

CHAPTER TWO

THE CONSTITUTIONAL CONTEXT FOR TAXATION

Background

This chapter traces the constitutional development of Nigeria since the 1914 amalgamation. It explains how different constitutional arrangements in Nigeria have provided the enabling framework for taxation and how government taxing powers have evolved through different political and constitutional epochs. This analysis provides further insight on the impact the various constitutional arrangements have had in defining the nature of relations among the different tiers of government especially in the area of fiscal matters.

Conceptual Issues

It is important to explain what taxation means in order that the term *tax* may not be confused with other forms of exactions such as fees, penalties and fines. Soyode and Kajola define tax as ‘a compulsory exaction of money by a public authority for public purpose’ and taxation as ‘a system of raising money for the purposes of government by means of contributions from individual person or corporate body’.¹ A judicial definition of tax was given in *Mathews v. Chicory Marketing Board (v)²* - a High Court of Australia case that considered section 90 of the Australian Constitution, which prohibits States from levying excise (taxes) - as ‘a compulsory exaction of money by a public authority for public purposes’. Summing up definitions of tax as offered by various other sources, Ayua concludes that:

The most important thing is a pecuniary burden laid upon individuals or persons or property to support the government and is *a payment exacted by legislative authority*³ (emphasis supplied).

The exaction of tax by government is not tied to any particular benefit to the taxpayer. It is this feature, according to Soyode and Kajola, which distinguishes a tax from other forms of exactions such as fees, penalties and fines.⁴ A fee is an amount paid in return for a specific and measurable service. An example of a fee paid to government includes payment for a certificate of occupancy. Fines and penalties are exactions by way of punishment for

infringement of state laws or regulations. Thus while fees are charged to defray the cost of a service rendered, fines and penalties are punitive measures imposed against a law breaker.

Although payment of tax is not necessarily tied to the conferment of any specific benefit to the taxpayer, it is implicitly recognised by taxpayer and tax collector that the judicious use of tax revenue by the government for the public good is the *quid pro quo* for taxing the citizens. Indeed, it has been observed that transparency, accountability and good governance are critical factors in ensuring voluntary tax compliance.⁵

A tax may be *direct* or *indirect*. It is direct where it is levied on the person who it is intended, should pay the tax. This is usually the case in the taxation of incomes. E.g companies' income tax and personal income tax are direct taxes. It is indirect if the levy is imposed on one person who pays with the expectation to pass the burden unto third parties. Custom duties and value added tax are examples of indirect taxes because the levy imposed by government is factored into the price of the item upon which they are levied and passed unto the consumer. Apart from direct and indirect taxes, Ayua⁶ further classifies tax types into proportional, progressive and regressive taxes. A tax is proportional when the proportion paid by each taxpayer bears the same ratio to the amount to be raised as the value of his property bears to the total taxable income. It is based on a constant proportion of income and therefore, neutral. A progressive tax is a graduated system that applies higher rates as income increases. A regressive tax is a structure that applies lesser rates as the value of the property increases.

Historically, the sole objective of taxation was to raise revenue for government. Kings or emperors levied their subjects to generate revenues to provide for the defense of the kingdom and also for the general welfare of the empire. In modern times, generating revenues for government is still an important objective of taxation but it is no longer the sole objective. Taxes are used by modern governments to generate revenue but in addition, to also fund governance, ensure resource redistribution, streamline consumption of certain goods, reduce inflation, generate employment and stimulate growth in the economy.⁷ Taxation has therefore, become a veritable tool of fiscal and economic policy.

According to Fashola, the philosophy underpinning taxation is that the expenses of government, being for the general good, ought to be borne by the public generally.⁸ The

foregoing view finds support in Akanle's treatise; *The Meaning and Nature of Taxation Power*. He opined that:

The justification of these powers rests on the assumption of the common law that every citizen is entitled to the protection of his life, liberty and property by the state. But for the state (i.e government) to preserve such life, liberty and property it must be enabled so to do, and this is done through the concept of implied powers of taxation, police and eminent domain.⁹

The funds provided by taxes are used by the states to support certain state obligations such as education systems, health care systems, pension for the elderly, unemployment benefits, and public transportation.

Closely tied to the objectives of taxation are the fundamental principles or *canons* of taxation. These canons are equity, certainty, convenience and economy.¹⁰ The canon of equity, also called the ability to pay means that all taxpayers should contribute according to their ability; i.e the poor should be taxed less and the rich should be taxed more. The canon of certainty means that every taxpayer should know the amount to be paid, when to pay, and where to pay. The canon of convenience is to the effect that the method of payment should not be burdensome to the taxpayer. This explains the collection of income tax at source or sales tax at the point of sales. Lastly, the canon of economy means that the cost of collecting revenue must be kept as low as possible. This is because where the cost of collection is higher than the revenue collected, the primary aim of taxation as a revenue generating scheme is defeated.

Nigeria and Constitutional Taxation

Background

Taxes were already levied in the various empires that existed before the creation of Nigeria. This was especially true in the cases of centralised empires such as the northern Emirates, and the kingdoms of the western and mid-western regions of the area that eventually became Nigeria. However, the era of colonialism marked a new dimension in taxation for these kingdoms. Not only were these taxes now being paid to a foreign government, the practice was extended into territories where it was hitherto unknown. Furthermore, the era of colonialism witnessed a change in the style and manner of tax administration; one that

derived legislative authority from colonial enactments. Thus the first colonial income tax was introduced in Northern Nigeria in 1906 by virtue of the *Native Revenue Proclamation No. 2 1906*.¹¹ This was later extended to the western and eastern territories through the *Native Revenue Ordinances* in 1918 and 1927 respectively. Several other legislations were subsequently passed by the colonial government to administer and regulate various types and aspects of taxation before Nigeria finally acquired independence in 1960.

The Foreign Jurisdiction Act 1890 facilitated the exercise by the English Crown of the jurisdiction acquired by it in foreign territories.¹² The legislative authority of the British Parliament to make laws for Nigeria was derived from this enactment as well as from the *Colonial Laws Validity Act 1865*. In furtherance to this jurisdiction, not only did certain laws passed by the British Parliament become applicable to Nigeria, the relevant representatives of the Crown in the colony and protectorates were also empowered in specified cases to exercise this jurisdiction on behalf of the Imperial Government. Although the colonial administration exercised this power in Northern Nigeria in 1906 to impose direct taxation, the first attempt at constitution making for the colony and protectorate was in 1914. By 1960, when Nigeria became independent, at least five constitutional instruments had been enacted at different times for the protectorate of Nigeria.

Pre-Independent Constitutions

Lugard Constitution 1914

The instrument sometimes referred to as the Lugard Constitution or the 1914 Constitution was in fact, an Order-in-Council that was passed in 1913. Its most significant impact was that it amalgamated the erstwhile Northern and Southern Protectorates into the Protectorate of Nigeria. It came into force on 1st January 1914. Both the executive and legislative powers of the new protectorate were vested in the Governor and Commander-in-Chief of the protectorate. The preamble to the *Nigeria Protectorate Order in Council 1913* provided, *inter alia*, that:

And whereas it is expedient that the Protectorates of Northern Nigeria and Southern Nigeria shall be formed into one Protectorate under the name of the Protectorate of Nigeria.

Sections IV and VIII of the Order empowered the governor to exercise both executive and legislative powers including powers to raise revenue. The sections provided thus:

- IV. The Governor and Commander-in-Chief for the time being of the Colony of Nigeria (hereinafter called the Governor) shall be the Governor and Commander-in-Chief of the Protectorate of Nigeria and he is hereby authorized, empowered and commanded to exercise on His Majesty's behalf all such powers and jurisdiction as His Majesty at any time before or after the passing of this Order had or may have within the said territories, and to that end to take or cause to be taken all such measures and to do or cause to be done all such matters and things therein as are lawful and as in the interest of His Majesty's service he may think expedient, subject to such instructions as he may from time to time receive from His Majesty or through a Secretary of State.
- VIII. It shall be lawful for the Governor, from time to time, by Ordinance, to provide for the administration of justice, *the raising of revenue*, and generally for the peace, order, and good government of the Protectorate, and all persons therein, including the prohibition and punishment of acts tending to disturb the public peace. (Emphasis supplied)

The authority of the Governor to pass legislation (including tax legislation) was therefore guaranteed by the specific provisions of paragraph VIII of the amalgamation constitution. Drawing from this constitutional authority, the *Native Revenue Proclamation 1906* was re-enacted in 1917 as the *Native Revenue Ordinance No. 1 1917*. Amendments to the ordinance were made in 1918 and 1927 to extend the taxation of incomes to the western and eastern provinces.¹³

Clifford Constitution 1922

The constitutional instrument often referred to as the Clifford Constitution established, at least in theory, a separate Legislative Council from the Executive Council. Section IV of the *Nigeria Protectorate Order-in-Council 1922* was in *pari materia* with section IV of the *Nigeria*

Protectorate Order in Council 1913. The 1922 Order however, introduced some new provisions that were not contained in the 1913 Order. For example, the legislative powers vested in the Commander-in-Chief to, from time to time, by ordinance 'provide for the administration of justice, *the raising of revenue*, and generally for the peace, order, and good government of the Protectorate' under section VIII of the 1913 Order were limited under section X of the 1922 Order to apply only to the northern provinces of the Protectorate. By virtue of section IX of the 1922 Order, legislative powers for the southern provinces of the Protectorate (as well as the colony of Lagos) were vested in the Legislative Council provided for under section VIII of the 1922 Order. The combined effect of sections VIII and X of the 1922 Order was that while the Legislative Council had legislative competence to make laws for the southern provinces, legislative authority in respect of the northern provinces was vested in the Governor and Commander-in-Chief. Nwabueze submits that:

It is true the governor could no longer legislate within the area of the jurisdiction of the council without its consent, yet the consent of the council was a mere formality, given always as a matter of course. This was because all the various legislative councils that functioned in the country up to 1922 were composed predominantly of officials appointed by the governor and bound to vote as directed by him.¹⁴

Further, not only was the governor (who was head of the Executive Council) a member of the Legislative Council, he also possessed the power to veto any ordinance passed by the Legislative Council. Sections VIII and IX provided thus:

VIII. On and after a date to be fixed by the Governor by Proclamation in the Nigeria Gazette, there shall be a Legislative Council constituted in such manner and consisting of the Governor and such persons as are directed by His Majesty by an Order in His Privy Council bearing even date herewith and known as the Nigeria (Legislative Council) Order in Council, 1922, or by any Order in Council amending or substituted for the same, or by any Instructions under His Sign Manual and Signet or through a Secretary of State.

IX. The persons who shall from time to time compose the said Legislative Council shall have full power and authority, subject always to any

conditions, provisos and limitations prescribed by the said Order in Council, or by any other Order in Council, or by any Instructions under His Majesty's Sign Manual and Signet, to establish such Ordinances, and to constitute such Courts and Officers, and to make provisions and regulations for the proceedings in such Courts, and for the administration of justice, as may be necessary for the peace, order, and good Government of that portion of the Protectorate of Nigeria known as the Southern Provinces.

Provided that it shall be lawful for the Governor by Proclamation issued with His Majesty's approval signified through a Secretary of State to add to or otherwise vary the territories defined as the Southern Provinces for the purposes of this Order.

The Governor shall have a negative voice in the making and passing of all such Ordinances.

In spite of the drawbacks in the make-up and procedure of the Legislative Council, the Council, at least, laid the foundation for the eventual emergence of the legislature as a distinct organ from the executive powers of the governor, in that, at least in theory, the Council was making laws for the southern provinces while the Governor continued to make laws that applied to Northern Nigeria.

Richard Constitution 1946

The Richard Constitution, as the constitution of 1946 is called was unique in two significant ways. First, under it, the northern provinces were brought within the competence of a legislative council created under Section 4 of the Nigeria (Legislative Council) Order in Council. The section provided:

The Legislative Council as constituted under the existing Orders immediately before the appointed day shall cease to exist and there shall be constituted a Legislative Council in and for Nigeria, in accordance with the provisions of this order.

The 'existing Orders' that were to cease existing were those of 1922 (under the Clifford constitutional instrument), 1928 and 1941. The 1946 arrangement therefore, abrogated

the system whereby the Legislative Council made laws for the southern provinces while the governor made laws for Northern Nigeria by vesting all legislative powers in the governor on the '*advice and consent*' of the Legislative Council. The mode of exercising legislative power under the new Constitution was laid down under section 21 of the Order thus:

Subject to the provisions of this Order, it shall be lawful for the Governor, with advice and consent of the Legislative Council, to make laws for the peace, order and good government of Nigeria.

Under the 1946 constitutional arrangement, therefore, legislative authority for the entire country was vested in the governor but the exercise of that power was subject to the 'advice and consent' of the Legislative Council. Further, the number of the unofficial members of the Council, who were to be appointed from the regional legislatures established under sections 33, 34 and 35, was greater than the official members of Council, suggesting that the new Legislative Council was not intended to be a rubber stamp of the governor *simpliciter*. This, again, was a progressive, if slight departure from the 1922 arrangement under which the number of official members was greater than the unofficial members.¹⁵ Nwabueze submits that although the consent of the Legislative Council to the governor's proposals in the past might have been almost always forthcoming, the said consent could no longer be taken for granted because of the unofficial majority in the new council. The learned author however concludes that:

The existence of an unofficial majority of 11 in the legislative council must not be taken to have seriously weakened the internal control of the British authorities. It had merely created a possibility that the council might refuse to approve a measure initiated by the governor, who remained as before the principal instrument of policy and responsible for practically all bills introduced in the council, with a power to veto legislation initiated otherwise than with his previous approval or to refuse to assent thereto and reserve it for the signification of H.M's pleasure.¹⁶

Under section 22, no bill that, *inter alia*, imposed, altered or repealed any rate, tax or duty could be introduced in the Legislative Council without the prior consent of the governor first had and obtained. The section provided that:

Subject to the provisions of this Order and of the Standing Rules and Orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Legislative Council, and the same shall be debated and disposed of according to the Standing Rules and Orders;

Provided that, except by the direction or with the sanction or recommendation of the Governor signified thereto, the Council shall not proceed upon any Bill, amendment, motion or petition which, in the opinion of the Governor or in that of the Presiding Member, would dispose of or alter any disposition thereof or charge thereon, or impose, alter or repeal any rate, tax or duty.

Sections 33, 34 and 35 established regional Houses of Assembly for the Northern, Western and Eastern Regions respectively. Under section 33 (1) the Northern House of Assembly consisted of a House of Chiefs and a House of Assembly; but the Western and Eastern Houses of Assembly created under sections 34 and 35 respectively did not consist of separate chambers for chiefs. The functions of the three regional Houses were spelt out under section 51 thus:

Subject to the provisions of sub-section (2) of this section, the functions of each House shall be:

- (a) to appoint Members to the Legislative Council as provided in Part II of this Order; and
- (b) to exercise the powers in relation to the estimates of the region and in relation to Bills conferred upon the House by the provisions of this Part of this Order; and
- (c) to consider and, by resolution, advise on any question or matter referred to the House by the Governor and on any question or matter introduced by a member for the consideration of the House in accordance with the provisions of this Order; and
- (d) to perform such other functions as may be prescribed by or under any law for the time being in force in Nigeria.

Thus, under the 1946 Constitution, regional assemblies did not possess inherent legislative powers. Furthermore, while owing to the majority of unofficial members, the Legislative

Council created a possibility where the governor's legislative power could be curtailed; such a possibility only went so far as non-tax bills were concerned. As far as tax bills were concerned, such a possibility collapsed in the light of the proviso to section 22.

MacPherson Constitution 1951

The 1951 Constitution, also called the MacPherson Constitution, was an improvement on the 1946 Constitution both in terms of devolution of powers to the regions and in terms of composition of the legislative assemblies. The constitution provided for an elected majority in both the central legislature and the regional assemblies for the first time.¹⁷ Two legislative houses were established for the northern region styled the 'the Northern House of Chiefs and the Northern House of Assembly' under section 15 of the Constitution. Similarly, section 26 established two legislative houses styled 'the Western House of Chiefs and the Western House of Assembly'. The Eastern legislative house was established under section 36 and unlike the northern and western regions, comprised of a single house styled 'the Eastern House of Assembly'.

The central legislature was established under section 67 of the Constitution. The section provided that:

There shall be, in and for Nigeria, a House of Representatives consisting of:

- (a) a President;
- (b) six ex officio Members;
- (c) one hundred and thirty-six Representatives Members, who shall be elected in accordance with the provisions of this Chapter; and
- (d) such Special Members as may be appointed under the provisions of Section 70 of this Order.

The power of the House of Representatives to make laws was provided for under section 83. Section 84 however curtailed the powers of the central legislature with regards to bills of monetary nature, including tax bills. The section provided thus:

Except upon the recommendation of the Governor or with the consent of the Governor signified thereto, the House of Representatives shall not proceed upon any Bill, motion or petition which, in the opinion of the President or other member presiding, would dispose of or charge any public

revenue or public funds or revoke or alter any disposition thereof or charge thereon, or impose, alter or repeal any rate, tax or duty.

The extent of the power of the regional assemblies to make laws was provided under section 92 of the Constitution. The section provided as follows:

- (1) Any matter (being a matter not mentioned in the Third Schedule to this Order but with respect to which the Central Legislature may make laws) shall be within the competency of the legislature of a Region if it is declared so to be by any Central law.
- (2) Any such matter, which has been declared as aforesaid to be within the competency of the legislature of a Region, shall cease to be within the competency of such legislature if the enactment embodying such declaration is repealed or otherwise ceases to have effect; but any law enacted by such legislature by virtue of that declaration shall remain in force but shall be subject to amendment and repeal as if it were a Central law.
- (3) For the avoidance of doubts it is hereby declared that where, by virtue of a declaration made under this section, any matter is within the competency of the legislature of a Region, the power of the Central Legislature to make laws with respect to such matter shall not thereby be abridged, altered or in any way affected.

The Third Schedule referred to in section 92 (1) was the list of items in respect of which a regional legislature could make laws. Item 24 thereto provided that a regional legislature could make laws on 'taxation to such extent as may be prescribed by or under any Order of His Majesty in Council'. There was no Exclusive Legislative List conferring, among other powers, exclusive jurisdiction of certain taxes on the central government under the 1951 Constitution. Such a list was unnecessary in the light of section 92 (1) – (3). The combined effect of the said sub-sections, read alongside item 24 of the Third Schedule was that the power of the regional assemblies to pass legislation was only to such extent as was *delegated* by the central legislature and no more. Residual tax jurisdiction, as it were, therefore, was vested in the central legislature. In subsequent Constitutions, this trend was to be reversed

to the extent that the taxes vested in the central legislature would always be spelt out under the Exclusive Legislative List, supposing that residual tax jurisdiction was now transferred to the regions/states.

Lyttleton Constitution 1954

The 1954 Constitution was the product of several Orders-in-Council passed between 1951 and 1954. It was an improvement on the 1951 Constitution and can be said to be the first truly federalist Constitution because the devolution of powers under it was more comprehensive than any Constitution enacted hitherto. Legislative Houses were established for the federation, the three regions and the Southern Cameroons under section 5 of the 1954 Constitution. The section provided thus:

- (1) There shall be, for the Federation, a Legislative House, which shall be styled the House of Representatives
- (2) There shall be, for the Northern Region, two Legislative Houses, which shall be styled, respectively, the Northern House of Chiefs and the Northern House of Assembly
- (3) There shall be, for the Western Region, two Legislative Houses, which shall be styled, respectively, the Western House of Chiefs and the Western House of Assembly
- (4) There shall be, for the Eastern Region, a Legislative House, which shall be styled, the Eastern House of Assembly
- (5) There shall be, for the Southern Cameroons, a Legislative House, which shall be styled, the House of Assembly of the Southern Cameroons.

The composition of the House of Representatives was contained in section 6 while the composition of the Northern, Western and Eastern Houses was contained in sections 17, 24 and 32 respectively. The composition of the House of Assembly of the Southern Cameroons was contained in Section 34. Under section 61 the consent of the Governor General in the case of the (House of Representatives) or Governor (in the case of a regional

House of Assembly) was required before any of the legislative houses could consider a bill that, *inter alia*, imposed, altered or repealed a tax, rate or duty. Section 61 (1) provided that:

Except upon the recommendation of the Governor-General or with the consent of the Governor-General, the House of Representatives shall not proceed upon any Bill, motion or petition that, in the opinion of the Speaker or any other officer presiding, would dispose of or charge any public revenue or public funds or revoke or alter any disposition thereof or charge thereon, or impose, alter or repeal any rate, tax or duty.

Subsections (2) and (3) of section 61 placed the same restriction on the regional legislative houses and the House of Assembly of the Southern Cameroons by requiring the consent of the regional governor in the case of the regional assemblies or commissioner in the case of the Southern Cameroons.

Section 162 contained provisions on the allocation of federal income tax. The Section provided that:

- (1) Where under any law enacted by the Federal Legislature any tax is levied on incomes or profits, there shall be paid by the Federation to each Region in respect of each year of assessment after the thirty-first day of March, 1954, a sum equal to the amount of that part of the proceeds of that tax for that year that is declared by the prescribed authority to be attributable to the incomes and profits of persons, other than bodies corporate, resident in that Region during that year.
- (2) (a) For the purpose of this section the proceeds of a tax for a year of assessment shall be the amount that is declared by the prescribed authority to be the amount remaining from the receipts from that tax that are collected in respect of that year after any refunds or other repayments relating to those receipts have been made or allowed for;

Provided that for the purpose of calculating the receipts from any tax collected in respect of the year beginning on the first day of April, 1954, no account shall be taken of any sums

collected before the commencement of this Order or of any refunds or other repayments relating to any sums so collected.

- (b) In this section “year of assessment” means, in relation to a tax levied under any law, a year of assessment for the purposes of that law.
- (3) The Governor-General may by regulation make provision for determining the residence of any person for the purposes of this section.

Legislative competence regarding taxes on incomes and profits was contained in the Exclusive Legislative List, which was Part I to the First Schedule to the Constitution. Item 36 thereto provided that:

Taxes on income and profits, except taxes on the incomes or profits accruing in or derived from, any Region or the Southern Cameroons of Africans resident in any Region or the Southern Cameroons and African communities in any Region or the Southern Cameroons.

It follows from the above provision that corporate income taxation and personal income taxation of residents of the Federal Territory of Lagos and expatriates was vested in the federal parliament while taxes from the income and profits of Africans resident in the regions were within the legislative competence of the regional assemblies.

Post-Independent Constitutions

Independence Constitution 1960

The Independence Constitution came into operation on October 1 1960 as a result of the independent status granted Nigeria within the Commonwealth by virtue of the Nigeria Independence Act 1960. Section 1 (1) and (2) of the Act provided as follows:

- (1) On the first day of October, nineteen hundred and sixty (in this Act referred to as “the appointed day”), the Colony and the Protectorate as respectively defined by the Nigeria (Constitution) Orders in

Council, 1954 to 1960, shall together constitute part of Her Majesty dominions under the name of Nigeria.

- (2) No Act of the Parliament of the United Kingdom passed on or after the appointed day shall extend, or be deemed to extend, to Nigeria or any part thereof as part of the law thereof, and as from that day:
 - (a) Her Majesty's Government in the United Kingdom shall have no responsibility for the government of Nigeria or any part thereof; and
 - (b) the provisions of the First Schedule to this Act shall have effect with respect to legislative powers in Nigeria.

The First Schedule to the Act referred to in (2) (b) provided, *inter alia*, that:

The Colonial Laws Validity Act, 1865, shall not apply to any law made on or after the appointed day by any legislature established for Nigeria or any part thereof.

In addition, section 10 (1) of the Nigeria (Constitution) Order-in-Council 1960 provided that:

The Parliament of the Federation of Nigeria may make laws for the peace, order and good government of any Region of the Federation with respect to taxes on income and profits, not being taxes on the income or profits accruing in, or derived from, that Region, of Africans resident in that Region and African communities in that Region.

Section 30 of the Constitution guaranteed protection against compulsory acquisition of property without adequate compensation, and also conferred a right to action to determine the compensation on the person so deprived. Subsection (3) (a) however provided that 'nothing in this section shall be construed as affecting any general law for the imposition or enforcement of any tax, rate or duty'.

The federal legislature was established under section 36 of the Constitution which provided that 'there shall be a Parliament of the Federation, which shall consist of Her Majesty, a Senate and a House of Representatives'. Exercise of legislative power was by both chambers

of parliament as provided by section 57 while under subsection (2) of section 57, a restriction was placed on the Senate in its exercise of legislative power regarding bills of a monetary nature. The subsection provided that 'A bill other than a money bill may originate in either House of Parliament but a money bill may originate only in the House of Representatives'. Further, section 58 (1) (a) (i) and (2) (a) (i) provided that:

- (1) The Senate shall not:
 - (a) proceed upon any bill, other than a bill sent from the House of Representatives, that, in the opinion of the person presiding, makes provision for any of the following purposes:
 - (i) for the imposition, repeal or alteration of taxation

- (2) Except upon the recommendation of the Governor-General signified by a Minister of the Government of the Federation, the House of Representatives shall not:
 - (a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:
 - (i) for the imposition of taxation or the alteration of taxation otherwise than by reduction.

The effect of section 58 was that the legislature could not initiate a tax bill or an amendment to a tax bill, save for the purpose of reduction. Any other proposal of a tax bill had to come from the Executive arm and could only be introduced at the House of Representatives. Section 64 (1) (a) re-echoed the provisions of section 10 (1) of the Nigeria (Constitution) Order-in-Council to the extent that the Parliament had power to make laws:

for the peace, order and good government of Nigeria (other than the Federal territory) or any part thereof with respect to any matter included in the Legislative Lists; and (b) for the peace, order and good government of the Federal territory with respect to any matter, whether or not it is included in the Legislative Lists.

Under subsection (5) the legislature of a region could also make laws with respect to any matter not included in the Exclusive Legislative Lists, but by subsection (4) where a law

enacted by a regional legislature was inconsistent with that of Parliament, the law enacted by Parliament prevailed and to the extent of its inconsistency, the regional law was null and void.

Section 70 expressly defined the taxing powers of the Parliament regarding income and profits. The section provided thus:

- (1) Parliament may make laws for Nigeria or any part thereof with respect to taxes on income and profits other than the income and profits of companies for the purpose of:
 - (a) implementing any treaty, convention or agreement between the Federation and other country or any arrangement with or decision of an international organization of which the Federation is a member with respect to taxes on income and profits;
 - (b) securing uniform principles for the taxation of income and profits accruing to persons in Nigeria from countries other than Nigeria and of income and profits derived from Nigeria by persons outside Nigeria;
 - (c) securing uniform principles for the computation of income and profits of all persons (including members of partnerships) for purposes of assessment of tax and for the treatment of losses, depreciation of assets and contributions to pension or provident funds or schemes;
 - (d) regulating the liability to tax of persons within Nigeria by reference to their places of residence or otherwise for the purpose of ensuring that any income or profit does not bear tax under the laws of more than one territory;
 - (e) providing, in pursuance of any arrangement in that behalf subsisting between the Government of the Federation and the Government of a Region, for the exemption from liability to tax in respect of all or part of the income or profits of any person or class of persons;

- (f) obtaining information with respect to income or profits from any source and providing for the exchange of information between different tax authorities; and
 - (g) providing, in pursuance of any arrangement in that behalf subsisting between the Government of the Federation and the Government of a Region, for the establishment and regulation of authorities empowered to promote uniformity of taxation and to discharge such other functions relating to the taxation of income and profits as may be conferred upon them in pursuance of any such agreement.
- (2) Parliament may make laws for Nigeria or any part thereof with respect to taxes on the estates of deceased persons and the succession to their property for the purpose of ensuring that any estate or part thereof does not bear tax under the laws of more than one territory.
- (3) The powers conferred upon Parliament by sub-sections (2) and (3) of this section shall not extend to the imposition of any tax or penalty or the prescribing of rates of tax or personal allowances and reliefs.
- (4) Nothing in subsections (2) and (3) of this section shall preclude the legislature of a Region from making laws with respect to the matters referred to in those sub-sections.

Under subsection (6) companies were defined to exclude:

- (a) A corporation established by or under the Native Authority Law 1954 of Northern Nigeria, the Western Regional Local Government Law, 1952, or the Local Government Law 1957, of Western Nigeria or the Eastern Region Local Government Law 1960 as amended or any law replacing them.
- (b) A purchasing authority established by the legislature of a Region and empowered to acquire any commodity in that Region for export

from Nigeria derived from the purchase and sale (whether for purposes of export or otherwise) of that commodity; or

- (c) A corporation established by the legislature of a Region for the purpose of fostering the economic development of that Region, provided its income is not derived from profits from a trade or business carried on by it or a share or other interest possessed by it in a trade or business in Nigeria carried on by some other person or authority.

Section 76 empowered Parliament to exempt persons from tax liability with respect to mining or matters connected therewith, matters not included in the Legislative Lists and for the purpose of implementing any agreement between the government of the federation and any person. The proviso to the section however made consultation between the federal government and the regional government a precondition. The section provided:

Parliament may, for the purpose of implementing any agreement between the Government of the Federation and any person relating to mining or matters connected therewith, provide for exempting that person in whole or in part from liability for any tax or rate imposed by or under a law enacted by the legislature of a Region with respect to any matter not included in the Legislative Lists:

Provided that no person shall be granted any exemption in pursuance of this section without prior consultation between the Government of the Federation and the Government of the Region concerned.

Sections 130 to 133 contained provisions on how import, export and excise duties on commodities should be treated by detailing the accounts into which they shall be paid, as well as the manner of their sharing between the federal government and the regions. Section 134 made provisions as to the sharing of mining royalties and rents between the federal government and the regions.

The Legislative Lists were contained in Parts I and II to the Schedule. Part I contained the Exclusive Legislative List while Part II contained the Concurrent Legislative List. Custom

duties, including excise and export duties were listed as item 10 on the Exclusive List. Taxes on amounts paid or payable on the sale of commodities (except produce, hides and skins, motor spirit, diesel oil sold or purchased for use in road vehicles, diesel oil sold or purchased for other industrial purposes) were listed as item 38 on the Exclusive Legislative List. Further, any matter incidental or supplementary to anything listed under the Exclusive List was also within the legislative competence of Parliament. Under item 27 of the Concurrent List, the regional legislatures also had legislative competence over matters contained in subsections (2) and (3) of Section 70. This was consistent with Section 70 (5).

The Regional Constitutions

Northern Region

The relevant sections were sections 4, 26, 27 and 30 of the Constitution of Northern Nigeria 1960. Section 4 established the legislature for the region consisting of Her Majesty, a House of Chiefs and a House of Assembly and vested it with powers to make laws for the peace, order and good government of the region. Section 26 (1) provided that the mode of exercising the legislative power of the legislature of the northern region shall be by bills passed by both legislative houses. While a bill could originate in any of the two chambers of the legislature, a money bill could originate only in the House of Assembly but not in the House of Chiefs of the Region. Section 30 (a) defined 'money bill' to mean a bill that in the opinion of the Speaker contains only provisions dealing, *inter alia*, with 'the imposition, repeal, remission, alteration or regulation of taxation'. Furthermore, section 27 (1) (a) (i) and (2) (a) (i) provided that:

- (1) The House of Chiefs shall not
 - (a) proceed upon any bill, other than a bill sent from the House of Assembly, that, in the opinion of the person presiding, makes provision for any of the following purposes:
 - (i) for the imposition, repeal or alteration of taxation;

- (2) Except upon the recommendation of the Governor signified by a Minister of the Government of the Region, the House of Assembly shall not
 - (a) proceed upon any bill (including any amendment to a bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:

- (i) for the imposition of taxation or the alteration of taxation otherwise than by reduction

These provisions simply reflected at the regional level the nature of legislative relations obtained at the federal level between the Senate and the House of Representatives.

Western Region

Section 4 of the Constitution of Western Nigeria 1960 established the legislature of the western region, comprising of a House of Chiefs and a House of Assembly “to make laws for the peace, order and good government of the Region”. Section 25 empowered the legislature to exercise its legislative powers through bills passed and assented to it by the governor on behalf of Her Majesty. Under section 25 (2) a money bill could only originate in the House of Assembly, and section 26 (1) (a) (i) prohibited the House of Chiefs from proceeding on any bill which, *inter alia*, imposed, repealed or altered taxation, except if such a bill emanated from the House of Assembly. Subsection (2) (a) (i) of section 26 prohibited the House of Assembly from proceeding on any bill that, *inter alia*, imposed, repealed or altered taxation other than by way of reduction, except if such a bill was introduced by the governor and so signified by a minister of the regional government. Section 29 defined a money bill to include, *inter alia*, ‘the imposition, repeal, remission, alteration or regulation of taxation’.

Eastern and Mid-Western Regions

Sections 4, 25, 26 and 29 of the Constitution of Eastern Nigeria 1960, and sections 4, 25, 26 and 29 of the later Constitution of Mid-Western Nigeria 1964 (which was enacted by the federal parliament upon the creation of the mid-western region in 1964) were all *in pari materia* with sections 4, 25, 26 and 29 of the Constitution of Western Nigeria.

Republican Constitution 1963

The relevant taxing provisions under the 1963 Constitution were contained in sections 62, 63, 76, 136, 137, 138, 139, and 142 as well as items 10 and 38 of Part I to the Schedule and finally, item 28 of Part II to the Schedule. Section 62 provided for the general powers of parliament to make laws. Parliament itself was established by section 41 of the constitution and consisted of ‘the President, a Senate and a House of Representatives.’ Under section 63 (1) (a) the Senate, among other things, could not consider a bill for the imposition, repeal or alteration of taxation except where such a bill emanated from the House of Representatives. In other words, the Senate did not have jurisdiction to initiate tax bills just like under the

1960 Constitution. Similarly, section 63 (2) restricted the power of the House of Representatives from initiating a bill that imposed or altered taxes except by way of reduction, unless upon the recommendation of the President through a minister. The implication being that the House of Representatives could only initiate tax bills that sought a reduction in tax liability. In any other case of tax legislation, such a bill had to originate from the President.

Section 76 (1) empowered the parliament to make laws for the taxation of income and profits of companies. Subsection (2) of the same section further empowered parliament to tax income and profits other than those of companies for the purposes of:

- a. implementing a multilateral or bilateral agreement
- b. securing uniform principles for the taxation of income and profits accruing to persons in Nigeria from other countries, and income and profits derived from Nigeria by persons outside Nigeria
- c. securing uniform principles for the computation of income and profits of persons for the purposes of tax assessment, treatment of losses, depreciation of assets, and contributions to pension or provident funds and schemes
- d. regulating the liability of persons in Nigeria regarding their places of residence to avoid tax liability under the laws of more than one territory
- e. implementing a subsisting agreement between the federal government and any of the regional governments regarding exemption from liability in respect of all or part of the income or profits of any person or class of persons
- f. obtaining information with respect to income or profits from any source and providing for the exchange of information between different tax authorities
- g. providing for the establishment and regulation of authorities empowered to promote uniformity of taxation and to discharge other functions relating to the taxation of income and profits as may be conferred on them in pursuance of an arrangement between the federal government and regional governments

Section 76 (3) empowered parliament to make laws with respect to taxes on estates of deceased persons and succession to their property to prevent tax liability accruing on them under more than one jurisdiction. Subsection (4) provided that the powers of parliament under subsections (2) and (3) did not extend to the imposition of any tax or penalty or the prescribing of rates of tax or personal allowances and reliefs. Subsection (5) empowered the regional legislatures to make laws on the matters contained in subsections (2) and (3). Finally

subsection (6) defined income and profits of companies to exclude the income or profits of corporation sole, corporations established under the native or local government laws of the regions, purchasing authority established pursuant to a law of a regional legislature and empowered to acquire any commodity from that region for export or any corporation established by a regional legislature for the purpose of fostering economic development of that region.

Part 1 of the Schedule to the constitution contained the Exclusive Legislative List and item 10 thereto placed customs, excise and export duties within the exclusive legislative competence of the federal government. Similarly, under item 38 taxes on amounts paid or payable on the sale or purchase of commodities apart from produce, hides and skin, motor spirit, diesel oil sold/purchased for use in road vehicles and diesel oil sold/purchased for other than industrial purposes were within the competence of the federal parliament. By virtue of item 28 of Part II to the Schedule, the matters contained in Section 76 subsections (2) and (3) were on the Concurrent Legislative List.

The 1979 Constitution

Section 4 of the 1979 Constitution provided that:

- (1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.
- (2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.

Subsection (3) of section 4 vested exclusive jurisdiction in the National Assembly with regards to matters contained on the Exclusive Legislative List which was Part I to the Second Schedule to the Constitution. Section 4 (6) vested legislative powers of a State in the House of Assembly of each State and by subsection (5) any law passed by a State House of Assembly which was inconsistent with an Act of the National Assembly was to be null and void to the extent of its inconsistency. By subsections (4) (a) and (7) (b) both the National Assembly and the States Houses of Assembly could make laws on the matters

on the Concurrent Legislative List which was Part II to the Second Schedule to the Constitution. Customs, excise and export duties were listed as items 15 and 22 under the Exclusive Legislative List. Also, stamp duties, taxation of incomes, profits and capital gains were listed on the Exclusive Legislative List under items 57 and 58. Items 7, 8, 9 and 10 of Part II of the Second Schedule (Concurrent List) provided that:

7. In the exercise of its powers to impose any tax or duty on:
 - (a) capital gains, incomes or profits of persons other than companies;
and
 - (b) documents or transactions by way of stamp duties, the National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a State or other authority of a State.
8. Where an Act of the National Assembly provides for the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a State in accordance with paragraph 7 hereof, it shall regulate the liability of persons to such tax or duty in such a manner as to ensure that such tax or duty is not levied on the same person by more than one State.
9. A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a local government council.
10. Where a Law of a House of Assembly provides for the collection of tax, fee or rate or for the administration of such Law by a local government council in accordance with the provisions hereof it shall regulate the liability of persons to the tax, fee or rate in such a manner as to ensure that such tax, fee or rate is not levied on the same person in respect of the same liability by more than one local government council.

Section 150 provided for allocation of tax revenue among the tiers of government on the basis of derivation. The section provided that:

Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation; and accordingly:

- (a) where such tax or duty is collected by the Government of a State or other authority of the State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State.
- (b) where such tax or duty is collected by the Government of the Federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of the net proceeds of such tax or duty that are derived from that State.

Under section 152, the States were required to pay to the federal government the cost of collecting tax revenue in proportion to the share of the proceeds received by the States in that financial year. The section provided thus:

Each State shall in respect of each financial year pay to the Federation an amount equal to such part of the expenditure incurred by the Federation during that financial year for the purpose of collection of taxes or duties which are wholly or partly payable to the State pursuant to the provisions of this Chapter or of any Act of the National Assembly as is proportionate to the share of the proceeds of those taxes or duties received by the State in respect of that financial year.

The Fourth Schedule to the constitution listed the functions of local governments in section 1 to include, *inter alia*, collection of rates, radio and television licences, licensing of bicycles, trucks (other than mechanically propelled trucks), canoes, wheel barrows and carts, assessment of privately owned houses or tenements for the purpose of levying such rates as may be prescribed by the House of Assembly of a State. Section 2 (d) also extended the

functions of the local government to include 'such other functions as may be conferred on a local government council by the House of Assembly of the State'. This provision was consistent with items 9 and 10 of Part II to the Second Schedule.

The 1999 Constitution

The relevant provisions under the 1999 Constitution of the Federal Republic of Nigeria¹⁸ are contained in sections 4, 24 (f), 163, 165, 173 (4) and Parts I and II to the Second Schedule. Section 4 (1) vests the legislative powers of the Federal Republic in the National Assembly which shall consist of a Senate and a House of Representatives and under subsections (2) and (3):

- (2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part I of the Second Schedule to this Constitution.
- (3) The power of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter included in the Exclusive Legislative List shall, save as otherwise provided in this Constitution, be to the exclusion of the Houses of Assembly of States.

Similarly, by virtue of subsection (7) the 36 State Houses of Assembly are vested with legislative powers in respect of matters contained on the Concurrent Legislative List as well as those on the Residual Legislative List.¹⁹ Furthermore, by virtue of the provisions of subsection (5), where any law enacted by a State House of Assembly is inconsistent with a law made by the National Assembly, the law made by the National Assembly shall prevail and the law made by the State House of Assembly shall be null and void to the extent of its inconsistency.

Section 24 (f) makes prompt payment of taxes a duty of every citizen of the Federal Republic. The section provides as follows:

It shall be the duty of every citizen to:

- (f) declare his income honestly to appropriate and lawful agencies and pay his tax promptly.

Section 163 provides for the treatment of tax revenue where such revenue is collected by the agent of the States pursuant to authority conferred on the agent of the State by the Federal Government; while section 165 requires the States to pay to the Federation the cost of revenue collection where the revenue so shared was collected by an agent of the Federation. The sections provide as follows:

163. Where under an Act of the National Assembly, tax or duty is imposed in respect of any of the matters specified in item D of Part II of the Second Schedule to this Constitution, the net proceeds of such tax or duty shall be distributed among the States on the basis of derivation and accordingly:
- (a) where such tax or duty is collected by the Government of a State or authority of a State, the net proceeds shall be treated as part of the Consolidated Revenue Fund of that State;
 - (b) where such tax or duty is collected by the Government of the federation or other authority of the Federation, there shall be paid to each State at such times as the National Assembly may prescribe a sum equal to the proportion of such tax or duty that are derived from the State.
165. Each State shall, in respect of each financial year, pay to the Federation an amount equal to such part of the expenditure incurred by the Federation during that financial year for the purpose of collection of taxes or duties which are wholly or partly payable to the State pursuant to the provisions of this Part of this Chapter or of any Act of the National Assembly as is proportionate to the proceeds of those taxes or duties received by the State in respect of that financial year.

Section 173 (4) provides that 'pensions in respect of service in the public service of the Federation shall not be taxed'.

Deriving from the provisions of section 4 (1)–(7), Part I of the Second Schedule to the Constitution (i.e. the Exclusive Legislative List) sets out the items in respect of which only the Government of the Federation may exercise legislative jurisdiction. The tax jurisdiction of the federal government under the List include *customs and excise*: item 15, *export duties*: item 25, *stamp duties*: item 58 and *taxation of incomes, profits and capital gains, except as otherwise prescribed by the Constitution*: item 59. There are no items specifically conferred on the States in respect of which they may exercise tax jurisdiction. However, item 7 of Part II to the Second Schedule (i.e. the Concurrent Legislative List) provides:

In the exercise of its powers to impose any tax or duty on:

- (a) capital gains, incomes or profits of persons other than companies; and
- (b) documents or transactions by way of stamp duties,

the National Assembly may, subject to such conditions as it may prescribe, provide that the collection of any such tax or duty or the administration of the law imposing it shall be carried out by the Government of a State or authority of a State.

The above provisions are further enhanced by the provisions of items 8, 9 and 10 of Part II to the Second Schedule. The items provide thus:

- 8. Where an Act of the National Assembly provides for the collection of tax or duty on capital gains, incomes or profit or the administration of any law by an authority of a State in accordance with paragraph 7 hereof, it shall regulate the liability of persons to such tax or duty in such manner as to ensure that such tax or duty is not levied on the same person by more than one State.
- 9. A House of Assembly may, subject to such conditions as it may prescribe, make provisions for the collection of any tax, fee or rate or for the administration of the Law providing for such collection by a local government council.
- 10. Where a Law of a House of Assembly provides for the collection of tax, fee or rate or for the administration of such Law by a local government council in accordance with the provisions hereof it shall

regulate the liability of persons to the tax, fee or rate in such a manner as to ensure that such tax, fee or rate is not levied on the same person in respect of the same liability by more than one local government council.

The combined effect of items 58 and 59 of the Exclusive Legislative List; items 7 and 8 of the Concurrent Legislative List; and section 4 (2) to (7), is that although through an Act of the National Assembly, the States may administer stamp duties, personal income tax and capital gains, only the National Assembly can make legislation on the regulation of these taxes. This situation has generated intense public debate on the regulation and administration of stamp duties, taxation of incomes and capital gains. Some commentators argue that in the light of the foregoing constitutional provisions, States administer stamp duties, incomes, and capital gains as agents of the federal government.²⁰ Other commentators have however, taken the view that in the light of the caution "*except as otherwise prescribed by this Constitution*" contained in item 59 of Part I to the Second Schedule which caution is re-echoed in Section 4 (3) of the constitution, it is obvious that "*the Constitution never intended to give complete and unbridged jurisdiction to the National Assembly over the taxation of incomes and profits, capital gains or stamp duty.*"²¹

Be that as it may, while the tax jurisdiction of the federal government is expressly provided for in items 15, 22, 57 and 58 the tax jurisdiction of the States is implied from the provisions of Section 4 (7) and items 7, 8, 9 and 10 of Part II of the Second Schedule. Consequently, in line with item 7 of Part II to the Second Schedule, the States have jurisdiction to administer stamp duties (individuals), capital gains (individuals) and personal income tax having been so enabled by an Act of the federal government. That is not to suggest that the States do not possess tax jurisdiction outside what has been *delegated* to them by the federal government. By the wording of items 9 and 10 of Part II to the Second Schedule, States have *residual* tax jurisdiction in exercise whereof, the States may delegate some of its powers to the local governments. The residual tax jurisdiction of the States was also recognised by Bello, JSC (as he then was) in *Aberuagba v. Attorney General of Ogun State*.²² Also, commenting on the subject of division of tax powers between the federal government and the States, Akanle submits:

...the enumeration of certain taxes as being within exclusive federal competence cannot be construed as a power over the whole subject of taxation throughout Nigeria. Similarly, the express mention of certain taxes in the Constitution does not mean that the whole field of taxation has been exhausted or that for any tax to be valid, it must be capable of being brought within the scope of the enumerated ones. For as has been rightly pointed out, the federal power of taxation should not be exercised to inhibit the exercise of State taxation power.²³

The 1999 Constitution also lists the functions of a local government in the Fourth Schedule to the Constitution. The functions are in *pari materia* with the functions of a local government under the 1979 Constitution. The only addition in the 1999 Constitution is the insertion of paragraph (vi) to section 1 of the Schedule which further empowers a local government in the “*licensing, regulation and control of the sale of liquor.*”

Conclusion

From 1914 when Nigeria came into being as a political entity to date, the country has had ten constitutional instruments enacted in the following years: 1914, 1922, 1946, 1951, 1954, 1960, 1963, 1979, 1989 and 1999. With the exception of the 1989 draft constitution which never came into force, the other nine had had various life spans as dictated by political events in Nigeria’s history. Prior to 1954, all taxing powers were vested in the government at the centre. The 1954 Lyttleton Constitution introduced federalism in Nigeria for the first time,²⁴ and with the devolution of fiscal powers under the Constitution, tax jurisdiction became vested in regional governments, a practice that has endured to date. Since the 1954 Constitution, the constitutional power to tax under our various Constitutions can be summarised as follows:²⁵

1954:

- a. Federation: Import duties, export duties, excise, income tax of Africans living in the colony of Lagos, income tax of foreigners, company taxation, mining rents and mineral royalties.
- b. Regions: Produce sales tax, purchase/sales tax on motor vehicle fuel, income tax on Africans living outside Lagos, licences, fees and rents.

1960:

- a. Federation: Import duties, export duties, excise, general sales tax, income tax of Africans resident in Lagos, income tax of foreigners living in Lagos, company tax, mining rents and mineral royalties.
- b. Regions: Produce sales tax, purchase/sales tax on motor vehicle fuel, income tax on Africans outside Lagos, income tax on foreigners living outside Lagos, licenses, fees and rents.

1963:

- a. Federation: Import duties, export duties, excise, mining rents and royalties, petroleum profits tax, companies income tax, personal income tax and capital gains.
- b. States: Personal income tax (administration), sales and purchase tax on produce and other commodities, entertainment tax, cattle tax, pools and betting tax, capital gains (administration), motor vehicle tax and licensing fees.

1979:

- a. Federation: Import duties, export duties, excise, mining rents and royalties, petroleum profits tax, companies income tax, capital gains, stamp duties, personal income tax.
- b. States: Sales or purchase tax, pools and betting, entertainment tax, estate duties, gift tax, land tax other than agricultural land, land registration fees, capital gains (administration), personal income tax (administration), stamp duties (administration).
- c. Local Government: Property tax, marketing and trading licences and fees, motor park duties, entertainment tax, licensing fees (of bicycles, non - mechanically propelled trucks, canoes, wheelbarrows, carts) and liquor licences.

1999:

- a. Federation: Import duties, export duties, excise, mining rents and royalties, petroleum profits tax, companies income tax, capital gains, stamp duties, personal income tax.

- b. States: Sales or purchase tax, pools and betting, entertainment tax, estate duties, gift tax, land tax other than agricultural land, land registration fees, capital gains (administration), personal income tax (administration), stamp duties (administration).
- c. Local Government: Property tax, marketing and trading licences and fees, motor park duties, entertainment tax, motor vehicle and licensing fees and liquor licences.

It is pertinent to note that the intervention of the military into politics did not derogate substantially from the tax jurisdiction of the various tiers of government as constitutionally guaranteed, the reason being that the constitutional provisions empowering the various tiers of government to administer tax did not form part of the provisions of the Constitutions which successive military regimes traditionally suspended.

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- 11 *Ibid.*
- 12 Nwabueze, B. O., *A Constitutional History of Nigeria* (London: C. Hurst & Co., 1982) 16 – 18.
- 13 These were respectively, the *Native Revenue (Amendment) Ordinance No.29, 1918* and the *Native Revenue (Amendment) Ordinance No.17, 1927*.
- 14 Nwabueze, *op. cit.*, 40.
- 15 Official members were those appointed by the governor directly.
- 16 Nwabueze, *op. cit.*, 43 - 44.
- 17 *Ibid.*, 46.
- 18 Hereafter referred to as CFRN 1999.

- 19 The Residual Legislative List is not a list *per se* in the nature of the Exclusive and Concurrent Legislative Lists. It consists of those functions neither specifically mentioned nor included in the Exclusive or Concurrent List. By virtue of the provisions of section 8 and the Fourth Schedule of CFRN 1999, the power to give effect to this list is vested in the State. See the judgement of the Supreme Court in *Attorney General of Abia State & 35 Ors. v. Attorney General of the Federation* (SC 3/2002); judgement delivered on Thursday, the 28 March 2002.
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