

6TH AELEX ANNUAL LECTURE

“TAXATION WITHOUT REPRESENTATION”

BEING THE TEXT OF A PAPER DELIVERED BY

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1. INTRODUCTION

1.01 DEFINITION

Taxation is the public act of identifying a revenue base for assessing a value on which a rate is to be paid to the responsible public entity by the payee, the owner of the asset or the user of the service licensed by the responsible public entity. Historically, taxation has taken various forms - taxes, tariffs, rates and levies. In most cases, the taxation is assessed on the value (ad-valorem) of the asset, and in some cases by the quantity or weight of the item to be assessed.

1.02 Issues arising from taxation between the assessor and the payee generally involve the two issues of the value, as well as the rate to be paid per unit of that value. Generally rates can be on a percentage of the value resulting in a progressive or proportionate system or, as in the case of a flat or uniform rate, the tax incidence could be termed effectively “regressive” in the sense that owners of smaller assets may be liable to a higher overall percentage of the total value of the assets than owners of larger units.

1.03 In this short paper, you have asked me to:

- a) Identify the issues and short comings of our tax administration.
- b) The measures which could be necessary to restore to our governments the moral authority to levy and collect taxes.
- c) Provide some enlightenment on the doctrine of the ‘social contract’ between the citizens, on the one hand and the

government which is supposed to represent and govern them, on the other hand.

1.04 THE PURPOSE OF TAXATION

We can identify four broad purposes of taxation as follows:

- Taxation for the purpose of raising revenues:- to fund expenditure or public necessities (i.e. for services provided to a given community which, by common consent, should not be provided by individual members of the community. Under normal circumstances, for example expenditure for public security (police, army, hygiene, public health and education), roads, schools, and hospitals, to name a few public goods should be primarily funded by government in the early stages of development. In practice, both the private and the public sectors participate to varying degrees to the total fund required for these services, especially in the more advanced economies.
- A second reason for taxes is to, in effect; redistribute services to less privileged income groups by allowing taxation to provide the platform for paying for such services to the segments of the population that would otherwise be unable to support such critical basic services.
- Taxes can also be a means of discouraging a pattern of consumption of certain goods and services by high rates, to collect revenues, and reduce the demand/supply of such goods and services by making them more expensive e.g. Cigarettes.

- Lastly, taxation provides a *raison d'être* for “representation” within the community - by surrendering incomes through taxation, citizens can expect a corresponding voice in revenue administration to provide the ends on which basis the taxes have been levied and collected. Such representation demands both accountability to tax payers, and efficiency in the use of the tax revenue to provide the services agreed as essential by the community.

1.05 TAXATION IN THE CONTEXT OF ECONOMIC DEVELOPMENT

Aside the equity of taxation, some of the real issues surrounding tax revenue administration are the perennial problems of corruption and inefficiency of both tax collection and tax revenue utilization. Taxes are often not properly or equitably collected, and the tax revenues are, in turn, not fully applied to the needs of the community on account of inefficiencies and corrupt practices.

- 1.06** In order to enable proper appreciation of the issue of the discussion namely the anomaly of taxation not reflecting the interest of the payee in terms of decisions on the tax forms, tax structure, as well as decisions of tax revenue disposition to various ends, we can briefly, examine common proxies for an efficient tax system in five selected countries; **Nigeria, Ghana, South Africa, Zimbabwe and Uganda.**

1.07 Nigeria

Nigeria operates a multi-tier tax regime which reflects the size and structure of the political entity made up of a federal, states and local government taxing authorities.

1.08 Tax and tariffs rates are moderate... the top income bracket pays a rate of 25%. There is a flat corporate tax rate which has been progressively reduced in the course of the past several years of economic deregulation. It now stands at 30%. In addition, oil and gas companies are subject to a special tax regime, made of royalties and other corporate taxes on their net operating incomes. They also pay the 5% value Added Tax (VAT) introduced in 1994, as well as other taxes such as a capital gains tax.

1.09 Petroleum companies are also subject to a profit tax of 85% in place of a corporate tax. In terms of tax efficiency, in most recent years, the average overall tax revenue as a percentage of the gross domestic product (GDP) has averaged about 5.6%. This is a measure of tax administration efficiency, aside being a reflection of the underlying economic structure in which a significant portion of the potential tax base is still largely outside the tax regime. It also reflects the dearth of a sizable industrial and commercial taxable base outside of the oil and gas sector.

1.10 The tax regimes of other African countries show a slightly larger coverage perhaps, because of the pressure to extend coverage to a higher tax base in the absence of a “captive” oil and gas tax base.

1.11 Ghana

Ghana’s tax structure, for example, yields an overall tax revenue to GDP ratio of 20% on a comparable basis to Nigeria’s 5.6%. The tax structure is similar, moderate income tax rates, with the top personal and corporate tax rates at about 25%. Ghana also introduced a value-added tax (VAT) shortly after Nigeria did in 1994. It also levies a capital gains tax, and recently re-instated some form of excise taxes on food products. The higher tax revenue to GDP ratio reflects a more stringent and efficient implementation of its tax regime over a relatively wider tax base. With the projected increase in the contribution of the oil sector to the Ghanaian economy, it is expected that revenue performance would improve even further to levels seen in the medium-income countries.

1.12 South Africa

South Africa is closer to the revenue performance of the medium income economies at about 26% of the GDP in comparable years. The tax rates are relatively high for incomes and moderate for corporate operators. The top income rate is about 40%, while the top corporate tax rate is 28%.

1.13 Other taxes include a Value Added Tax (VAT), a property tax, a security transfer tax, an inheritance tax, and a special capital gains tax. By comparison with Nigeria, the tax system is more varied, compliance with taxation over a wide base is higher, and tax administration, more efficient. But more significantly, for the purpose of this paper, is the perception of a higher “representation” of the purpose of taxation in the “provision of the services” for which the tax system exists in the form it does!

1.14 Two other examples should suffice for an illustration of the differences between tax systems, reflecting

- a) The robustness of the tax base;
- b) The industrial structure of the economy as it facilitates tax administration; and
- c) The perception of “representation” or performance of the respective tax authorities in the provision of services to the tax liable entities.

1.15 Zimbabwe

Zimbabwe has had a fairly “high” tax regime with the top income bracket being liable for as much as 47.5% of the net income; the corporate sector has a tax rate of 30%. The relatively highly developed industrial mining base, and the narrow, though highly sophisticated commercial agricultural base, thus ensured a high tax revenue/GDP regime on the basis of these two main tax rates. Other taxes include a 3% AIDS surcharge on all taxes to meet the

cost of the high incidence of HIV AIDS with its high prevention and management expenses.

1.16 Zimbabwe also imposes a VAT and a capital gains tax. As a consequence of these taxes/surcharges/levies, the tax revenue/GDP for Zimbabwe was even higher than South Africa's at 31.7%, computed on the same basis as the other cross-sectional data provided for other countries. It is not evident that compliance reflected the perception of "equitable representation", i.e. the provisions of public services in a timely and equitable manner, given Zimbabwe's recent crisis. It is however indicative of the relative highly developed industrial and agricultural sectors. Both sectors suffered terribly in the loss of capital and its productive base as a consequence of its political crisis which lasted nearly two decades. All indications are that there is a growing stability and progressive restoration of economic activity levels which should improve perceived "representation" in the use of tax-based public revenues.

1.17 Uganda

Lastly, we consider the case of Uganda which also has moderately high tax rates. The top income bracket and the top corporate incomes have been subject to a rate of 30%. Mining companies have had to pay a special corporate tax of 45%. These essentially reflect the past colonial tax structure from which Nigerian Authorities have progressively reduced tax rates in subsequent tax changes with the ostensible intent to enhance private savings and investment. This

was always the rationale given for reducing high income personal and corporate tax rates which were similar to those still subsisting in other former British colonies.

1.18 The reduction of tax rates over time was also driven by the common perception that past administrations were becoming not only less efficient and transparent, but also that public expenditure were singularly “unrepresentative” in its spread to all tax payers. Each review was therefore an opportunity to press for even lower rates and wider exemptions!

1.19 Finally Uganda also levies many taxes...a VAT, and a property tax. The overall tax rate is about 12.4% of GDP or more than double the effective tax rate for Nigeria (5.6%). In an effort to further improve tax performance, through improved compliance, and to encourage private savings and investment, some minor tax cuts were introduced during the 2007-2008 budget to bring Uganda, in line with other members of the East African community.

2. TAXATION AND REPRESENTATION

2.01 Developing countries face special difficulties in their drive to build an efficient and sustainable tax regime. Tax policy is often seriously constrained by the limitations of administrative capacity. It is thus natural that economic theory, especially optimal fiscal policy, may not be reflected in the design of the tax system.

2.02 Improving tax performance depends in large part on how diverse political groups view proposed innovations, and how they react to such perceptions. With the level of tax evasion, those who may be required to pay more under new tax policies must be convinced that they will get something tangible in return. Those who do not want to pay more should not have the room for tax avoidance or for blocking the tax reform.

2.03 In examining the concept of “Taxation Without Representation”, with particular reference to developing economies, it is instructive to examine some of the “structural and fundamental differences “between what has been molded out of the history of taxation and representative governance between developed and developing countries. These differences may, to a significant degree, explain why citizens pay their taxes, the extent to which the derived revenues are applied to “represent” their interests.

2.04 For developing countries, as we have just summarized in the first section of this report, there is a discernible continuum, the factors that are responsible for disparate levels of divergence between “Taxation” and perceived “representation” are:

- CORRUPTION
- ADMINISTRATIVE AND COMPLIANCE COSTS
- POLITICAL CONSTRAINTS
- ETHNIC AND REGIONAL FACTORS
- DIFFERENCES IN ECONOMIC STRUCTURE

2.05 The issue of **CORRUPTION** deals with the obvious and widespread misuse of tax revenues to fund diverse interests other than those of the masses who, therefore, suffer from “inadequate” representation in the effective utilization of such public revenues. The examples are in various forms across the entire landscape: inadequate expenditure on housing, public transportation or job creating capital expenditures for the vast majority of those who are the object of the governance in the first instance.

2.06 In terms of **ADMINISTRATIVE and COMPLAINEE COSTS**, often the tax-based funds that are essential for research, monitoring and effective compliance, is usually never regular or sufficient. In most developing countries, the informal economy, an index of “underdevelopment”, in all sectors of the economy, particularly, in agriculture, small, and even medium scale secondary and tertiary (services) sectors, a significant portion of the transactions is still carried out on a cash basis, often with no receipts. This situation leads to the position of a “captive” few, often in the public service and in the fledging corporate sector, having to pay for the “inefficiency” of the tax authorities in not properly expanding its potential base. At the other end of the spectrum, the rich also get away through effective tax avoidance and “reforms” that will be beneficial to them.

2.07 POLITICAL CONSTRAINTS present a unique block to the development of active representation in a paradoxical sense! The

political structure in most of our countries is not such that those officially “elected” or “selected” recognize any significant degree of “accountability” to their supposed constituencies. Arbitrary and selective representation not derived from a democratic freely-canvassed choice of the politically active members of the community to vote, rigging and manipulations of voting constituencies, all contribute to the high probability that a politician can get onto a “taxing pedestal”, a political office position, without having secured the required voter backing in an honest democratic manner. Taxation without representation becomes in-built because the official is not and cannot be held accountable for improper “representation”.

2.08 ETHNIC AND REGIONAL FACTORS also represent a major consideration in many developing countries that have a heterogeneous population. The human factor comes into play in tax policy and tax administration. While there is usually a community-wide tax policy, in the implementation of the “budget” or “development projects”, “representation”, betrays, in many instances, obvious political bias. Such disparate representation is often explained away in terms of “fund constraints”, sequencing of development projects and other excuses that do not satisfy the neglected segments. This leads to social tension and the feeling of “taxation without representation”.

2.09 DIFFERENCES IN ECONOMIC STRUCTURE also affect the likelihood of appropriate taxation and associated “representation” arising from unequal taxable base across sections of the same population, those in rich oil, gas and relatively industrialized areas in contrast with those engaged in low income levels in agriculture and fishery. The strains which different income sources impose on a feeling of inappropriate representation in the provision of services can be mitigated by just and humane governance. It can also be exacerbated by rapacious, irresponsible, and non-representative government or taxing authority.

3. LOOKING BACK

3.01 In this section, we examine the historical origins of the concept of no taxation without representation. The slogan began during the period 1773-1776. The phrase summed up a primary grievance of the 13 American colonies against the colonial English monarchy. “No taxation without representation” cried the voice of a young Virginian Lawyer in the House of Burgesses and demanded that the king recognize his rights... These four words came to represent a principle that was powerful enough to motivate a revolutionary movement between the colonials and a dominating colonial power. That single phrase not only justified the American Revolution against the British Parliament, but also became a symbol for

“democracy”, or just the type of government the Americans wanted to create.

3.02 When the English stated that sovereign power could not be divided between Legislative authority in London and a “Taxing Authority” in the colonies the Americans began to consider revolutionary ideas...the feelings sprouted that ONLY their own “elected” could tax them. Thus the phrase “No taxation without representation” strongly expresses the interest and desires of the people to be a part of their own government. Of greatest importance is that the idea essentially symbolizes democracy as a whole, a government of the people, by the people, for the people. In order for the people to be on the side of the government, the people need to be a part of those governing. The poignancy of the concept in contemporary political affairs in Nigeria is reflected in the call for a truly democratic electoral system, open electoral laws and practices, and the sanctity of the people’s registered interests, and choice through a free and counting ballot process. All speak to the same principle.

3.03 The American colonies defined the principle to cover a “freeman’s” right to vote, and influence elections of the state...a process that has been denied them by a parliament far away in England. We can see the relevance of “distant government”, whether at the federal capital, in Lagos, now Abuja, or at the state levels in the capital from the vantage perception of the “masses”...trapped in vast slums in the cities, or the masses in remote towns and villages. They

constantly express the view that was also cogent at the time - which is that for governance and laws to be fair, they people need to have a say. These are the views and strong passions that have molded the ideas of democracy in all lands.

3.04 In passing, we must note the difference between the American concept of a “freeman”, and that derived from the “freeman” in the philosophy that is linked to Jean Jacques Rousseau (1712-1778). Rousseau’s was a more fundamental expression of the concept of a man’s freedom as a “free natural being”, not the freedom constrained so brutally by slavery in the American tradition. Jean Jacques Rousseau, the philosophical thinker, writer and composer, had a distinct influence on the 18th Century French Revolution, particularly in the ideas embodied in his treatise” Du Contract Social”. In it, he asserted that “Man is born free; and everywhere he is in chains” Rousseau did not restrict himself to the “elected” freeman as opposed to “slaves”, deemed not eligible to elect or to be elected!

3.05 Rousseau further argued that a civil society was one based on a genuine social contract rather than a fraudulent one. Such a society would provide the people, its free members, with a better guaranteed form of freedom, in exchange for their natural independence, namely, political liberty, which he defines as obedience to a self imposed law, created by the “general will”.

3.06 In the context of the developing “free” country, taxes could not be raised and collected, fines imposed, and properties seized outside of the proper structure of the “general will”---the law. This does not have room for arbitrariness, double or multiple taxes/levies that are based on the target expenditure or revenue desires outside that of the law in which a taxpayer’s income (or asset in the case of naturally occurring asset such as oil, gas, etc) has a central role in determining, through the “due process of the law”. Private property cannot be seized on the basis of the right of eminent domain without just compensation!

4. NO TAXATION WITHOUT REPRESENTATION

4.01 Current aberrations of taxation without representation include the long protracted decolonization struggles in many parts of the old colonial system in many Eastern Asian Islands under Dutch, French and British domains. They also include the struggles that ended recently from the last vestiges of English, French, Belgian, and Portuguese colonial footholds in parts of Africa that only ended in the 1960s.

4.02 There are cases of the concept still in the unresolved District of Columbia case in the United States, where a constitutionally defined state system excludes from proper representation the inhabitants of the federal capital district of the United States in the national legislature. The District of Columbia maintains a mere observer “non voting “representation” in the U.S Congress. Lack of

adequate representation exists in many parts of Latin America, where a massive absentee landlords system exists to the disadvantage of millions of landless field workers. Gerrymandering constituencies is also widespread in many countries - deliberately contrived to deny representation, for political purposes, for peoples whose incomes are reduced by taxation, and a denial of the corresponding services, such as social services and security protection.

4.03 In our nation, we have seen mounting evidence, particularly over the past forty years; of the failure of federal, state and local governments to “productively” utilize public revenues to the optimal benefits of the citizens by providing basic needs such as clean air, potable water, sanitation, education and health. There has been a failure to provide a conducive business environment through a proper structure of laws and a legal system of sanctions and free recourse to judicial process without intimidation. Rather, through rampant and pernicious use of the political power to tax, levies, taxes, tariffs and all manner of deductions are constantly imposed by unrepresentative legislative systems throughout our “federal” system - from the local government through to the federal legislatures.

4.04 Unjust “Representation” presents in many forms:

- Unequal spread of local government (Cf. the case of Lagos, Kano and in other states)- some of these deriving from the population count.
- The sharing of VAT (an issue that Lagos state has continued to raise) but which may apply to a lesser extent to other large metropolis.
- Inadequate tax administration in virtually all the levels of the Federal Structure, particularly at the state and local government levels.
- Inadequate services commensurate with both the resources “Utilized” and the “spread” of what is implemented.
- Inadequate leverage of the nation’s enormous “Cash” resources, thus short changing potential resources available for investment in development.
- Multiple taxation especially at the state and local government levels and in some municipalities
- The issues of equity and coverage in the resources “Pre-empted” by the following recent innovations also apply:
 - a) The Petroleum Trust Fund (PTF)
 - b) The work associated with the so-called Revenue Mobilization Commission. (These two were set up in the early 1990’s).
 - c) The Education Tax Fund (ETF)
 - d) Derivation and other special funds
 - e) PTDF - Petroleum Technology Development Fund

All of these attest to funds “appropriated” outside the broad mandate of the people, and all have been subject to questions of “taxation” without adequate “representation”.

4.05 The only remedy to this catalogue of “multiple incidences of taxation without commensurate representation” can be encapsulated in the concept of “improved governance”. Good governance, a term that has, as can be predicted, become a modern cliché, has to do with just, equitable, consultative and responsive governance - good governance in the public sector as well as in ‘private’ banking and private corporate sectors. With responsive, and responsible governance, social services will be provided to those being governed in the form of adequate security, access to affordable education, health, as well as a social safety net for the aged, the handicapped, the infirm and the “dependent” members of the community.

4.06 In the U.S today for example, there has been a recent phenomenon, a “movement”, dubbed “Tea Party” revolt of voters, ostensibly against a perception of growing federal expenditures. The revolt is a front being organized by the “conservative elements that lost the last election to a more progressive” Obama”. To many observers, this is essentially a vestige of racism and ultra conservatism...refusing to share the American Dream with their fellow Americans in the belief that this would affect them

economically, politically and socially. This comes from a judgment that such a spread of federally funded services such as in health care and a more humane ‘immigration’ would lower the barrier that excluded the new entrants into America’s mainstream.

4.07 In the Nigerian case, the cry for a redress of long lingering absence of representation stems from a lack of openness in the political process and the endemic and ever deepening corruption in the polity. The unequal sharing of the total public revenues, both those derived from the proceeds of common assets, and revenues raised from public taxation - all show the unequal access that contributes to widening income disparities. The extensive incidence of tax avoidance and widespread tax evasion with impunity by those who also have favored access to the nation’s common treasury and other assets, engender social anomie and social tension.

4.08 So where are the “Tea parties”? Why do we seem perpetually to moan about numerous and persisting cases of “taxation without representation.”

Why do we appear incapable of mounting any meaningful and effective challenge to a system that negates our natural right in the Rousseau sense, a system that we will not normally tolerate in the rural setting?

The reasons for this inertia include:

- The fact that information is generally lacking on the facts, and on the right of the estranged citizens, parties or groups.

- The organization for effective and sustained challenge is obviously lacking for the purpose of challenging unjust laws and unrepresentative “levies, taxes and other deprivations”.
- The leadership to mobilize the people effectively to mount the challenge must obviously be lacking.
- Even, more importantly there is generally a lack of understanding on the issue of taxation and associated right and “representation”.
- Finally of particular importance is the “relative weakness of the tax payers” in which the control of the power of coercion is in the hand of the “tax authorities”. It is however noteworthy that this failure to enforce the rights and privileges of the citizenry does not exist in the rural communities all over the nation - can we then say conclusively that “modern “ rule is unmistakably, the source of the aberration of taxation without representation.

4.09 In summary, it is not a difficult task to see the issues and the shortcomings that would need to be tackled to improve the situation:

- A more clearly- defined federal structure
- A more effective public administration and accountability
- A more equitable structure of taxes, and a greatly improved tax administration
- Identifying the real needs of the masses as opposed to a mentality of pet “gigantic” projects that do not impact on the basic needs of the masses----examples of this misallocation abound all over the nation. For instance, the massive eight-lane

highway into and from Abuja in the face of acute shortage of housing, water, public transport, and the employment-needs of the area is one glaring case of the abject subversion of what truly “represents” the people!

4.10 The measures that would gradually restore the moral authority of government consist of:

- Improved transparency and accountability in governance
- Painstaking search to identify and implement the real needs of the people
- An open electoral system
- Open participation in the voting process at all stages of the political process
- Security to all the people-including access to an affordable and reliable police and judicial system

4.11 Taxation with representation will:

- Improve individual/group allegiance to the state or the relevant authority.
- Improve the strength, steadfastness and the participation in state affairs, providing the legitimate and sustainable basis for the political and social support of the state by the people.
- Improve and nurture true nationalism, as the substance underpinning the allegiance is demonstrably both tangible and psychological.

- Result in improved security for the whole system and its component parts as it can be defended by the strength of the general will.
- Create a healthier society in which the talents and gifts of its constituent members can flourish, unfettered by artificially contrived constraints.
- Finally provide a fair tax regime...and representation will contribute to optimal growth and development by creating a most conducive environment and a higher overall investment.

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