other criteria required by the programme. It is no news that States are at varying stages of GIS deployment with some notably Kaduna, Kogi, Lagos, Oyo, Nasarawa, and Gombe States leading the way.’ In that development, Bello-Barkindo said that the NGF had scheduled two Virtual Peer Learning Events (PLEs) on “using GIS technology to strengthen land administration and property taxation” at the subnational level. He said that the event would be held in collaboration with the Federal Ministry of Finance, Budget and National Planning assisted by the World Bank. ‘The Peer Learning Events are part of several capacity building efforts aimed at supporting the effective deployment of GIS at State-level.’”

104. “In 2012 Dr Okonjo-Iweala launched a diagnostic study of the Nigerian tax system with the technical help of McKinsey & Company. According to the minister, the objective of the diagnostic study was to find a solution to help improve compliance in Nigeria’s tax system. It led to the implementation of some key initiatives by the FIRS that resulted in increased tax revenues in 2014.” GGA, (op. cit), p. 19.

105. See the ‘National Tax Policy 2012’, Federal Ministry of Finance, April 2012, p.42, para 6.0: <http://admin.theguides.org/Media/Documents/NATIONAL%20TAX%20POLICY.pdf> (accessed 13.05.2021).

106. See for example, Afolabi Elebiju, ‘Eating the Frog’ of Multiplicity of Taxes’, *Taxspectives, ThisDay Lawyer*, 21.10.2014, p.15; also available at LeLaw Thought Leadership page: <https://lelawlegal.com/add11pdfs/Eating-Frog-of-multiplicity-of-taxes.pdf> (accessed 02.10.2021).



In the illustrative case of *Eti-Osa vs. Jegede & Anor*,¹⁰⁷ the key issue was whether the Appellant has the authority to impose tax outside the items in **Fourth Schedule 1999 Constitution** (as amended) and **Part III, Taxes and Levies (Approved List of Collection) Decree No. 21 of 1998 (the TAL Decree)**,¹⁰⁸ and without reference to the Joint Tax Board (JTB), as provided for in **section 1(2) TAL Decree**. The CoA held that the Appellant had no such power to create or impose taxes, outside the scope of the enabling laws. However, the **TAL Act** has now been declared unconstitutional, throwing up new policy challenges in the fight against multiple taxation.¹⁰⁹

Without doubt, *multiple taxation is*

undesirable, constitutes unwarranted burden to RE investors that could make them pull back investments or look for possible means to circumvent taxes, including the valid ones. For instance, having to pay CIT, LUC, suffer WHT and some LG-imposed levies like ground rents, business premises levies, refuse collection levies,¹¹⁰ among others, in respect of the same property is likely to trigger negative tax attitude.¹¹¹

Apart from the stifling effect on start-ups and small scale businesses; multiplicity is a wary scenario for investors, because of the instability it represents: the prospect of waking up to new charges that they did not plan for previously can only have a deterrence effect. Properties may

also become unaffordable for low income earners, and the fiscal potentialities of RE sector may be truncated on basis of excess tax burden.¹¹²

Findings have revealed that multiple tax practices in Nigeria are resultants of poor administration, corruption on the part of tax officials, and unfavourable revenue allocation formula among the three tiers of government.¹¹³ Thus, a solution to multiple taxation must penetrate the bases, to be effective. Given the nullification of the **TAL Act**, it has become even more imperative for more concerted, synergistic anti-multiple taxation policy efforts, as part of Nigeria tax reform initiatives.

RE taxes may be codified in a single document and in simple language. While streamlining excess charges, priority should be given to few charges with highest potential to yield fiscal benefits.¹¹⁴ Would it not be better to have moderate portions of levies paid more voluntarily than to continue with burdensome tax charges while delinquency persists, with great enforcement costs by the Revenue?¹¹⁵

107. (2007), LPELR-8464 (CA).

108. Now **Taxes and Levies (Approved List for Collection) Act, Cap. T2, LFN 2004 (TAL Act)** by virtue of **section 315 1999 Constitution**.

109. See the CoA decision in *Uyo Local Government Council vs. Akwa Ibom State Government & Anor* (2020) LPELR-49691. See also Chimezirim Echendu, 'Impacts: Issues Arising from Invalidation of the Taxes and Levies (Approved List for Collection) Act in Uyo Local Government Council vs. Akwa Ibom State Government & Anor (2020) LPELR-49691 (CA)', *LeLaw Thought Leadership Insights*, March 2021: https://lelawlegal.com/add111pdfs/LELAW_IMPACT1.pdf (accessed 12.05.2021).

110. The authors concede that strictly speaking, refuse collection charges is not a tax whether provided by public agencies or under private sector participation (PSP) arrangements. This is because residents are being charged for services provided – evacuation of waste from such properties.

111. According to an authoritative study, "Similarly, the Lagos State House of Assembly (LSHA) passed a bill to clarify and stipulate legitimate levies for Local Governments in Lagos State. The Bill also sought to monitor and regulate the method of collection of such levies in all local government authorities in the State. Despite the legislative clarification and monitoring, a recent survey carried out by the Lagos Chamber of Commerce and Industry (LCCI) showed the following: - 3% of businesses in Lagos State confirmed that 'multiple taxations' remained even after the law approving levies and taxes for LGAs in Lagos. - Businesses in Lagos paid taxes eight times more than businesses located in other States. - Nearly two-thirds (67%) of the businesses in Lagos State complained that double taxation, fees, levies and charges caused a significant rise in their cost of doing business over the past few years." See GGA, (op. cit), pp. 39-40.

112. Recently a leading RE practitioner, Paul Onwuanibe (Group CEO, Landmark Africa) stated that "multiple taxes imposed by the government discourage investors from injecting capital into property development." "Government has introduced several incentives to encourage investment in real estate, but tax is one of the major issues impeding growth. We pay all sorts of tax, ranging from infrastructure tax, property tax, education and IT tax. We wonder why these multiple taxes are necessary when we don't get to see improvement in key infrastructure that can drive investment. The government needs to clean up taxes that kill investment." - See 'Multiple Taxes Slowing Down Real Estate Investment', *The Nation*, 12.12.2017: <https://thenationonline.net/multiple-taxes-slowing-real-estate-investment/> (accessed 14.05.2021).

113. Collins Sankey Oboh et al., 'Multiple Tax Practices and Taxpayers' Non-Compliance Attitude in Nigeria', *IRJFE*, (Issue 103), January 2013: http://www.internationalresearchjournaloffinanceandconomics.com/ISSUES/IRJFE_103_12.pdf, (accessed 05.04.2021).

114. In the *World Population Review 2021*, the Bahamas, Bahrain, Kuwait and Oman were reported amongst nil or low tax jurisdictions: <https://worldpopulationreview.com/country-rankings/tax-free>. (accessed 09.09.2021). PWC's 'Paying Taxes 2020 (The Changing Landscape of Tax Policy and Administration Across 190 Economies)', (pp. 14-15) reports that Cote d'Ivoire, Bahrain, Israel, Cyprus, Pakistan, Kenya, Indonesia and Kyrgyz Republic had the largest reductions in the number of taxes and mandatory contributions in 2018. Available at: <https://www.pwc.com/gx/en/paying-taxes/pdf/pwc-paying-taxes-2020.pdf> (accessed 09.09.2021). Presumably, tax reduction or streamlining strategy, accompanied by stiff compliance regulations, would bring focus to only a few charges of high significance.

115. A commentator rightly opined that the most efficient taxes are those that do not alter or modify taxpayers' behaviour. According to him: "with increased tax revenues comes the concomitant implications of the long term effect of the additional tax burdens especially on formal sector taxpayers." See Frank Okeke, "Pints": *When Does Extracting More Tax Revenue Become Too Much?*, *LeLaw Thought Leadership Perspectives*, January 2021: https://lelawlegal.com/add111pdfs/Pints_Edited.pdf (accessed 06.09.2021). See also Afolabi Elebiju, 'Eating the Frog' of *Multiplicity of Taxes*, 'Taxspexives', *THISDAY Lawyer*, 21.10.2014, p.15; also available at *LeLaw Thought Leadership* page: <https://lelawlegal.com/add111pdfs/Eating-Frog-of-multiplicity-of-taxes.pdf> (accessed 25.09.2021).

d. *Poor implementation of tax policies:* Policy implementation is the bedrock of sustainable sectoral reform, and PT policies are not an exception - improve the fiscal benefits of the industry.¹¹⁶ They are expected to create guidance for future decisions and set stage for implementation. Recently, the FIRS issued an *Information Circular* to provide clarifications on the tax treatment of REICs on the application of **sections 9, 19, 23, 24 and 80 CITA**, pursuant to **FAS 2020** amendments.¹¹⁷ Lagos State House of Assembly also introduced its revised **LUCL** in 2020 to meet the reality of COVID-19.¹¹⁸ They should reflect an effort for continuous revamping of the tax system to constantly keep it in tune with changing demands of time.

Care must however be taken by RTAs against *ultra vires* actions or arbitrary exercise of discretions, inconsistent with statutory intents and objectives. In **Theodak Nig. Ltd v. FIRS**¹¹⁹ the FHC overturned the FIRS' tax assessment which deemed the value of the Appellant's property its the aggregate income, purportedly relying on **section 30(1)(a) and 65 CITA**. The Court (*Chikere, J*) specifically noted that assessment based on "*best of judgment*" must reflect sound analyses and careful

consideration.¹²⁰

Setting PT policy objective is desirable; however, there must be no 'disturbing gap' between set objectives and implementation outcomes. Thus, it is expedient that adequate and proper planning should precede policy formulation, thereby enhancing its prospects of success.



Furthermore, the strategic focus to improve PT policy implementation should encompass interactions between administrative bodies and taxpayers.¹²¹

The approach should feature "*responsive regulation*", community partnerships¹²² and stakeholders' participation in property taxation system. The role of tax advisers, consultants and practitioners as "*tax intermediaries*" (devoted to assisting

taxpayers to comply) cannot be overemphasised.¹²³ Nigeria can also draw insight from tax base structures and implementation strategies of industrialised countries, whilst ensuring that local implementation recognise our peculiarities/cultural context, and is thus bespoke, to deliver optimal results.

e. *Low tax awareness:* Sometimes, the magnitude of PTD is a reflection of lack of awareness: there is a direct connection between tax awareness and tax compliance. Since higher tax awareness would likely lead to higher compliance, PT awareness is pivotal to smooth PT administration. Whilst ignorance is not an excuse, it is still an inhibitor - no matter how old or how good any tax law, regulation, or policy is.

In Nigeria, some RE players are not adequately equipped with knowledge of taxes that apply to property transactions; for example, some may not deduct WHT from legal and agency fees, or challenge the inclusion of VAT on such RE related professional service invoices. Because the industry's low entry barriers has turned it to a "*an all comers' market*", 'tax illiteracy' can be a real hindrance.

116. Leveraging lessons from other jurisdictions cannot be overemphasised, since property taxes is usually a matter of general interest. For some perspectives, see Roy Bahl and Sally Wallace, '*Reforming the Property Tax in Developing Countries: A New Approach*', Georgia State University, International Studies Working Paper, 08-19: <https://icepp.gsu.edu/files/2015/03/ispwp0819.pdf> (accessed 15.09.2021); Enid Slack and Richard M. Bird, '*How to Reform the Property Tax: Lessons From Around the World*' IMF Working Paper on Municipal Finance and Governance No. 21, 2015: https://munkschool.utoronto.ca/imfg/uploads/325/1710_imfg_no.21_online_sept17.pdf (accessed 15.09.2021).

117. FIRS, '*Circular on Tax Implications on Operations of Real Estate Investment Companies ('REIC') in Nigeria*', Information Circular No. 2020/07, 29.04.2020: <https://www.firs.gov.ng/wp-content/uploads/2021/01/2019-FA-Information-Circular-REIC.pdf>, (accessed 17.03.2021).

118. O Olasunkanmi, '*LASG Reviews Land Use Charge Rates... Waves Penalties for Y2017 - 2019, Sets Up Multiple Payment Channels*' (sic), LASG Official Web Portal, 05.08.2020: <https://lagosstate.gov.ng/blog/2020/08/05/lasg-reviews-land-use-charge-rates/> (accessed 09.09.2021).

119. (2019) 40 TLRN 1.

120. His Lordship opined *inter alia* (at p.13): "*I am finding it difficult to understand why the Defendant will use the value of property of the Plaintiff to come up with Deemed Profit and consequently the percentage of 20% on the Deemed Profit. This is because as defined above, turnover is the aggregate income that a business receives from its normal business activities* (Emphasis)"

121. Justin Dabner and Mark Burton, '*Lessons for Tax Administrators for the Introduction of the OECD's "Enhanced Relationship" Model: The Australasian Experience*', SSRN, 24.12.2015: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2707918, (accessed 04.04.2021).

122. *Ibid.*

123. Cf. with the "*enhanced relationship*" model endorsed by the Organisation for Economic Co-operation and Development (OECD), whereby some tax intermediaries (particularly tax practitioners) can form partnerships with tax administrators to play key role in solving tax-related concerns and fulfilling developmental demands. See OECD, '*The Study into the Role of Tax Intermediaries*', OECD: <https://www.oecd.org/tax/administration/39882938.pdf> (accessed 09.04.2021).

To foster better awareness towards influencing positive change of taxpayer's attitude towards tax compliance, public tax education (TE) is critical. Every RTA should be actively



engaged in TE – anecdotal examples of advertisements/public notices in various news media and on conspicuous landmarks/billboards by the FIRS, LSIRS, Ogun SIRS abound.¹²⁴ Lagos State's TE initiatives as part of its IGR improvement drive, since Governor Tinubu's administration (1999-2007), has yielded stellar results.¹²⁵ The role of professional associations/pressure groups like Chartered Institute of Taxation of Nigeria (CITN), Institute of Chartered Accountants of Nigeria (ICAN), etc can also not be overemphasised.

As a complement to other TE initiatives, basic taxation should be included in the academic curriculum of basic and secondary schools, while the more technical aspects continue to be taught at the undergraduate and post graduate levels in tertiary institutions. *From a wider perspective, tax compliance requires more than awareness, it requires a degree of honesty, transparency, capacity building and commitment from both taxpayers and tax administrators.*

D. PTD's Economic Impact and Way Forward

PT is a significant incidence of property ownership, and it is trite that taxes on land/property have both

fiscal and non-fiscal effects.¹²⁶ Revenues from PTs contributes to funds used for municipal/local services such as provision of roads, streetlights, fire services, maintenance of infrastructures, security management, garbage collection, health care infrastructure and other critical services. Conversely, PTD hinders delivery of these services, whilst also implicating higher enforcement costs against tax delinquents; ultimately, these exacerbates the (negative) economic impact of PTD. Given our foregoing discussion, we now turn to examine a few steps to enhance compliance with PT requirements, going forward.

a. Tax audit: The real probability that the Revenue may, sometime in the near future examine the correctness of reported PT liability and cross-check the fulfilment of PT obligations to ascertain full tax compliance, can positively impact taxpayers' compliance behavior. Given the high rate of PTD, tax audit is an inevitable tool for tax authorities to detect delinquents. Tax audit is not new to Nigerian tax system. Conceptually, audit probabilities has tendency to compel compliance because of the probability of detection and resultant penalties.¹²⁷

124. One of the FIRS banners on the homepage of its website is 'FIRS – It Pays to Pay Your Tax!': (accessed 02.10.2021). Records of perennial low tax collections may give credence to ineffective TE endeavors in most Nigerian States.

125. "Educating the people about the whole process of taxation and why they should pay tax will encourage compliance. ... The education would be effective when they have noticed [improvements] in their position in terms of the social amenities that are basic to their existence. Most of the taxpayers can then be expected to react positively towards tax drives and a reduction in evasion. Ogundele (1994) asserts that to comply with tax laws, taxpayers need to have adequate tax knowledge. One of the major objectives of the last administration in Lagos State, Nigeria, was to optimize the State's tax potentials by achieving a very substantial, if not total coverage of its taxpayer base. ... To actualize this goal, the Tinubu's administration initiated the State's Tax Administration reform process. As part of the re-engineering process, the tax payment process was reviewed and all payments to the Board were to be made directly to designated revenue collecting banks by the taxpayers. Moreover, [LSIRS] adopted public enlightenment by using Radio, Television, Newspapers, Bill Boards and Distribution of T-shirts among others. With the following messages: a. 'A secure, safe, beautiful State with adequate social amenities, job opportunities and empowerment programmes. This is only possible when you PAY YOUR TAX'; b. 'IT IS YOUR DUTY, IT IS YOUR CIVIL RESPONSIBILITY AND IT IS THE LAW.'" See J.K. Olowookere and H.T. Fasina, 'Taxpayers' Education: A Key Strategy in Achieving Voluntary Compliance in Lagos State', IISTE, Vol.5, No.10, 2013, pp.3-4: <https://core.ac.uk/download/pdf/234624713.pdf> (accessed 14.05.2021). It appears however that Lagos state is still up in its business of creating tax awareness via public transmission media and sponsored pop-ads on e-billboards, and other electronic devices like smart phones. If all other States in the federation can adopt smart and effective measures to being tax-related information to people, it would go a long way in communicating government's zealously to eradicate TD and increase the national revenue.

126. Richard M. Bird and Enid Slack, 'Land and Property Taxation: A Review', World Bank, March 2002: <http://www.worldbank.org/publicsector/decentralization/June2003Seminar/LandPropertyTaxation.pdf> (accessed 14.05.2021).

127. Sections 60 CITA and 47 PITA mandates the RTA to call for delivery returns, production of books, documents and information in the course of tax audit or examining or investigating matters relating to profits and contravention of these provisions shall render a person liable on conviction to a fine. See equivalent or complementary provisions in the FIRSEA, CITA, CGTA, SDA, etc as amended by the FAs 2020. Tax disputes are always a possibility, hence taxpayers and the RTA should ensure their conduct/position aligns with the law to enhance chances of success of their respective tax appeals. Whilst the RTA has expansive regulatory and enforcement powers; these are nonetheless without boundaries; on the other hand, taxpayers also have rights vis a vis their obligations – the RTA cannot exercise their powers against taxpayers arbitrarily or to harass them. This can be illustrated by the ability to assess taxpayers who do not file tax returns or who file returns that lack credibility, to tax on a Best of Judgment (BoJ) basis; however, when challenged, the BoJ must be defensible.



In Ethiopia, total tax revenue used to be relatively poor: an average of 10.9% of GDP between 1990 and 1994 and 12.9% from 2000 to 2006.¹²⁸ A study showed that Ethiopia lost at least US\$3.2 billion in 2014 that should have been collected from taxes, due to tax evasions and other factors.¹²⁹ However, a comprehensive tax audit programme made delinquents file returns and keep accurate records, resulted in year to year increment in tax collections, from 7.83% in 2014/2015 to 15.15% in 2018/2019 budget year.¹³⁰ It has also been posited that “tax audit has a

significant positive effect on tax revenue generation, explaining about 48.3% and 43.9% of the total variation in tax revenue generation of Nigeria.”¹³¹

The FIRS reportedly collected ₦212.792 billion (non-oil) revenue from 2,278 audit cases in 2018.¹³² Considering the disparity between the oil and non-oil tax revenue, apparently there is potential for more PT collections *via* audits. Recently, the FIRS has invested more in conducting online and desk audits; this is commendable, given post Covid-19 realities.¹³³ Capacity development must be a constant goal as performance bars needs to be raised from time to time, with requisite accountabilities.¹³⁴

b. Tax planning: The ultimate objective of every investor, including RE investors, is to achieve optimal returns on their investment. It is therefore not surprising that deal structures have this business objective in view, through *inter alia*,

tax and regulatory efficiency. RE players are entitled to adopt plans that enable them minimise their tax liability (tax avoidance), albeit such must stand up to regulatory scrutiny by RTAs, within context of statutory provisions.¹³⁵ Affirming the legality of tax planning, the SC in *Akinsete v. Senior Inspector of Taxes, Akure*,¹³⁶ expressed that a person may use lawful means to avoid tax; what he may not do is to try to evade tax. *The validity of tax planning is so settled in tax jurisprudence that such principle provides comfort, to investors.*¹³⁷

c. Penalty system: Current tax laws provide penalties for failure to pay tax, delayed or under-payment and other tax-related defaults/offences, which could result in criminal and or civil liability (financial penalties and interest, and/or imprisonment), depending of the nature and gravity. Sanctions for TD¹³⁸ are essentially for deterrence/financial compensation to the Revenue; and one relevant issue is of proportionality of the sanction.¹³⁹

128. Agumas A. Mebratu, ‘Impact of Tax Audit on Taxpayers Compliance: Empirical Evidence from Ethiopian Revenue Authority at Federal Level’, *International Journal of Accounting Research (IJAR)* Vol. 2, No. 12, 2016: https://www.arabianjbr.com/pdfs/AC_VOL_2_12/1.pdf (accessed 14.05.2021).

129. Tesema Gemeda and Teklu Kassu, ‘Tax Audit Performance in Ethiopia: The Case of Western Addis Ababa Small Taxpayer Branch Office’, *IJSTE*, Vol.11, No.19, 30.06.2020: <file:///C:/Users/OLUWASIJIBOMI/Downloads/54493-58315-1-PB.pdf> (accessed 13.05.2021).

130. *Ibid.*

131. Nwaiwu, J.N. and McGregor, T.C., ‘Webometric Indices of Tax Audit and Tax Revenue Generation Research in Nigeria’, *International Journal of Advanced Academic Research*, Vol. 4, Issue 2, 02.2018, p. 33: <https://www.ijaar.org/articles/Volume4-Number2/Social-Management-Sciences/ijaar-sms-v4n2-feb18-p6.pdf> (accessed 10.09.2021).

132. See ‘FIRS Hits ₦5.3 Trillion, Highest in Nigeria’s History, Targets ₦8 Trillion 2019’, FIRS: <https://firs.gov.ng/firs-hits-n5-3-trillion-highest-in-nigeria-history-targets-n8-trillion-2019/> (accessed 14.05.2021).

133. “In 2020, the FIRS created 35 additional tax audit units. According to Mohammed Nami, the FIRS Executive Chairman, “[A]t the FIRS we are paying greater attention to a tax audit in general and Transfer Pricing audit in particular in order to improve the level of tax compliance in the country. As a result, in the last one year, we have created more than 35 additional Tax Audit Units and deployed experienced and capable staff to take charge of these offices...” See Uche Usim, ‘Why We Created 35 Additional Audit Units in 2020 – FIRS’, *The Sun*, 11.01.2021: <https://www.sunnews.com/why-we-created-35-additional-audit-units-in-2020-firs/> (accessed 12.02.2021). “As a step toward easing the burden of the COVID-19 pandemic on taxpayers, the FIRS announced on April 6, 2020 that it was suspending all field audits, investigations and monitoring visits until further notice. However in a subsequent notice, the FIRS resumed these activities in phases, so that in ‘Phase II,’ field visits in respect of monitoring, tax audit and tax investigations will resume effective from 30th June 2020.’ The FIRS also announced for the longer term, its plans for seamless online desk reviews and audits (discussed under ‘Palliatives’ below).” See also Afolabi Elebiju, et al, ‘Nigerian Chapter, Winter 2020/Spring 2021: Transfer Pricing Forum’, Bloomberg, April 2021, pp. 8-9: <https://lelawlegal.com/add11pdfs/Nigeria.pdf> (accessed 15.09.2021).

134. See for instance, Kehinde Olatunji, ‘LIRS Launches Service Charter’, *The Guardian* 28.07.2021: <https://guardian.ng/business-services/lirs-launches-service-charter/> (accessed 02.10.2021). According to the news report, “The Lagos State Internal Revenue Service (LIRS) has launched its service charter, a social pact between LIRS and the taxpaying public, today. Executive Chairman, LIRS, Mr Ayodele Subair disclosed that the Service Charter serves as LIRS’ commitment to enhancing effective and efficient customer-friendly service delivery on a continuous basis. He remarked that it comes as part of the Lagos State Government’s policy to improve the ease of doing business in the State.” See also, ‘Our Charter – FIRS’: <https://www.firs.gov.ng/our-charter/> (accessed 02.10.2021).

135. Tax planning or tax avoidance is permissible, unlike tax evasion. Tax avoidance is the legal usage of the tax regime to one’s own advantage to reduce the amount of tax that is payable by means that are within the law. Tax evasion on the other hand is a deliberate illegal activity in which a person or an entity avoids paying true tax liability. See Ayooluwatunwase Fadeyi, ‘Tax Planning: Walking the Thin Line Between Tax Avoidance and Tax Evasion’, *BDLegal Business (BusinessDay)*, 29.03.2018, p.26; also available at LeLaw Thought Leadership: https://lelawlegal.com/add11pdfs/Tax_Planning_Payment_Ayo.pdf. According to her (at p.1, LeLaw branded version): “This implies that taxpayers can manage their affairs in order to pay the lowest tax validly possible and cannot be compelled to pay anything more. Tax planning should however be done with caution, so that whilst trying to avoid tax, one does not cross ‘the criminal threshold’ by evading it.”

136. (2011) 4 TLRN 156, at 159.

137. See Afolabi Elebiju, (ed.), (op.cit) at p.25 (para 3.18.6 and footnote 81) respectively: “3.18.6. It is trite that taxpayers are not obliged to pay more than the statutorily provided quantum of taxes, and also that the Revenue should not benefit from ambiguities in the tax law. ...”⁸¹ Undeniably, tax planning is an important competitive tool. Per Lord Tomlin, *CIR v. Duke of Westminster* [1936] A.C. 1: ‘everyman is entitled, if he can, to order his affairs so that the tax attaching under the appropriate Acts is less than it otherwise would be. If he succeeds in ordering them so as to secure that result, then, however unappreciative the Commissioners of Inland Revenue or his fellow taxpayers may be of his ingenuity, he cannot be compelled to pay an increased tax.’ See also, Justice Learned Hand, in *Helvering v. Gregory* 69 F. 2d (2nd Cir. 1934): ‘... there is not even a patriotic duty to increase one’s taxes’”. Per *Ildris, J* (as he then was) in *JGC v. FIRS* (2016) 22 TLRN 37 at 93: “it is now firmly established that a party may embark on a tax planning exercise so as to limit its tax incidence.”

138. That is, conviction to a fine or imprisonment as prescribed for offences under sections 93 – 95 CITA, sections 87, 92-96 and 98 SDA, sections 25-37 VATA.

139. Whilst misappropriation of tax revenue is not an excuse for non-compliance, there would be a moral burden if the Revenue seeks to enforce the collection of taxes that is perceived would not be properly expended.

Whilst reputational risk that comes from exposure to penal sanctions in the tax laws is a huge deterrent;¹⁴⁰ a school of thought believes that pervasive delinquency has lingered, because the Revenue's enforcement capacity of the tax penalty regime seems weak.¹⁴¹ The level of tax compliance is influenced by amongst other factors, how taxpayers perceive the likelihood of being detected and punished; and taxpayers' perception of the severity of the statutory sanctions against defaulters.¹⁴²

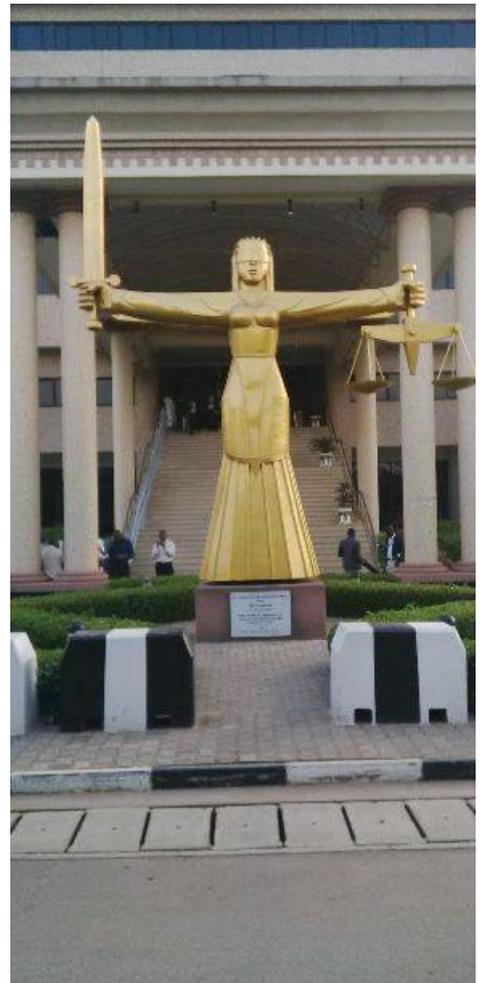
The frustratingly slow pace at which the wheels of justice turn in Nigeria, plays out even in taxation. In an attempt to speed things up regarding tax enforcement involving the FIRS, the Chief Justice of the FHC recently issued the **Federal High Court (Federal Inland Revenue Service) Practice Directions, 2021 (PD)** on 31st May 2021, with a commencement date of 1st June 2021. Many of the PD provisions have been criticised as *ultra vires*, and exercise of judicial law making as they seek to confer powers in excess of, or

conflict with, substantive tax provisions on the FIRS.¹⁴³

Lessons can also be drawn from Angola's issuance of an Executive Decree in March 2016 which allows the tax administration to publish the list of non-compliant taxpayers every quarter, coupled with refusal of work permit requests from defaulters.¹⁴⁴ The pertinent question for this scenario in Nigeria is *whether such would be not be unconstitutional, unless where the amounts in issue represent "tax debts" – where the taxpayer's liability has been conclusively judicially determined (they no longer have any right of appeal) or the underlying assessment has become final and conclusive.*

a. Tax rewards: While sanction may compel compliance, reward will also incentivise prompt positive compliance attitude in tax payers. Thus, reward can be the other side of the enforcement coin: with sanction, people comply to avoid punishments; whilst with reward, people comply for

benefits.¹⁴⁵ The tax laws' combination of "carrot and stick" is recognition that such would be better than just one approach.



140. Cf. a recent initiative of the FIRS to issue 'VAT Compliance Certificate' to taxpayers that were faithfully remitting their VAT to the FIRS, in the hope that such would encourage more businesses to comply. According to the former FIRS Chairman: "If you notice, the FIRS has come out with new VAT certificates. We have asked taxpayers to display (these) in their places of business. That will show that the company is registered for tax. Once the company is registered for tax, it means one is enabled to collect VAT. What FIRS has found out is that there are a lot of companies that are not registered for tax, but are collecting a lot of money in VAT and not remitting it. So, we are trying to sensitise the society on why they must ask anyone they want to do business with if they have registered for tax." See Bassey Udo, 'INTERVIEW: Our Challenges, Successes at FIRS – Fowler', Premium Times, 04.08.2019; <https://www.premiumtimesng.com/news/headlines/344695-interview-our-challenges-successes-at-firs-fowler.html> (accessed 15.09.2021). Likewise, many businesses will want to avoid notices of default on their premises that could be injurious to their brand, despite that in many instances the tax liability may still be in dispute. There could also be negative press around tax disputes with the FIRS/SIRS that some companies or high net-worth individuals may want to avoid.

141. Sections 40-49 FIRSEA; 25-35 VATA; 92, 94-99 CITA; 94-101 PITA; and section 43 and Schedule CGTA provides for diverse offences, related sanctions/penalties and modes of enforcement/prosecution of same. However, it appears that the enforcement of prescribed penalties can be more pervasive. According to some commentators: "there should be adequate prosecution of tax offences. Encouragement of prosecuting tax offences will minimise tax criminality." - See Saka M. Olokooba, et al 'Tax Offences: Clogs in the Wheel of Progress and Development of Nigeria as a Nation', NAUJILJ 9(1) 2018, p. 236: [file:///C:/Users/LELAW%20LEGAL/Downloads/168822-Article%20Text-434216-1-10-20180328%20\(2\).pdf](file:///C:/Users/LELAW%20LEGAL/Downloads/168822-Article%20Text-434216-1-10-20180328%20(2).pdf) (accessed 08.09.2021). That was exactly the approach of the SC in interpreting provisions of the *Income Tax Law, Cap. 71, Vol. III, Laws of Bendel State, 1976* in *Unipetrol Nigeria Plc v. Edo SBIR [2006] 8 NWLR (Pt. 983), 624*.

142. Abel Myburgh, 'The Impact of Non-compliance by Taxpayers in Nigeria', BDO, 20.04.2016: (accessed 22.03.2021). Tax compliance is arguably more likely to occur when the probability of detection and prosecution is perceived to be high and also when sanctions against non-compliance are perceived to be severe. Beyond fines and confinements, other penalties that may be appropriate include: placing a lien on delinquents' properties, appointment of receivership until tax liability is cleared off, foreclosure, and disposition of PT delinquents' properties. Although some of these penalties are already in place but the prospect of their enforceability needs to be enhanced. Interestingly, insight may be drawn from the recently reported effort of Lagos State Government to incorporate foreclosure policy to de-risk the housing and mortgage sector, regulate consumer loans for property realisation in the State, encourage growth in RE and unlock its economic potentials. See Chinedum Uwaegbulam, 'Lagos to Incorporate Foreclosure in Mortgage Property Law', *The Guardian*, 05.07.2021: <https://guardian.ng/property/lagos-to-incorporate-foreclosure-in-mortgage-property-law/> (accessed 08.09.2021). Cf. also provisions on *ex parte* and absolute post no debit (account freezing) and forfeiture of property orders in the PD.

143. See for example, *Abubakar v. Yar'Adua [2008] 4 NWLR (Pt.1078) 465, 511* which confirmed that Practice Directions (PDs) are Rules of Court whilst *Buhari v. INEC [2008] 19 NWLR (Pt.1120) 246* is to the effect that PDs will be *ultra vires* if they conflict with the Constitution or their enabling statute(s). Whilst the CJ is constitutionally empowered to make Rules and Practice Directions for expeditious and efficient delivery of justice at the FHC, the same cannot purport to amend statutory tax provisions. In *Mobil Oil v. FBIR [1977] 1 NCLR 1*, the Court held that: "... it is our view that the 'practice direction' ... does not affect the right of an appellant or respondent in an income tax appeal before the Federal Revenue Court to adduce evidence...". *Order III, Rule 5* permits the Judge to make an interim order of forfeiture of property, "if he is satisfied that the requirements in the Practice Directions are complied with". The PD conflict with statutory provisions which prescribe the operative framework for resolving tax disputes in Nigeria; the PD is incompetent to tinker with, or amend the statutory tax dispute provisions. Another dubious provision is *Order V, Rule 3*'s requirement of paying 50% of the assessed amount pending the determination of contested application; but under the substantive tax laws as amended by the FIRSEA, taxpayers are not required to make any payment (unless of undisputed amount), whilst objecting to assessments.

144. *Ibid*. While this option may be desirable to improve compliance, cognisance must be taken of existing Nigerian statutory provisions like sections 48(2), 49(2) and (3) PITA; section 61(2) CITA; and section 39 FIRSEA (as amended by section 54 FA2section) which all disallow unauthorised disclosure of any information relating to the income, tax and personal circumstances of taxpayers. Exceptions to these provisions may be expanded to accommodate such penalty described above.

145. Examples abound of Nigeria's tax reward approach. For instance, section 23(1)(o),(q), (s) and 23(1B) CITA (as amended by sections 9 FA1 2020 and 10 FA2 2020), section 45 PITA offer size based and sectoral tax reliefs (exemption) for tax registration and early filing of returns or payment within the time stipulated specified by law.

Ordinarily, ‘reward’ evokes monetary benefit or compensation; however, tax reward is not limited to money. A good illustration can be found in the LSIRS practice of giving out “Model Taxpayer Awards” to some exemplary taxpayers, with significant publicity attached to the exercise in order to further encourage the taxpaying public.¹⁴⁶ Some other States like Kaduna also have similar awards;¹⁴⁷ generally, they could reinforce the corporate social responsibility (CSR) narrative of corporate awardees. Another way of looking at tax rewards is through improved public service delivery by RTAs: *the more pleasant interface experience taxpayers have with RTA is, the more taxpayers will be willing to comply.*

Also, in Lagos State, eligibility for the Lagos State Home Ownership Mortgage Scheme (HOMS) for their

developed properties is contingent on applicants’ ability to show residence in, and payment of PIT for the previous five years, to Lagos State.¹⁴⁸ Another analogy is that vendors/ service providers to MDAs are required to be in good tax compliance status. This will affect RE players who for example are building contractors or facilities manager for government.

Nigeria already has various tax incentives intended to encourage investment in key sectors of the economy;¹⁴⁹ arguably are these not also a form of ‘rewards’? Rewards are more likely to penetrate the RE sector to individual participants in the sector, if well structured. It is also noteworthy that *RE transactions in Free Trade Zones (FTZs) would be RE tax exempt, since the regime makes Nigerian tax regime inapplicable,*

*subject to certain exceptions.*¹⁵⁰

Finally, value-for money expenditure of tax revenues is probably the strongest exemplar of impactful tax rewards. Taxpayers already complying will be encouraged to do even moreso, whilst those outside the tax net are likely to voluntarily ‘jump’ in. As stated earlier, public sensitisation by way of TE is an ‘easier sell’ in such circumstances.

Should the government consider another iteration of VAIDS? Whilst the jury may be out because of previous experience/VAIDS performance, maybe it is an option that should not be off the table, although TA is not essentially a tax reward. Given its ‘enticement’ potential, TA scheme could be recurrent (at short intervals), until significant number of citizens/ taxpayers become committed to fulfilling their tax obligations.¹⁵¹



146. Some individual awardees include well known personalities, such as Pastor E.A. Adeboye (General Overseer, Redeemed Christian Church of God) and Chief Emeka Anyaoku (elder statesman and former Secretary-General, The Commonwealth). See also ‘Access Bank Achieves 100% Tax Compliance’, Access Bank, 31.01.2015: <https://www.accessbankplc.com/pages/Media/access-news/Access-Bank-Achieves-100-Tax-Compliance.aspx>; ‘Airtel wins Lagos State Tax Compliance Award’, Vanguard, 14.20.2014: <https://www.vanguardngr.com/2014/02/airtel-wins-lagos-state-tax-compliance-award/> (all accessed 02.10.2021).

147. See ‘Nigerian Breweries Bags Highest Taxpayer Award In Kaduna Despite Sharia’, Sahara Reporters, 29.03.2021: <http://saharareporters.com/2021/03/29/nigerian-breweries-bags-highest-taxpayer-award-kaduna-despite-sharia> (accessed 02.10.2021).

148. See HOMS Application Form, especially at p.4: <http://lagoshoms.gov.ng/Application-Form.pdf> (accessed 02.10.2021).

149. Tax incentives in Nigeria include: turnover threshold based tax exemption (for small and medium sized companies), sector based tax exemptions, holidays or incentives, location relevant and infrastructure investment incentives, export incentives, etc.. See Chuks Okoriekwe ‘Pioneer Status Tax Incentives in Nigeria: A Commentary on Recent Developments and Implications for Businesses’, LeLaw Regulatory Alert, 12.11.2020: <https://lelawlegal.com/add11pdfs/Pioneer-Status-Commentary-on-Recent-Developments.pdf> and in *ThisDay Lawyer*, 12.09.2017, p.7; ‘Fiscal Incentives in Nigeria: Lessons of Experience’, Central Bank of Nigeria (CBN)’s Occasional Paper No. 47, 09.2013: https://www.cbn.gov.ng/out/2015/rsd/ocp47fiscal%20incentives%20in%20nigeria_lessons%20of%20experience.pdf (accessed 27.06.2021).

150. See the *Nigerian Export Processing Zones Act, Cap. N107, LFN 2004* and the *Oil and Gas Export Processing Zones Act, Cap. 08, LFN 2004* as amended by *FAs 2020*. See also Afolabi Elebiju, ‘Free Trade Zones & Nigeria Tax Regime’, CITN MPTP, Ibadan, 25.06.08: https://www.templars-law.com/wp-content/uploads/2015/05/citn_presentation.pdf; Afolabi Elebiju and Frank Okeke, ‘Journeys: Current State Assessment Of Nigerian Export Processing/Free Trade Zones Regime’, LeLaw Thought Leadership Insights, April 2020: [https://lelawlegal.com/add11pdfs/FTZ\(1\).pdf](https://lelawlegal.com/add11pdfs/FTZ(1).pdf) (both accessed 15.09.2021).

151. In 2016, a 45-day TA window was introduced for defaulting taxpayers to enjoy waiver of accumulated interest and penalties on unpaid taxes. In 2017, VAIDS was introduced to stimulate voluntary declaration of taxable assets and payment of outstanding tax liabilities, without penalties. See ‘Nigerian Tax Amnesty’, Nigeria Tax Amnesty Factsheet: . See also Gabriel Fatokunbo, ‘Is Tax Amnesty a Step Out of Recession?’, *BusinessDay*, 10.11.2016, p.30: <https://businessday.ng/opinion/article/is-tax-amnesty-a-step-out-of-recession/> (accessed 03.05.2021); also available at LeLaw Thought Leadership page: <https://lelawlegal.com/add11pdfs/Tax-Amnesty1.pdf> (accessed 03.05.2021). See also other references in footnote 1 above.



Conclusion

Nigeria's previous and anticipated (future) growth trajectory presents a positive compelling RE business case. This of course, comes with tax implications, including large headroom for reforms. Closing Nigeria's housing deficit and other infrastructural gaps will implicate RE transactions that will yield PT to the public *fisc*. It is high time that Nigeria took giant strides to bolster its revenue generation strategy by

focusing on its non-oil sources. With synergy of efforts and commitment from all RE stakeholders in both the public and private sectors, eradication of PTD, or at least, reducing PTD to its barest minimum is an achievable goal.

These would be underpinned by efficient tax administration and 'bespoke' laws/ policies that are cognisant of the peculiarities of the Nigerian RE sector, aimed at bringing

more delinquents into the tax net, or optimising their tax contributions, as their RE transactions thrive. According to E.A. Bucchianeri: *"... if it can be thought, it can be done, a problem can be overcome."* Given the bright Nigerian RE's bright outlook, it is no longer congruent for it to be punching below its weight.



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