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The Meaning and Allocation of Taxing Powers in Nigeria: Lessons from Ethiopia[1]

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Abstract

Various taxing power-related challenges have negatively affected the governance of state and federal governments of Nigeria since 1999 to date. For instance, the poor drafting of the Nigerian constitution of 1999 and the failure on the part of the policy makers to adequately distinguish and delineate the taxing powers of the state and federal governments has given rise to sharp divisions and jurisdictional conflict-related litigation. Accordingly, the article examines these and other related flaws in the Nigerian and Ethiopian tax laws. Moreover, the relevant constitutional provisions in these countries are comparatively discussed to, *inter alia*, recommend possible measures that could be employed to remedy such flaws in Nigeria and Ethiopia. In this regard, it is submitted that the Nigerian tax laws and the Nigerian constitution of 1999 should be amended to provide a clear position on the taxing powers for both state and federal governments. Lastly, the authors submit that the Nigerian policy makers should consider adopting the Ethiopian model for the allocation of taxing powers.

Keywords: Taxing powers; Governance; Nigerian and Ethiopian tax laws.

Introduction

The term 'taxing power' could be defined as the government and/or regulatory body's authority to impose and collect taxes from both juristic and natural persons (Wex Legal Dictionary, https://www.law.cornell.edu/wex/taxing_power accessed 28 March 2019). This suggests that the authority by

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a government, regulatory body, agency and/or any other authorised persons to impose any type of tax on all persons as stipulated in the relevant statutes, constitutions or regulations constitutes the 'taxing power' (Tiley and Loutzenhiser, 2012, pp. 30). For instance, the United States of America (USA) constitution of 1868 as amended (USA constitution) provides that the congress has the power to collect taxes, duties, imposts and excises and to pay debts for the common defence and general welfare of the country (see section 8 of article I). Such taxes are uniformly enforced throughout the USA (section 8 of article I of the USA constitution). Likewise, the Federal Inland Revenue Service (FIRS) is mainly responsible for collecting taxes, duties, imposts and excises in Nigeria. Moreover, the Ethiopian Revenue and Customs Authority (ERCA) is mainly responsible for collecting taxes, duties, imposts and excises in Ethiopia. Notably, the USA, Nigeria and Ethiopia are all federal countries. The apportionment of powers between the federal and state governments is one of the distinct features of federalism, which distinguishes it from other systems of government (Erbsen, 2008, pp. 494-584). Nonetheless, federalism has sometimes given rise to the overlapping of authorities, tax-related complexities and a host of other problems in tax and revenue collection in many federal countries, including Nigeria (Abebe, 2013, pp. 59-68; Bird, 2012, pp. 38-43; Hollander, 2010, pp. 138-170). For instance, the poor drafting of the Nigerian constitution of 1999 and the failure on the part of the policy makers to adequately distinguish and delineate the taxing powers of the state and federal governments has given rise to sharp divisions and jurisdictional conflict-related litigation in Nigeria. This could have been exacerbated by the fact that the taxing powers of the state and federal governments are not adequately stipulated in the Nigerian constitution of 1999 and other relevant statutes. Consequently, this has culminated in several tax-related legal actions between the federal and the state governments as well as the aggrieved taxpayers in Nigeria.

It is crucial for the state and federal governments to have a proper demarcation of their taxing powers in order to enhance the proper governance and execution of their functions in Nigeria (Fletcher, 2004-2005, pp. 1-46; Gordon, 2013, pp. 1039-1063). This article underscores the importance of adequate taxation laws and their robust enforcement in both state and federal governments of Nigeria, especially, in respect of oil taxes

and related revenues (Bird, 2012, pp. 38-43). The dwindling oil revenue, the 2007-2009 global recession and the dearth of foreign direct investment (FDI) could have also contributed to the current tax and revenue challenges in Nigeria (Bird, 2012, pp. 38-43; Allen and Giovannetti, 2011, pp. 1-27). As a result, the collection of taxes, duties, imposts and excises (taxation) by the FIRS is generally regarded as an alternative tool to reduce Nigeria's over-dependence on oil revenue and donor-aid funding (Salami, 2011, pp. 28-47). However, the taxation efforts of the various State Internal Revenue Services (SIRS) and the FIRS are constantly impeded by the lack of adequate taxation provisions in the Nigerian constitution of 1999 (sections 162-167 read with sections 4; 5 and Part I and II of the second schedule), the Federal Inland Revenue Service (Establishment) Act 13 of 2007 ('Federal Revenue Act', sections 1-3; 7-8; 25-39 read with sections 40-49; 61; 68 and 69), the Taxes and Levies (Approved List for Collection) Act, Chapter T2, LFN, of 2004 ('Taxes and Levies Act', section 1(1) and Part I and Part II of the schedule to the Act) and other related legislation.

It appears sections 4 and 5 of the Nigerian constitution of 1999 dealing with the general powers of the state assemblies and the federal national assembly, as well as the executive powers of both the state and federal governments respectively, must be read together with sections 162-167 of the same constitution which deals with taxation matters. This approach has at times, created confusion for the enforcement bodies that are obliged to comply with both the general legislative and taxing powers of the state and national assemblies as well as the executive powers of the state and federal governments. For instance, the executive, the judiciary and some academic legal scholars have different interpretations on the meaning, allocation and application of taxing powers in Nigeria (Orifowomo, 2010, pp. 186; Oluduro et al., 2010, pp. 196). Accordingly, there is no unanimity regarding what constitute taxing powers in Nigeria to date. This has also created some uncertainty regarding whether the Nigerian federal legislature is competent enough to enact adequate tax laws to improve the levying, allocation and collection of taxes and related revenues at both state and federal levels in Nigeria. Accordingly, Orifowomo (2010, pp. 186) and Oluduro et al. (2010, pp. 196) argue that the Nigerian tax laws regulate only about fourteen items of fiscal import. On the other hand, Sanni (2010, pp. 221) argues that the Nigerian tax laws regulate more than fourteen items of fiscal

import. This debate and confusion is triggered by the flaws in the current Nigerian tax laws. Notably, such flaws have culminated into numerous tax-related conflicts between the state and federal governments as well as tax-related conflicts between the taxpayers and such governments (*Attorney General of Lagos state v Attorney General of the Federation* (2003) (*Attorney General Lagos* case) and *Attorney General of Lagos State v Eko Hotels Limited & Federal Board of Inland Revenue* (2017) (*Eko Hotels* case), which held, *inter alia*, that the imposition of sales tax in addition to consumption tax and/or value added tax (VAT) amounts to double taxation. The authors concur with the decision in *Eko Hotels* case and submit further that the federal and state governments must exercise their taxing powers carefully to avoid over-taxation since state and federal taxes are normally imposed on the same people and same entities that are found in the same territories in Nigeria (Animashaun, 2017, pp. 3). Generally, double taxation occurs, *inter alia*, when a certain tax is levied twice against a particular person on the same source of their earnings after a determined period. Thus, double taxation occurs to both natural and juristic persons at personal and corporate levels respectively. Nonetheless, for the purposes of this article, double taxation refers, *inter alia*, to the imposition of a particular tax by different tiers of the same state and federal governments on the same person over a determined period in Nigeria. The authors submit that double taxation is unfair, especially, when both the Nigerian state and the federal governments are not statutorily and/or constitutionally empowered to impose a particular tax upon the affected persons (Sanni, 2012, pp. 229). For instance, double taxation is effected through unfair methods such as imposition of frivolous compulsory tax payment demands, road blocks, intimidation and the use of coercive force on the affected persons by the relevant tiers of the state and federal governments in Nigeria (Sanni, 2012, pp. 229). Double taxation does not amount to concurrent taxation. The latter normally occurs when two or more tiers of government are statutorily and constitutionally empowered to impose a particular tax at the same time on the same person after a certain period. For example, this could occur when both the Nigerian state and federal authorities are empowered to impose a particular tax on the affected person at the same time (Animashaun, 2017, pp. 280). Notably, concurrent taxation is rarely employed in Nigeria and as such, it is not fully discussed in this article. Moreover, notwithstanding the fact that some aspects of the USA constitution were merely stated

earlier, double and concurrent taxation aspects of the USA are not discussed in this article because it is focused on the relevant taxation aspects of Nigeria and Ethiopia.

Given this background, the article comparatively discusses the taxing powers of the relevant authorities in accordance with the Nigerian and Ethiopian constitutions and tax laws. This is done to, *inter alia*, recommend possible measures that could be employed by the relevant authorities to remedy the aforesaid flaws in Nigeria. The Ethiopian position on taxing powers is discussed in this article because both Nigeria and Ethiopia are federal countries. Moreover, the delineation of taxing powers between the states and the federal government in Ethiopia is relatively precise (Articles 51(10), 52, & 94-100 of the Ethiopian constitution).

Overall Aim

The article explores the gaps and flaws in the allocation of taxing powers between the state and federal governments of Nigeria. This is done to recommend possible measures that could be employed by the relevant authorities to combat such flaws and the inherent tax-related conflicts and litigation in both state and federal governments of Nigeria.

Meaning of 'Taxing Powers' in Nigeria

As earlier stated above, 'taxing power' could be defined as the authority by a state, government, regulatory body, agency and/or any other authorised persons to impose any type of tax on all persons in accordance with the relevant statutes, constitutions or regulations of the country concerned (Tiley and Loutzenhiser, 2012, pp. 30). Thus, taxing power refers to, *inter alia*, the authority of a state or government to lawfully impose taxes on all the persons and prescribe relevant conditions for the administration and collection of such taxes by authorised regulatory bodies and/or agencies in that country (Tiley and Loutzenhiser, 2012, pp. 30; Mazza and Kaye, 2006, pp. 642-670). The taxing powers may be conferred on any tier of government or jointly conferred on different tiers of government and/or divided between the different tiers of government (Animashaun, 2017, pp. 123). It is submitted that taxing powers should be distinguished from the mere administrative revenue collection by the regulatory bodies

and related agencies (Mason, 2011, pp. 976-1035). Accordingly, taxing powers are statutorily conferred on the state or government and/or regulatory bodies through the relevant tax legislation and related regulations (Cooter and Siegel, 2012, pp. 1196-1253; Freedman and Vella, 2011, pp. 79-121; Animashaun, 2017, pp. 125). In Nigeria, the taxing powers are conferred upon states and federal governments mainly in terms of the Federal Revenue Act (sections 1-3; 7-8; 25-39 read with sections 40-49; 61; 68 and 69) and the Taxes and Levies Act (section 1(1) and Part I and Part II of the schedule to the Act) and other related legislation.

The Allocation of Taxing Powers in Nigeria

Nigeria has 36 federal states and a Federal Capital Territory (FCT) in Abuja (sections 2 and 3 of the Nigerian constitution of 1999). The Nigerian constitution of 1999 provides for the allocation of taxing powers for the states and the federal governments of Nigeria (sections 162-167 read with sections 4; 5 and Part I and II of the second schedule). However, only few taxes are expressly provided in the Nigerian constitution of 1999. Such taxes include customs and excise taxes, export taxes, stamp duties taxes and taxes on incomes, profit and capital gains (Items 16, 25, 58 and 59 of Part 1 of the second schedule of the Nigerian constitution of 1999). Taxing powers of the states and the federal government are also generally provided in the Federal Revenue Act (sections 1-3; 7-8; 25-39 read with sections 40-49; 61; 68 and 69) and the Taxes and Levies Act (section 1(1) and Part I and Part II of the schedule of this Act) as well as other relevant tax legislation. The taxing powers of the federal government as enumerated in the Nigerian constitution of 1999 are concurrently exercised together with the federal legislative powers. This approach has sometimes led to unnecessary bureaucracy and confusion to both the SIRS and the FIRS (*Attorney General of Abia State v Attorney General of the Federation* (2006) (*Attorney General of Abia State* case pp. 265; 380). Moreover, the inadequacy of the provisions dealing with the allocation of taxing powers in the Nigerian constitution of 1999, the Federal Revenue Act (sections 1-3; 7-8; 25-39 read with sections 40-49; 61; 68 and 69) and the Taxes and Levies Act (section 1(1)), have resulted in numerous tax-related conflicts and litigation between the states and the federal government.

The Nigerian constitution of 1999 has granted wide taxing powers to the federal government of Nigeria compared to the state governments (Bird, 2012, pp. 38-43). Most of the taxes that could be collected by the states are provided for in federal statutes. These include the Federal Revenue Act (sections 1-3; 7-8; 25-39 read with sections 40-49; 61; 68 and 69) and the Taxes and Levies Act (section 1(1)). This has made other persons to erroneously maintain that the states have limited and/or no taxing powers of their own since they rely on delegated taxing powers in accordance with the relevant federal statutes of Nigeria (Omoigui-Okauru, 2007, pp. 12). However, the Nigerian Constitution of 1999 specifically provides that the state governments have some taxing powers which are derived from section 4(7) and items 9 and 10 of Part II of the second schedule of the Nigerian constitution of 1999. The states are specifically vested with the power to levy rates on privately owned houses and/or properties in the Nigerian constitution of 1999 (section 7(5) and item 1(1) of the fourth schedule of this constitution).

It appears that for any state to legally impose taxes in Nigeria, the following criteria must be met (section 4(7) and items 9 and 10 of Part II of second schedule of the Nigerian constitution of 1999; Bird, 2011, pp. 144-160). Firstly, the type of tax in question must not be found in the exclusive legislative list as stipulated in Part I of the second schedule of the Nigerian constitution of 1999 (section 4(7)(a) of the Nigerian constitution of 1999). Secondly, the type of tax in question must be included in the concurrent legislative list as set out in the first column of part II of the second schedule of the Nigerian constitution of 1999 (section 4(7)(b)). In addition, the type of tax in question must be consistently enforced in accordance with the federal tax laws (4(7)(c) of the Nigerian constitution of 1999). Thirdly, the states' tax laws must be consistent with the Nigerian constitution of 1999 (sections 1(3) and 4(5)).

Lastly, the type of tax in question must not be an 'incidental' or 'supplementary' matter to the exclusive legislative list as provided in the Nigerian constitution of 1999 (Akande, 2000, pp. 478). In addition, the Supreme Court maintains that the states should be authorised to exercise their taxing powers if there is any remaining or residual tax matters that are not covered by the exclusive and/or concurrent legislative lists (*Attorney General of Abia State* case pp. 265; 380). Tax disputes between taxpayers

and the state or federal governments may be settled by the High Court or the Tax Appeal Tribunal and/or the Court of Appeal (sections 233, 242, 251 and 272 of the Nigerian constitution of 1999). In this regard, it is important to note that the Supreme Court of Nigeria has original and final jurisdiction to decide tax-related disputes between the states and federal governments (section 232 of the Nigerian constitution of 1999).

Taxing Power-related Conflicts between Federal and State Governments of Nigeria

There have been various taxing power-related conflicts between some states and taxpayers in Nigeria since the inception of the Nigerian constitution of 1999 to date (*Attorney General Lagos* case; *Attorney General of Abia State* case pp. 265; 380). These conflicts are usually related to the taxing power jurisdiction of states and federal governments. Corporate and individual taxpayers are sometimes confused with conflicting tax claims from the states government and the different tiers of the federal government (*Eko Hotels* case). This has culminated into numerous tax-related cases between taxpayers and the federal or state governments regarding the actual taxes imposed on the relevant persons and the jurisdiction of the federal or state governments to levy and/or collect certain taxes. Moreover, such cases have been mainly related to the allocation of taxing powers between the states and federal governments to collect petroleum income tax in the oil rich Niger Delta region of Nigeria (Cuvelier et al., 2014, pp. 342-350; Bird, 2012, pp. 38-43). Furthermore, the fact that the Lagos state government introduced sales tax despite the existence of the VAT which is imposed on the same goods by the federal government is another case in point for the ongoing tax-related conflicts between states and the federal government of Nigeria. Accordingly, in *Eko Hotels* case, the applicant instituted an action seeking clarity from the federal High Court regarding the relevant tier of government entitled to collect consumption tax. The applicant further petitioned the federal High Court regarding the relevance and validity of collecting the consumption tax in lieu of the VAT. The federal High Court held that the federal government was empowered to collect consumption tax. On appeal, both the Court of Appeal and the Supreme Court held that the federal government taxes supersedes the sales taxes that were imposed by the Lagos state. The Supreme Court also held, as earlier stated, that the

imposition of sales tax together with consumption tax or VAT constitutes double taxation; and held the state tax law illegal. The Supreme Court however overlooked the fact that the states must be fully empowered to enforce their bye-laws, including those that pertains to tax collection and tax remittances (*Attorney General of Lagos State v Attorney General of the Federation* (2014) 6 CLRN 1) (*Lagos State 2014* case).

Ironically, in *Attorney General of the Federation v Attorney General of Lagos State* (2013) 12 CLRN 1 (*Lagos State 2013* case), the Supreme Court held, *inter alia*, that the Lagos state government is empowered to make its own by-laws to regulate the tourism and hospitality industry in Lagos. Thus, despite the fact the federal government had argued that the regulation of tourism falls under the exclusive legislative list of the federal National Assembly, the Supreme Court held that the Lagos state government was empowered and entitled to impose and collect its own tourism and hospitality taxes. The divergent verdicts in *Lagos State 2013* case and *Lagos State 2014* case clearly exposes the ongoing confusion and conflicts between the states and the federal governments regarding the allocation of taxing powers. Accordingly, if the verdict in *Lagos State 2013* case is to be considered, the residents of Lagos State will be obliged to pay both sales tax and VAT to the Lagos state and federal governments respectively (sections 7 & 38 of the Valued Added Tax Act, Chapter V1 of 2004 (VAT Act). This could amount to double taxation which negatively affects both individuals and juristic persons. Owing to these harsh taxes, several businesses have relocated to other states such as Ogun State while others have relocated to other countries (Author unknown *Premium Times* (2017).

The states have the exclusive right to pools, betting and lotteries, gaming and casino taxes (Part II of the Taxes and Levies Act). Nonetheless, the federal government promulgated the National Lottery Act 7 of 2005 (Lottery Act) to levy taxes on lotteries and casinos in Nigeria. Notwithstanding that lotteries and casinos taxes are not in the exclusive and/or concurrent legislative lists, the federal government of Nigeria argued that it was exercising its powers to regulate trade and commerce by imposing such taxes (item 62 of Part I of the second schedule of the Nigerian constitution of 1999). This is contrary to the verdict in *Edet v Chagoon* (2008) 2 NWLR (Pt. 1070) 85 (*Chagoon* case) where the Court of Appeal held that the federal government of Nigeria has no taxing power in respect

of lotteries and casinos. Similarly, the Supreme Court in *Attorney General of Lagos State v Attorney General of the Federation,* (2003) 12 NWLR (pt. 833) held that the urban and regional planning legislative powers were neither in the exclusive legislative list nor the legislative concurrent list. Therefore, the federal government had no exclusive jurisdiction to regulate urban and regional planning matters. Some states, citing sharia injunctions, have outlawed lotteries and casinos in their jurisdictions (section 240A of the Criminal Code Act and section 206 of the Penal Code Act; Dickovick, 2014, pp. 565). It will be unfair for taxes on gambling and alcohol consumption which are prohibited in some states to be taxed by the federal government. This follows the fact that the proceeds of such taxes are put in the distributable account for eventual distribution among all the states in Nigeria (section 162 of the Nigerian constitution of 1999). In this regard, the authors submit that lotteries and casino taxes should be imposed by the states that permit the aforesaid activities only. In addition, *Chagoon* case held that the levying of the gambling and related taxes by the federal government in states that prohibit such activities is unlawful. This follows the fact that the federal government is lawfully obliged to impose taxes on gambling and other related activities upon the states that do not criminalise such activities. Thereafter, as indicated above, the proceeds of such taxes are collectively placed in a distributable account where all states would benefit (including those that criminalise gambling and related activities due to Islamic law and related religious reasons). Conversely, this status *quo* could enable states that criminalise gambling and related activities to unfairly benefit from the aforesaid account without paying the relevant taxes to the federal government of Nigeria. Likewise, it is also unfair for the federal government of Nigeria to impose gambling and related taxes on a state that prohibit such activities on the mere basis that it owns developed and/or undeveloped land in that state which is not subject to state laws (section 49 of the Land Use Act Chapter L4, Laws of the Federation of Nigeria, 2004). The federal government of Nigeria has exclusive taxing powers in respect of mineral resources and petroleum products (item 59 of Part 1 of the second schedule of the Nigerian constitution of 1999). Despite this, there are two extreme positions on oil revenue in Nigeria. Some states submit that the current *status quo* that empowers the federal government of Nigeria to have exclusive taxing powers in respect of mineral resources and petroleum products should be maintained (Okolo and Raymond, 2014

pp. 99-108). On the other hand, the oil producing states submit that they should have total control over their mineral and petroleum resources (Okolo and Raymond, 2014, pp. 105; Collier and Hoeffler, 2005, pp. 627). This is also known as 'resources control' and it allows the states to have absolute control of their mineral resources and pay only certain taxes to the federation government of Nigeria (Salami, 2011, pp. 28-47). These divergent and conflicting views have led to militia violence, vandalism of property and reduced oil production, especially in the Niger Delta region of Nigeria (Animashaun, 2017, pp. 125; Bird, 2012, pp. 38-39; Collier and Hoeffler, 2005, pp. 627). These oil-related conflicts also prompted the government to provide a thirteen percent oil revenue grant to the oil producing states to ameliorate such conflicts (section 162(2) of the Nigerian constitution of 1999).

In light of the above, it is important to note that the federal government of Nigeria has taxing powers in respect of certain taxes such as personal income tax, stamp duties and capital gains tax for individuals only but the administration of the taxes rest with the states (items 58 and 59 of Part 1 of the second schedule of the Nigerian constitution of 1999). The authors submit that despite the fact that the taxing powers and the administration of such taxes rest with the federal and state governments respectively, there are no conflicts in this regard because these powers are delineated properly (section 163 of the Nigerian constitution of 1999). The federal government levies and collects taxes on personal income taxes for the military, expatriates and residents of Federal Capital Territory, Abuja only. It also levies and collects stamp duties and capital gains tax for corporation only (section 163 of the Nigerian constitution of 1999; Akande, 2000, pp. 271-272).

The Allocation of Taxing Powers in Ethiopia

The Federal Democratic Republic of Ethiopia operates a federal system of government, since 21 August 1995. Ethiopia is divided into nine ethnically based states and two chartered cities of Addis Ababa and Dire Dawa (Lie and Mesfin, 2018, pp. 1-40). Put differently, Ethiopia employs multi-ethnic federalism and/or ethno-federalism. The Constitution of the Federal Democratic Republic of Ethiopia, 1995 (Ethiopian constitution) enumerates several taxing and other related powers and duties of the federal and state

governments of Ethiopia (Articles 51 & 52 of the Ethiopian constitution). Accordingly, powers and taxes exclusive to the Federal Government are falls under the first category (Articles 51(10) & 96 of the Ethiopian constitution). The taxing powers and taxes exclusive to the states are listed in the second category (Articles 52 & 97 of the Ethiopian constitution). The third category enumerates taxes concurrent to the federal and the state governments (Article 98 of the Ethiopian constitution). The undesignated are provided in the fourth category (Article 99 of the Ethiopian constitution). Lastly, taxes designated or re-designation through the constitution or an amendment of the constitution fall under the fifth category (Lencho, 2012, pp. 327). Interestingly, the House of the Federation and the House of Peoples' Representatives may vote on the enforcement of undesignated taxing powers in Ethiopia (Article 99 of the Ethiopian constitution). Both the state and the federal governments are obliged to enforce their tax directives and taxing powers in accordance with relevant laws and the Ethiopian constitution (Article 100; Lencho, 2012, pp. 328-380). This has enabled both the state and the federal governments of Ethiopia to curb unnecessary tax-related conflicts and litigation.

The Ethiopian constitution empowers the federal government to levy and collect customs and excise duties, taxes and other charges on imports and exports, national lotteries taxes and income tax from employees of the federal government-owned enterprises and international organisations, among others (Article 96; Lencho, 2012, pp. 328-380). On the other hand, the Ethiopian states may levy and collect income taxes on employees of the state and private enterprises (Article 97(1) Ethiopian Constitution). The Ethiopian states also have exclusive authority to impose profit and sales taxes on individual traders, private farmers and farmers' cooperative associations in their territories, among other taxes (Article 97(3) & (4) of the Ethiopian constitution).

In light of the above, it appears that the allocation of taxing powers and subsequent collection of various taxes is systematically and precisely distributed between the state and federal governments of Ethiopia (Lencho, 2012, pp. 331). Further, agricultural income taxes are levied and collected by the states only, it is not found at the federal level (Lencho, 2012, pp. 333). This indicates that the Ethiopian states have their own original taxing

powers unlike the position of the Nigerian states that mainly rely on the federal government delegated taxing powers (Bird, 2012, pp. 38-43).

Notably, taxes that are not expressly provided in the Ethiopian constitution such as VAT, fall under undesignated taxes (Lencho, 2012, pp. 331). In this regard, a two-thirds majority of members of the Ethiopian parliament that vote in a joint session is required to determine how the taxing powers in respect of undesignated taxes may be exercised by the state and federal governments of Ethiopia (Article 99 of the Ethiopian constitution). The House of Federation adjudicates any tax-related disputes between the state and federal governments of Ethiopia. The Council of Constitutional Inquiry which comprises legal experts and politicians assist the House of Federation to adjudicate and finalise such disputes (Article 99 of the Ethiopian constitution; Abebe, 2013 pp. 65-66).

Comparative Overview of the Allocation of Taxing Powers in Nigeria and Ethiopia

As indicated above, the current Nigerian and Ethiopian constitutions were adopted in 1999 and 1995 respectively. Both of these constitutions adopted federalism which, *inter alia*, enables the taxing powers to be allocated and distributed between the state and federal governments. Nonetheless, different approaches are adopted to allocate and enforce the taxing powers in Nigeria and Ethiopia. For instance, unlike the position in Ethiopia, Nigerian states' original taxing powers in respect of the levying and collection of taxes in Nigeria are severely limited. In contrast to the position in Ethiopia, there is no clear demarcation in the allocation of taxing powers between the Nigerian federal and state governments. Consequently, corporate and individual taxpayers are constantly confused with conflicting tax claims that are imposed on them by both the state and federal governments of Nigeria. This confusion regarding the jurisdiction and taxing powers of the state and federal governments has given rise to numerous tax-related conflicts between taxpayers and the state or federal governments as well as tax-related conflicts between the states and the federal government of Nigeria. Unlike the Ethiopian constitution, the Nigerian constitution of 1999 does not expressly provide taxing powers to both the state and federal governments in respect of undesignated taxes in

Nigeria. Moreover, unlike the Ethiopian position, the Nigerian parliament has no powers to adjudicate on tax-related disputes in Nigeria.

In contrast to the Nigerian constitution of 1999, the Ethiopian constitution clearly provides clear distribution of taxing powers between the federal and state governments in Ethiopia (Lencho, 2012, pp. 328-380). The Ethiopian constitution also adequately empowers the parliament to determine the enforcement of taxing powers in respect of undesignated taxes and to adjudicate over tax disputes in Ethiopia. This approach has to date yielded minimal confusion, conflicts and tax-related litigation in Ethiopia. For instance, there is minimal tax-related litigation between the state and federal government in Ethiopia since 1995 to date (Lencho, 2012, pp. 372-378). In this regard, it suffices to note that the Ethiopian constitution is relatively well drafted than the Nigerian constitution of 1999 on allocation of taxing powers. This approach has so far culminated in less jurisdictional conflicts between states and the federal government of Ethiopia (Lencho, 2012, pp. 328-380).

Lessons from Ethiopia

The Nigerian constitution of 1999 does not adequately and clearly demarcate the taxing powers of the state and federal governments. In this regard, Nigeria should consider adopting the Ethiopian position and amend its constitution to enact adequate provisions that expressly and adequately provide clear demarcation of the taxing powers between the Nigerian state and federal governments. Moreover, like the position in Ethiopia, taxes that could be levied and collected by the states as well as the federal government must be clearly stipulated in the Nigerian constitution of 1999 and related laws to avoid double taxation and related conflicts in Nigeria. The Nigerian constitution of 1999 should also be amended in line with the Ethiopian constitution to empower the federal parliament to determine and adjudicate over some tax disputes to complement the role of the relevant courts in this regard. Nigeria should also consider following the Ethiopian position of devolving certain taxing powers exclusively to the states to enable them to independently levy and collect taxes in their territories (Lencho, 2012, pp. 331-333; Bird, 2012, pp. 38-43).

In addition, the Nigerian constitution of 1999 should be amended in line with the Ethiopian constitution to adequately provide for undesignated taxes or those taxes that do not fall under the exclusive and/or concurrent legislative lists and factors that must be considered by the federal and state governments of Nigeria when exercising their taxing powers. This could enhance the collection of taxes and curb possible conflicts between the state and federal governments in Nigeria. Furthermore, Nigeria should establish a constitutional body such as the Council of Constitutional Inquiry of Ethiopia to advise the federal parliament and complement the Supreme Court in the settling of tax-related disputes between all the affected persons.

Concluding Remarks

The article has explored the allocation of taxing powers in Nigeria and Ethiopia. It was noted that unlike the position in Nigeria, the allocation of taxing powers between the states and the federal government in Ethiopia is not ambiguous (Articles 51(10) & 52(2)(e) read with Articles 95-100 of the Ethiopian constitution). Consequently, in contrast to the position in Nigeria, tax-related litigation have been recorded between the federal and state government in Ethiopia to date. It was also noted that the Nigerian constitution of 1999 has several flaws that could have given rise to conflicts and numerous tax-related litigations at both state and federal levels in Nigeria. Owing to these flaws, it is submitted that Nigeria should seriously consider adopting the Ethiopian position to enhance its allocation of taxing powers between the states and the federal government. Moreover, the Nigerian constitution of 1999 should be amended to decentralise some taxes and related taxing powers from the Nigerian federal government to the states to equip them to independently collect their own taxes in their territories (Bird, 2012, pp. 328-380).

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