

CHANGING PERSPECTIVES IN THE LAW AND PRACTICE OF TAXATION IN NIGERIA

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CHAPTER TWENTY-SIX

AN ANALYSIS OF TAXATION OF CAPITAL MARKET TRANSACTIONS IN NIGERIA

Hafsat Iyabo Sa'adu, *

INTRODUCTION

Taxation is the backbone of any economy in the world while the capital market is a barometer for measuring the pulse of a country's economy¹⁴⁶⁴. Tax is described as a charge imposed by governmental authority upon property, individuals or transactions to raise money for public purposes¹⁴⁶⁵. Tax could as well be described as a rateable portion of the produce of the property and labour of the individual citizens, taken by the nation, in the exercise of its sovereign right, for the support of government, for the administration of the laws, and as the means for continuing in operation the various legitimate function of the state¹⁴⁶⁶. In many jurisdictions, tax is levied on personal income which consists of salaries, business profit, interest, dividend, royalties and companies profit, petroleum profits, capital gains and capital transfers. Invariably, the capital market is the pillar upon which the global economy depend on for the provision of cheap source of funding for business, governments and individuals.

However, capital market has been defined as a financial market in which long term securities are bought and sold¹⁴⁶⁷. In a simpler term, capital market is a financial market, which trades in medium to long term financial instruments like stocks and

¹⁴⁶⁴ Ekiran Oba, *Basic Understanding of Capital Market Operations* (1st ed, the CIBN Press Limited, Lagos 1999) p. 16.

¹⁴⁶⁵ New Webster's Dictionary of the English Language, (College ed, Surjeet Publications, Indian) p. 1574.

¹⁴⁶⁶ Black's Law Dictionary, (8th ed, West Publishing Co, NP 2004) p.1496

¹⁴⁶⁷ *Ibid*

bonds with maturity in excess of one year. The capital market is broadly divided into primary and secondary market respectively.

PRIMARY MARKET

This is a market where new securities are issued. The mode of offer for the securities traded in this market includes offer for subscription, right issues, offer for sales and private placement. A good example is where a newly listed company is doing an Initial Public Offer (IPO)¹⁴⁶⁸.

SECONDARY MARKET

This is the market for trading in existing securities. It consists of exchange and over-the-counter market where securities are bought and sold after their issuance in the primary market¹⁴⁶⁹.

The main pivots of the secondary market are the stockbrokers. They are the only people permitted by law to trade on the floor of the Nigerian Stock Exchange and they do so on behalf of their clients or themselves¹⁴⁷⁰. The stakeholders in the market include Investors, Issuers, Capital Market Operators (Like Issuing Houses, Bankers, Investment Advisers, Underwriters, Fund Portfolio Managers, Receiving Banks, Registrars and Trustee), Self Regulatory Organization (like Nigerian Stock Exchange) and the Regulatory Authority (like Securities and Exchange Commission)¹⁴⁷¹.

Taxation of capital market in Nigeria involves mainly income tax on dividends, capital gains tax on shares, stamp duties, withholding tax on dividends and value added tax. It is important to note the fact that there is no special tax legislation for the capital market operations in Nigeria¹⁴⁷². Thus the intersection between the

¹⁴⁶⁸ Sanni Abiola, 'Tax Reform in the Capital Market - A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007

¹⁴⁶⁹ See Section 38 of the Investments and Securities Act, 2007

¹⁴⁷⁰ Investments and Securities Law Journal (2006) Vol. 1 pp. 66-69.

¹⁴⁷¹ Sanni Abiola, 'Tax Reform in the Capital Market - A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007

capital market operations in Nigeria and taxation can only be determined by examining how each tax impacts on the market operations.

This paper thus examines the impact of taxation on the capital market operations in Nigeria. The charge of double taxation and capital market operation in Nigeria shall also be examined. The effects of economic recession on the taxation of capital market are also worthy of consideration in this paper.

A BRIEF HISTORY OF THE NIGERIAN CAPITAL MARKET

The birth of the Nigerian Capital Market could be traced to the colonial administration when the colonial British Government sought funds for running the local administration¹⁴⁷³. At that time, most of these funds were derived from agricultural produce, marketing and social mineral mining. The Colonial administrators later discovered that these sources were grossly inadequate to meet their growing financial obligations. Hence, the need for them to expand their revenue base by raising funds from the public sector. This now necessitates the setting up of the basic infrastructure for its take off pending the development of an organized private sector¹⁴⁷⁴.

By the year 1957, the Government and Other Securities (Local Trustees Powers) Act was enacted, it spelt out the types of securities in which trust funds may be invested. It also defined the powers and responsibilities of trustees. It is this same year that the colonial government set up the Professor Barback Committee to examine the ways and means of fostering a share market in Nigeria. The terms of reference of this committee among others include the possibility of establishing a capital market in Nigeria. Part of the recommendations of the committee included the creation of facilities for dealing in shares, establishment of rules regulating shares transfer and measures for encouraging savings and issues of securities of the government and other organizations¹⁴⁷⁵.

In line with the recommendation of the Barback Committee, the General Loan and Stock Act and Local Loans (Registered Stock and Securities) Act were promulgated

¹⁴⁷³ Osaize E.B, *Capital Market – African & Global* (The Book House Company, Lagos 2007) p.55

¹⁴⁷⁴ *Ibid*

¹⁴⁷⁵ *Ibid*

towards the end of the year 1957¹⁴⁷⁶. However, following the establishment of the Central Bank of Nigeria in 1958 through the Central Bank of Nigeria Act 1958, it was logical to have a Stock Exchange, hence the incorporation of the then Lagos Stock Exchange in 1960.¹⁴⁷⁷

Trading commenced in 1961 after the enactment of the Lagos Stock Exchange Act of 1961. The Self-Regulatory body was subsequently re-organized and renamed as the Nigerian Stock Exchange in 1977. The Exchange now has branches in Lagos, Kaduna (1978), Port Harcourt (1980), Kano (1989), Onitsha (1990), Ibadan (1990), Abuja (1999), Yola (2002), Benin (2005) and Ilorin (2008)¹⁴⁷⁸.

TAXATION AND CAPITAL MARKET OPERATIONS IN NIGERIA

As earlier explained, taxation and capital market operations in Nigeria involves different types of taxes including:

- Income tax on dividends;
- Capital gains tax on shares;
- Stamp duties;
- Withholding tax on dividends; and
- Value added tax.

These and other related issues on the taxation of capital market in Nigeria shall be discussed one after the other.

INCOME TAX ON DIVIDENDS

Income tax may be described as a tax on income or a tax upon that which is properly regarded as 'income' for the purposes of the appropriate taxing acts, that is, 'taxable income'¹⁴⁷⁹. The Nigerian legislation does not provide for complete definition of

¹⁴⁷⁶ Ibid

¹⁴⁷⁷ Ibid

¹⁴⁷⁸ Odife Dennis, 'The Evolution of the Nigerian Capital Market and the Present Reforms' (Paper presented at the Abuja Conference on Legislation for the Capital Market, Abuja) 2000.

¹⁴⁷⁹ Abdulrazaq M. T., *Revenue Law and Practice in Nigeria* (Malthouse Press Limited, Lagos 2009) p. 35

income but various rules are laid down for computing receipts liable to tax, and the decisions of the courts contribute to the law on the subject¹⁴⁸⁰.

The ordinary meaning of dividend is a share of profits whether at a fixed rate or otherwise, allocated to the holders of shares in a company. Dividend could also be the distributable part of the profits of a company.

Dividend could as well be an amount received by a person on an investment made by him/her. The capital of the company is divided into shares and when a person acquires some shares in the company, he becomes a part of owner of the company¹⁴⁸¹. At the end of each accounting period of the company, the company may declare and distribute dividends to its shareholders. Any dividend distributed to a shareholder is income in the hand of the shareholder¹⁴⁸².

The charge to tax on dividend is outlined in section 3 of the Personal Income Tax Act 2004 and section 9 of the Companies Income Tax Act 2004.¹⁴⁸³ Wherein tax is payable for each year of assessment upon all income or profits from a source inside or outside Nigeria accruing in, derived from, brought into, or received in, Nigeria.

Section 3 of Personal Income Tax Act (PITA) 2004¹⁴⁸⁴ provides that:

Subject to the provisions of this Act, tax shall be payable for each year of assessment on the aggregate amounts each of which is the income of every taxable persons, for the year, from a source inside or outside Nigeria, including,... dividend, interest or discount among others;

Sub-section 2 of the above section defines dividends to mean:

- (i) In relation to a company not being in the process of being wound up or liquidated, any profits distributed, whether such profits are of a

¹⁴⁸⁰ Ayua I.A., *The Nigerian Tax Law* (Spectrum Law Publishing, Ibadan, 1996) pp. 15-16

¹⁴⁸¹ See Section 99 of CAMA, 2004

¹⁴⁸² Abdulrazaq M. T., *Taxation Principles and Practice in Nigeria* (Batay Publication Ltd., Ilorin) p. 296.

¹⁴⁸³ *Ibid*, See also *The Nigerian Tax Law* pp 15-16

¹⁴⁸⁴ As amended in 2011.

capital nature or not, including an amount equal to the nominal value of bonus shares, debentures or securities awarded to the shareholders; and

- (ii) in relation to a company that is being wound up or liquidated, any profits distributed, whether in money or money's worth or otherwise, other than those of a capital, nature earned before or during the winding up or liquidation.

Furthermore, Section 9 of the Companies Income Tax Act (C.I.T.A.) 2004¹⁴⁸⁵ provides as follows:

Subject to the provisions of this Act, the tax shall, for each year of assessment, be payable at the rate specified in subsection (1) of Section 40 of this Act upon the profits of any company accruing in, derived from, brought into, or received in, Nigeria in respect of dividends, interest royalties etc. Income tax is payable by companies at a standard fixed rate of 30k in the naira on their profits under section 40 companies Income Tax Act. No Personal reliefs are given and there are no reduced rates.

Income tax is payable by company at a standard fixed rate of 30k in the naira on their profits under section 40 C.I.T.A.

The Companies Income Tax Act categorized companies into two, Nigerian companies and foreign companies. A Nigerian company is one the control and management of whose activities are exercised in Nigeria¹⁴⁸⁶. All other companies fall into the latter category. The division is important because a Nigerian company is liable to income tax in relation to profits, which are deemed to be derived from Nigeria and subject to Nigerian tax in Nigeria wherever they arise and whether or not they have been brought into or received in Nigeria. On the other hand the profits of a company, other than a Nigeria company, are only deemed to be derived from

¹⁴⁸⁵ As amended in 2007

¹⁴⁸⁶ See Section 13 CITA 2004 as amended in 2007 and Revenue Law and Practice in Nigeria p.

Nigeria to the extent that they are attributable to some part of the operations of the company carried on within Nigeria¹⁴⁸⁷.

Section 57 of the Companies Income Tax Act, 2004¹⁴⁸⁸ required companies operating in the Nigerian Stock Exchange to file monthly returns with the Federal Board of Inland Revenue not later than 7 days after the end of each year calendar month of its transactions during the preceding calendar month. Company is expected to state the following in a prescribed form:

- (a) an offer in the primary market, state in the return;
- (b) the type of offer;
- (c) the services rendered;
- (d) the amount of tax deducted at source;
- (e) the amount of value added tax payable;
- (f) operations in the secondary market, state in the return;
- (g) the number and value of transactions carried out during the relevant calendar month;
- (h) the commission received or paid;
- (i) the amount of tax deducted at source; and
- (j) the amount of value added tax payable.

This filing requirement is an important aspect of the regulation of activities in the capital market from the perspective of taxation. The Nigerian Law required a strict compliance with this provision of the law because it would provide an audit trail

¹⁴⁸⁷ Ibid, and see Section 1 (2)

¹⁴⁸⁸ Ibid

for the tax authority to trace, identify and raise assessment in respect of taxable income where there is no voluntary declaration of such¹⁴⁸⁹.

RULES REGULATING TAXATION OF DIVIDENDS

Dividends are generally taxable in the companies' and shareholders' hands as part of the assessable income for the relevant year under the Companies Income Tax Act, 2004¹⁴⁹⁰.

Dividends are usually paid to owners or shareholders of business at specific periods as earlier analysed above. This is based on the declared earning of the company and the recommendations made by its directors. Thus, if there are no profits made, dividends are not declared. But when profits are made, the company is obliged to pay all statutory taxes including dividends to the government¹⁴⁹¹. This is, therefore, an essential corporate responsibility particularly profit making companies.

Taxation of dividends paid by a Nigerian Company shall be deemed to derive from Nigeria and shall be taken as the gross amount before deducting tax¹⁴⁹². It is provided further that any amount of the undistributed profits of a Nigerian Company controlled by not more than five person (known in England as a close company) which could be distributed as dividends without detriment to the company's existing business may be treated as distributed so that every shareholder shall be assessed to tax on the income from the deemed distribution in proportion to his share in the ordinary share capital thereof at the relevant time. Such amount shall be increased by the relevant tax deemed to be deducted at source.

Section 13 P.I.T.A. provides that:

¹⁴⁸⁹ Sanni Abiola, 'Tax Reform in the Capital Market – A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007pp. 12-13

¹⁴⁹⁰ As amended see further Nigerian Tax Law p. 187

¹⁴⁹¹ Samuel S.E. and Inyada S.J., 'The Effect of Company Income Tax on Dividend Policy of Financial Institutions in Nigeria' <<http://www.wiloludjournal.com>> accessed on 14 September 2011

¹⁴⁹² See Section 12 PITA CAP P8 2004 as amended in 2011

the income from a dividend paid by a company other than a Nigerian company or from any other source outside Nigeria which shall be the amount of that income brought into or received in Nigeria, provided that, if the income arose in a country to which section 39 of this Act applies, the amount of that income to be taken for assessment shall be the amount under subsection (5) of section 39 of this Act.

In addition, section 15 P.I.T.A. provides that:

Where a dividend or interest is distributed or paid by a Nigerian company, the dividend or interest as the case may be, whenever necessary for the purpose of the first schedule to the Act, shall be deemed to be derived from the territory in which the recipient of the dividend or interest, resides or where the recipient is not resident in Nigeria, the person shall be a person to whom section 2(i) (b) (iv) applies. It should be mentioned that not all dividends are subject to income tax.

COMPANIES

Where a Nigerian company pays any dividends or is treated as having distributed any amount of profits to another Nigerian Company, the rule is that the recipient company receives dividend income tax under section 18(b) C.I.T.A. 2004 (as amended) 2007 by the paying company although it is treated for the purpose of calculating the total profits of the recipient company as having been received gross.

The recipient company is entitled to a certificate from the paying company setting out the following particulars in writing:

- the gross amount of the dividend or such other distribution;
- the name and address of the recipient;
- the accounting period or periods of the company in respect of the profits out of which the dividend is distributed or declared to be payable and the date on which payment is due; and

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- (iv) the amount of tax so deducted.

Such dividend is not charged further to income tax on such part of its profits as having already been taxed by deduction at source. This is treated as franked investment income.

A company paying a dividend is entitled to retain the tax deducted from any dividend paid by it and thus recoup itself for long-term which it pays on its own profits. This shows that income is only paid on the profits of a company once and where those profits are distributed to shareholders, whether corporate or individual, the burden of income tax is eventually passed on to the shareholders by way of dividend.

Section 80 (2) of the C.I.T.2004 (as amended) 2007 states the rate at which tax is to be deducted in this section as 10%.

INDIVIDUAL SHAREHOLDERS

At the individual level, it appears that dividends generally are not taxed in the individual shareholder's hands as part of his assessable income for the relevant year of assessment. Before the CITA 1990 was amended, dividends received by individual shareholders are taxed at the same rate of 5% and the same information are required then as was applicable to companies charged to income on dividends.

The position now under the CITA 2004 (as amended) is that any amount treated as distributed as provided in section 21 (1) and other enactment in Nigeria imposing tax on the incomes of persons other than companies be deemed to be profits or income from a dividend accruing to those person who are shareholders in the company in proportion to their shares in the ordinary capital thereof, and the amount of such profits or income to be taken for assessment in the hands of each such persona shall be his due proportion, as the Board may determine¹⁴⁹³.

The issue is that companies paying dividends are to withhold tax of ten per cent on gross dividends before paying over to individual shareholders.

¹⁴⁹³ See further Section 21(2) & (3) and Section 43 (2) of CITA 2004 (as amended) 2007.

CAPITAL GAINS ON SHARES

Capital gains tax or CGT is charged on capital gains, that is, the profit realized on the sale of an asset that was previously purchased at a lower price¹⁴⁹⁴. It could also be described as the excess of the proceeds derived from the disposal of the asset over and above the cost of acquiring and enhancing the assets by the owner of the asset that is subject to capital gains tax. The most common capital gains are realized from the sale of shares, stocks, bonds, and property¹⁴⁹⁵.

Capital gains tax is a form of tax chargeable on capital gains arising from the disposal of chargeable asset¹⁴⁹⁶. Capital Gains Tax (CGT) was first introduced in Nigeria through the Capital Gains Tax Act of 1967¹⁴⁹⁷ and it only applied in the then Federal Capital Lagos. However, by virtue of the Finance (Miscellaneous Provisions) of 1967¹⁴⁹⁸, it was made to apply to the whole of Nigeria in 1967. It was consolidated and reenacted in Cap 42 of the Laws of the Federation of Nigeria as the Capital Gains Tax Act of 1990 and now Capital Gains Tax Act. (Cap. C001 LFN 2004)

According to Abdulrazaq:

The Capital Gains Tax Decree applies as regards taxation of any company throughout the Federation¹⁴⁹⁹. It may be remarked that many of the provisions of the Act are drafted in similar or identical terms to parallel provisions in the United Kingdom¹⁵⁰⁰.

¹⁴⁹⁴ Adeyemi S.B. and Babington Ashaye M.T., 'Re: Introduction of Capital Gains in the Nigeria Capital Market' See <<http://www.secure.irs-ogun.org/downloads/C>>accessed on 21 November 2011.

¹⁴⁹⁵ See Section 1 of Capital Gains Tax Act Cap C001 LFN 2004

¹⁴⁹⁶ Decree No. 44

¹⁴⁹⁷ No. 15 of 1976

¹⁴⁹⁸ Referring to the Federation of Nigeria

¹⁴⁹⁹ Abdulrazaq M.T. *Revenue Law and Practice in Nigeria* p. 149.

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The rate of tax on capital gains on stocks and shares is ten percent.¹⁵⁰¹

There are certain conditions for a liability to capital gains tax to arise:

1. there must be a disposal of a type relevant to CGT;
2. of an asset of a type relevant to CGT;
3. by a person chargeable to the tax; and
4. on which a chargeable gain which is computed under the Act arises¹⁵⁰².

The legislation intends to distinguish a gain from a chargeable gain. It is only the latter that is subject to tax. The legislation does not specify how a gain should be computed. It only specifies what costs can be deducted from the consideration¹⁵⁰³. The effect of the above is that capital gains would not arise where these conditions are absent. It is the excess of the proceeds derived from the disposal of the asset over and above the cost of acquiring and enhancing the assets by the owner of the asset that is subject to capital gains tax¹⁵⁰⁴.

DISPOSAL

There is no concrete definition of disposal. But the Act provides that a disposal of assets by a person is deemed to take place where any capital sum is derived from a sale, lease, transfer, an assignment, a compulsory acquisition or any other disposition of assets, notwithstanding that no asset is acquired by the person paying the capital sum¹⁵⁰⁵.

Disposal of an asset could be any legal or equitable alienation or transfer of beneficial interest or title to an asset by a person to another person that acquires the interest.¹⁵⁰⁶ A disposal by a trustee of shares in the course of administration is

¹⁵⁰¹ See Section 2 (1) of the Capital Gains Tax Act, 2004. The rate of capital gains tax, which was formerly twenty per cent has been amended to ten percent through Decree No. 18 of 1998

¹⁵⁰² Abdulrazaq M.T., *Revenue Law Practice in Nigeria* p. 152

¹⁵⁰³ Ibid and see generally Section 12-16 Capital Gains Tax Act, 2004.

¹⁵⁰⁴ John D.C., 'Capital Gains Tax' in CITN Tax Guide and Statutes Abdulrazaq M.T. (ed) (The Chartered Institute of Taxation of Nigeria, Lagos, 2009) p. 75

¹⁵⁰⁵ See Section 6(1) Capital Gains Tax Act, 2004.

¹⁵⁰⁶ Abdulrazaq M.T., *Revenue Law and Practice in Nigeria*. P.157.

clearly a disposal on this definition since beneficial title passes to the purchaser and the fact that the disposer is not a beneficiary is quite irrelevant¹⁵⁰⁷.

As earlier explained, the capital gains tax is levied on the 'gains' of 'any asset' that is not exempted. The meaning of asset under Capital Gains Tax Act is radically different from the restricted meaning of the word in a plain language. Asset is defined widely in section 3 as 'all forms of property, except those expressly excluded, under the Act'.¹⁵⁰⁸ Chargeable assets under the CGTA include the following:

- (a) options, debt and incorporeal properties generally;
- (b) any currency other than Nigerian currency; and
- (c) any form of property created by the person, disposing of it or otherwise coming to be owned without being acquired¹⁵⁰⁹.

Stock and shares were removed from the list of chargeable assets possibly to accelerate capital market development and to encourage investors to invest in these types of assets.¹⁵¹⁰ The Nigerian Enterprises Promotion Decree of 1972 included stocks and shares of every description in the chargeable asset list having realized the potential revenue derivable from this form of investment. This produced some fruitful results for example in 1972/73, 1973/74, 1974/75, collections from Capital Gains Tax were No. 4 Million, N2.2 million and N2.1 million respectively as against No. 1 million in 1971/72 and N0.03 million in 1970/71¹⁵¹¹. Since the conclusion of indigenisation exercise, the revenue accruing from the capital gain

¹⁵⁰⁷ Ibid, see the case of *Re Paradise Motor Co. Ltd* (1968) 2 All ER 625

¹⁵⁰⁸ Sanni Abiola, 'Tax Reform in the Capital Market – A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007 p.

¹⁵⁰⁹ See Section 3 Capital Gains Act, 2004.

¹⁵¹⁰ See Capital Gains Tax Decree 44 of 1967. Though, there are lots of arguments for and against introduction of Capital Gains Tax in the Nigerian Capital Market.

¹⁵¹¹ Sanni Abiola, 'Tax Reform in the Capital Market – A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007 p.

on the gains from the sale of shares and stocks has virtually become zero because Nigerians mostly buy shares and stocks and keep¹⁵¹².

In response to the demand to exempt stock and share so as to encourage investment in that sector, section 31 of the Capital Gains Tax Act, 2004 now exempts gains from sales of stocks and share from taxation as follows:

- (1) Gains accruing to a person from a disposal by him of Nigerian Government Securities, Stocks and Shares shall not be chargeable gains under the Act; and
- (2) In this section, Nigerian Government Securities include Nigerian treasury bonds, savings certificates and premium bonds issues under the Savings Bonds and Certificate Act.

The point now is whether this is in line with what is obtainable in other parts of the world. A good tax system must be equitable not only in the quantum of the income being asked for but also ensures that incomes from different sources are treated in a similar way. Therefore, the exclusion of stocks and shares of every description from capital gains chargeable from 1st January 1998 is an aberration to the tax principles of equity and fairness. It gives undue advantage to traders/investors in stocks trading who are excluded from paying taxes on capital gains on stocks and shares compared with other taxpayers who generated their incomes from other sources¹⁵¹³.

For instance in the United States of America, capital gain is taxed under income tax. This is partly on the basis of market efficiency in that economic resources should be based on market factors that determines the highest return and not on the basis of tax consideration¹⁵¹⁴. Another issue is the inability to expand tax base and bring all eligible taxpayers into the tax net. If all the loopholes in the tax system are removed and the tax base is expanded, the government will fulfil the obligations of

¹⁵¹² Ibid.
¹⁵¹³ Adegbenro S.B. and Babington Ashaye M.T., 'Re: Introduction of Capital Gains in the Nigeria Capital Market' see <<http://www.secure.irs-ogun.org/downloads/C>> accessed on 21 November 2011.

¹⁵¹⁴ Ibid. p 21. See further Revenue Law and Practice in Nigeria p. 149.

meeting the needs of all its citizens. The abrogation of the provision of Capital Gains Tax Act in taxing capital gains from stocks and share in Nigeria as chargeable assets will encourage foreign investment and with the availability of super profit in the capital market, any reintroduction of capital gain tax on stock and shares will discourage investment.

There are arguments against the reintroduction of Capital Gains Tax on stock and shares in Nigeria. It is sometimes claimed that Capital Gains Tax in conjunction with Income Tax is a case of double taxation. This theory further argued that the value of capital relates to the future income that the capital is expected to produce. Any increase in the value of capital hence relates to an unexpected increase in future income. However this additional future income is already subject to income tax so the capital gains are already taxed. It means that no capital gains tax applies if ownership of the capital (that will produce future income) does not change hands. In other words, capital gains tax does not apply if the capital gain is not realized through a sale¹⁵¹⁵.

Taxes on investment income have a major effect on the functioning of capital markets, and the capital gains tax is believed to have a detrimental effect on the ability of capital to finance the most profitable investment opportunities. This particular tax has been proved as discouraging to the supply of risk capital for business start-up and for a Small and Medium-sized Enterprises (SMEs). This type of financing is primarily provided by financially sophisticated individuals (angels) or venture capitalists that operate outside of a tax-sheltered environment. Their choices of business are very sensitive to capital gains tax on their investment income. Their income is most likely to come in the form of capital gains rather than dividend income or interest income.

Another converse argument put forward is that a capital gain has a lock-in-effect on investment behaviour. For example, an investor wanting to sell a portion of his or her assets and reinvest the proceeds into better performing stock or shares must pay a tax on the capital gains just to change from one asset to another even though

¹⁵¹⁵ Adeyemi S.B. and Babington Ashaye M.T., 'Re: Introduction of Capital Gains in the Nigeria Capital Market' see <<http://www.secure.irs-ogun.org/downloads/C>>accessed on 21 November 2011.

the proceeds are not ever used for consumption purposes. Thus, fewer funds are available for this new investment, resulting in a lower effective rate of return. The effect of this is that it reduces the flow of investment, which is not in the interests of developing countries like Nigeria where there is the need for greater investment mobility¹⁵¹⁶.

There is also the taxation of illusory income, for instance, shares bought a few years ago in an average representative company on the Nigerian Stock Exchange would increase in value at the same rate as the increase in consumer prices. In real terms, there is no gain and the taxation of capital gains does not recognize this fact¹⁵¹⁷.

STAMP DUTIES

Stamp duties in Nigeria have their origin in the country's colonial heritage. Strictly, they are taxes on documents and not on transactions or persons and are governed by the Stamp Duties Act 1939 as amended by numerous Acts and various Resolutions in Volume 22 of the Laws of Federation of Nigeria 1990 Cap 411. The current stamp duties enactment in force is the Stamp Duties Act Cap S004 LFN 2004. Additionally, a number of regulations have been made¹⁵¹⁸.

Stamp Duties are taxes imposed on instruments such as deeds of assignment, powers of attorney, appointment of a new trustee, and appointment in execution of a power of any property of any use, share or interest in any property, by any instrument not being a will, share warrant or stock certificate of Bearer and other types of documents listed in the schedule to the Stamp Duties Act¹⁵¹⁹. Stamp Duties can be either *ad valorem* or specific. *Ad valorem* are duties that vary with the amount of consideration and in accordance with a scale stated in the relevant schedule fixed by the government. In *ad valorem* assessment, the Commissioner for Stamp Duties or Adjudicator will be required to know the amount involved in the transaction to enable him to determine the correct duty to pay. These include

¹⁵¹⁶ Ibid, p. 6 and See Ayua I.A., *The Nigerian Tax Law* p. 213

¹⁵¹⁷ Ibid

¹⁵¹⁸ Abdulrazaq M.T., *Revenue Law and Practice in Nigeria* pp. 251-252

¹⁵¹⁹ See Section 3 (1)

share capital of companies, debenture stock etc¹⁵²⁰. Specific or fixed duties are those that do not vary with the consideration for the document being stamped. The specific duty is payable irrespective of the value of the instrument such instrument includes payment receipt, cheque leaves etc¹⁵²¹.

Although stamp duties is a federal tax, its administration is shared between the Federal and State Government where the instrument or document relates to a corporate person, stamp duties is payable to the Federal Government while those relating to individuals are payable to the relevant tax authority of a State¹⁵²².

A shareholder's equity in a company is evidenced by share certificate. A certificate is issued upon the purchase of share while the certificate is transferred upon the sale of the part of the whole shares. It is important that an electronic depository called Central Securities Clearing System (CSCS) has presently been introduced to deal with the difficulties associated with the transfer of shares and production of new certificate for traded securities which often took months to conclude in the light of the manual processes in use. This is to obviate the need for paper certificate where it is desired. Through CSCS, an investor's shareholding can be stored and traded electronically¹⁵²³. The CSCS commenced operation in April 1997 with less emphasis on the issuance of certificates for transactions through the secondary market. However, where a shareholder elects to have a certificate either for the whole or for the balance of a partial sale, the shareholder is allowed to exercise his right to a certificate as granted by law¹⁵²⁴. Transfer of shares is specifically exempted from stamp duties while contracts relating to shares attract duty at the

¹⁵²⁰ Seyi Ojo, *Fundamental Principles of Nigeria Tax* (2nd ed, Sagibra Lax Publications, Lagos 2008), pp.119-120

¹⁵²¹ *Ibid.*, p. 119

¹⁵²² See *Savannah Bank Ltd. V. Director - General, Ministry of Lands, Surveys & Town Planning* (1999) FHCLR 370 at 375, Item 57 Exclusive Legislative List in Part I of the Second Schedule to the 1999 Constitution, Item D, Paragraph 7(b) of Part II of the Second Schedule to the 1999 Constitution and Sections 3(3) and 4 of the Stamp Duties Act, 2004.

¹⁵²³ Sanni Abiola, 'Tax Reform in the Capital Market - A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007 p.

¹⁵²⁴ See Section 3 (1) Stamp Duties Act, 2004

rate of ₦2.00 for every ₦200.00¹⁵²⁵. In this regard, the contract (of either purchase or sale) is between the stockbroker and his client. By regulation, a stockbroker is under an obligation to issue a contract note to his client. The contract note can be used as evidence in the law court if the need arises¹⁵²⁶. In practice, the stamp duty is usually remitted by stockbrokers to the Federal Stamp Duties Office on monthly basis¹⁵²⁷.

Apart from those instruments exempted by the Act, an unstamped instrument will not be admissible in evidence in the law court. However, the court or arbitrator may grant permission to a party to pay all unpaid duties and penalties on an instrument to enable the party to formally tender it in evidence¹⁵²⁸.

WITHHOLDING TAX ON DIVIDENDS

Withholding tax is not a separate tax but a convenient way of collecting income tax in advance whether personal or corporate income tax. Thus, it is an advance payment of income tax which ordinarily is collected on proceeding year basis¹⁵²⁹. The purpose is to bring the prospective taxpayer into the tax net, thereby widening the income tax base. In other words, the withholding tax system is aimed at tracking down taxpayers and the incomes which may otherwise not be reported by them¹⁵³⁰.

The withholding tax on income is deducted at source and when this is finally brought to the notice of the tax authority and appropriate tax is computed, due credit is given for holding tax deducted at source on the presentation of the original withholding tax receipts through the issuance of credit notes. The taxpayer issuance

¹⁵²⁵ Sanni Abiola, 'Tax Reform in the Capital Market – A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007 p. 23

¹⁵²⁶ *Ibid*

¹⁵²⁷ *Ibid*

¹⁵²⁸ See Section 19 and 22 Stamp Duties Act, 2004

¹⁵²⁹ Sanni Abiola, 'Tax Reform in the Capital Market – A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007 p. 13

¹⁵³⁰ Taxation of Transactions in the Nigerian Capital Market: Guidelines, Application and Procedures see FIRS Information Circular No.9903 of 1st July 1999.

of credit notes. The taxpayer will be required to pay only the balance due after matching the actual tax liability against the credit for the withholding tax suffered at source. Therefore, withholding tax is nothing more than a collection machinery to curb tax evasion¹⁵³¹.

The law imposes obligations on companies, including those operating in the capital market to withhold tax from certain payments¹⁵³² made by them (for goods and services) at the applicable rate but this depends on whether the payee is a company or individual¹⁵³³.

WHO CARRIES THE BURDEN OF PAYING WITHHOLDING TAX?

The payment of withholding falls on the payee and not on the company withholding the tax. The payee here depending on certain circumstances as the case may be:

- The investors (when receiving dividends); and
- The various intermediaries (when being paid for their services by the fund users)¹⁵³⁴.

HOW TO IMPOSE WITHHOLDING TAX AT THE PRIMARY MARKET

The withholding tax at the primary market is usually for issuing companies to pay fees to issuing houses, stock brokerage firms, reporting accountant and solicitors in

¹⁵³¹ Ibid

¹⁵³² A company paying dividends to its shareholders is first obliged to pay tax on its profits at the company's rate before paying dividends to its shareholders. As a general rule, any dividend or other company distribution whether or not of a capital nature made by a Nigerian Company is liable to a withholding tax at source of 10 percent. However, any dividend paid by a company in the form of bonus/scrip share issue is not taxable in the hands of individual shareholders and is excluded from the profits of any other company that is a shareholder in such company.

¹⁵³³ See Section 78-81 of the Company Income Tax Act Cap 21, LFN 2004 as amended in 2007.

¹⁵³⁴ Sanni Abiola, 'Tax Reform in the Capital Market – A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007

respect of new and right issues, as well as debenture stocks. Such fees should suffer withholding tax at source¹⁵³⁵.

The issuing companies are mandated to deduct the withholding tax therefrom and pay over to FIRS within 30 days as stipulated in the tax law. The net is then paid over to the issuing House that handled the issues. The applicable rate for commissions/fees is ten percent (10%) for limited liability companies, and five (5%) for individuals and partnerships¹⁵³⁶.

The issuing Houses which co-ordinate the activities and services of the other parties involved in the issuing, on behalf of the issuing companies are appointed agents to deduct the withholding tax and pay the tax withheld to the relevant tax authorities¹⁵³⁷.

HOW TO IMPOSE WITHHOLDING TAX AT THE SECONDARY MARKET

At the secondary market, the withholding tax is imposed as follows:

- (a) In the case of a purchase, the stockbroker is expected to charge the investor for;
 - The cost of the share purchased.
 - Commission based on gross value of share purchased on behalf of that investor.
 - The SEC fee which is currently 1% of total consideration and is not subject to withholding tax and value added tax being part of gross income earned by SEC.
 - Deduct withholding tax on the commission at 10% and pay over to the relevant tax authority, i.e. State Board of Internal Revenue (SBIR) or Federal Inland Revenue Service (FIRS).

¹⁵³⁵ See Section 78-81 of the Company Income Tax Act 2004 as amended in 2007 and the Relevant Extra-Ordinary Gazette.

¹⁵³⁶ FIRS Information Circular No. 9903 of 1st July 1999.

¹⁵³⁷ Ibid

(b) In the case of a sale, the stock broker is expected to deduct from his commission,

- The other fees payable to other third parties, as approved by SEC¹⁵³⁸.
- Thereafter, the net sale should be paid over to the investor. Both the stockbroker's commission and other fees paid to other third parties are subject to withholding. The stockbroker is to pay over tax withheld from the commission and other fees to the relevant tax authority.

However, it is important to note that there is practical difficulty for each State Board of Internal Revenue to audit the accounts of each stockbroker to ensure that appropriate tax has been withheld and remitted especially where the stockbroker is located outside the jurisdiction of each state. In this regard, the state(s) where the offices of these stockbrokers are located are in best position. It is however, doubtful if this opportunity is being optimally utilized in practice. The fact is that the Federal Inland Revenue Services is in a position to partner with the states to ensure that taxes due to the states are collected and remitted promptly subject of course to the rights of the Federal Inland Revenue Services to charge appropriate fees for its services¹⁵³⁹.

WITHHOLDING TAX ACCOUNTING

In accounting to the tax authority¹⁵⁴⁰, the person/company making the payment is expected to state the following on the WHT remittance form:

- the gross amount of the payment;
- the name and address of the recipient;
- The nature of the activities/services rendered;
- the rate of the WHT and
- the WHT due;
- the period covered;

¹⁵³⁸ Abiola, 'Tax Reform in the Capital Market – A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007

¹⁵³⁹ Federal Inland Revenue Services (FIRS) and State Board of Inland Revenue (SBIR)

- (vii) the tax file number;
- (viii) cheque number and date; and
- (ix) the date of payment¹⁵⁴¹

It is important to point out that payment for registered companies is made to Federal Inland Revenue Services (FIRS) while payment for individuals is made to State Board of Inland Revenue (SBIR). In practice, payment is made to designated bank within the area of the company or individual with a schedule of all the transactions containing the requisite information, while it is the responsibility of the taxpayer to follow up the credit notes¹⁵⁴².

MODE OF COLLECTION OF WITHHOLDING TAX

The mode of collection of withholding tax includes:

- (i) the rate at which tax is to be withheld on commission and fees which are stipulated as 10% when these payments are made to limited liability companies; and 5% for individuals and partnerships;
- (ii) the currency in which the tax is to be paid is the currency the transaction was carried out and in which the tax was deducted¹⁵⁴³;
- (iii) payments of withholding tax should be made in bank drafts and payable to 'the Federal Government of Nigeria – FIRS-Withholding Tax Account';
- (iv) payments should be accompanied by the relevant forms (CMF1, CMF2, CMF3, CMF4, or CMF5); and
- (v) any, default in the implementation of the tax carries heavy penalties. Also, failure to deduct withholding tax and failure to remit taxes withheld are

¹⁵⁴¹ See Sections 78 (5) and 79 (1) and (2) Companies Income Tax Act, Cap 21 LFN 2004 as amended in 2007.

¹⁵⁴² Sanni Abiola, 'Tax Reform in the Capital Market – A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007 pp. 14-15

¹⁵⁴³ Federal Inland Revenue Services Information Circular Nos. 9502 of 20th February 1995 and 9501 of 13th January 1995

punishable on conviction by a fine of 200% of the tax not withheld or remitted¹⁵⁴⁴.

It is important to note that the policy of Government imposes dual roles on the tax collecting Houses as agencies which handle new and right issues; also, as agent of Government for the deduction and remittance of withholding tax.

DIVIDEND EXEMPTED FROM WITHHOLDING TAX

dividend by a Nigerian Company that is satisfied by the issue of shares of the company paying the dividend - bonus shares.

dividend paid out of income that is exempted from tax by any of the provisions of Companies Income Tax Act (CITA) or by the virtue of the fact that the company is still enjoying pioneer status¹⁵⁴⁵.

VALUE ADDED TAX

Value Added Tax (VAT) is a different type of tax and it is charged and payable on the supply of all goods and services other than those exempted and listed in Schedule 1 of the Value Added Tax Act, Cap VI, LFN 2004¹⁵⁴⁶. VAT is a consumption tax on all taxable goods and services payable by any consumer including companies, firms, agencies and individuals¹⁵⁴⁷. The consumer is liable for the tax exemption from this not aimed at agencies, companies or individuals but rather at the goods and services¹⁵⁴⁸.

Therefore all agencies of government, religious and other organizations and similar persons that are normally exempted from income tax are expected to pay VAT on

¹⁵⁴⁴ See Section 82 Companies Income Tax Act, 2004 as amended in 2007

¹⁵⁴⁵ Ademola A.B., *Nigerian Tax Prudence* (2nd ed, Elsie Publishers, Akure 2002) p. 198

¹⁵⁴⁶ See Section 2 of VATA 2004

¹⁵⁴⁷ Abdulrazaq M.T. *Revenue Law and Practice in Nigeria* p. 273 and Sanni Abiola, 'Tax Reform and the Capital Market - A Welcome Development' (Paper presented at a Seminar organized by the State Board of Internal Revenue, Abeokuta) 2007 p. 18

¹⁵⁴⁸ IRS Information Circular No 9903 of 1st July 1999

the goods and services consumed by them except where the goods and services are specifically exempted by law¹⁵⁴⁹.

HOW TO IMPOSE VALUE ADDED TAX AT THE PRIMARY MARKET

At the primary market VAT is imposed as follows:

- (i) Every consumer pays VAT on services rendered to it at the primary market. As consumers of services rendered by both the issuing Houses and other parties to the issue, the issuing companies are liable to the payment of VAT for the services rendered. The issuing Houses and other parties to the issue should charge VAT at 5% on their invoices for services rendered. Since the issuing Houses handle the transactions connected with new and right issues, they are to act as agents for the collection and remission of VAT to FIRS;
- (ii) As a pre-requisite for listing new securities by Nigerian Stock Exchange (NSE), the evidence of settlement of WHT and VAT on the new and right issues must be attached. The listing fees are themselves liable to WHT and VAT, and
- (iii) Before an operator's licence is renewed by the regulatory authority, evidence of WHT and VAT on issues handled in the previous year must be produced¹⁵⁵⁰.

HOW TO IMPOSE VAT AT THE SECONDARY MARKET

VAT is imposed on the secondary market in both purchase and sale transactions and the consumer of the services rendered is the investor. It is, therefore, the investor that suffers the incidence of this tax. The VAT on these transactions (sale and purchase) should be paid over to FIRS¹⁵⁵¹.

¹⁵⁴⁹ Ibid. (See further Value Added Tax (Exemption of Commission on Stock Exchange Transactions) Order 2014 issued on 30th July 2014 by the then Finance Minister Dr. Ngozi Okonjo-Iweala to amend the "Service Exempt" from Value added Tax (VAT) to include commissions on transactions in the Nigeria Capital Market. The Exemption Order is effective from 25 July 2014 and it is applicable for a period of 5 years from commencement.

¹⁵⁵⁰ Ibid

¹⁵⁵¹ Ibid

MODE OF COLLECTION OF VAT

The mode of collection of VAT in the Nigerian capital market are:-

- The rate of VAT is 5%;
- Payment of VAT should be made in bank draft and payable to 'the Federal Government of Nigeria -FIRS- VAT Account'; and
- Payment should be accompanied by the VAT form 022. The policy of Government imposes on the Issuing Houses the role of agent of government for the collection and remittance of VAT in respect of their own respective transactions which ordinarily should have been paid over to the operator who charged the VAT on his invoice¹⁵⁵².

THE CHARGE OF DOUBLE TAXATION AND CAPITAL MARKET OPERATION IN NIGERIA

As far as operation of capital market is concerned, double taxation referred to tax is levied on the income of the company in its hands (in its corporate name) and thereafter the dividends and other distributions made to shareholders out of the profits are again subjected to tax in the shareholders hands as their personal income. This is the situation where the taxation of the income of companies is based on the classical theory of taxation¹⁵⁵³.

The operators in the Nigerian capital market have been complaining of double taxation and multiplicity of fees and strictly speaking, the description above does not amount to double taxation. Double taxation is a well-established concept in the international taxation. Double taxation at the intra national level occurs where the same income or piece of property is subject to tax twice or more in the hands of the same taxpayer by the same tax authority. Therefore, since a company is a distinct and separate person from its shareholders, the taxation of income of a company

¹⁵⁵² See Paragraph 4 of the FIRS Information Circular No. 9502 of 29th February 1995

¹⁵⁵³ Sanni Abiola, 'Tax Reform in the Capital Market - A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007 pp.16-17

cannot be said to be the same with taxation of the income of the shareholders. The classical theory of taxation of companies views company's income tax as part of the price paid for the privileges of incorporation. An investor who desires to avoid paying companies income tax has a choice of carrying on business either as a sole proprietor or partnership¹⁵⁵⁴.

The imputation theory however though taxes the profits of a company in its hand but allows, on distribution, a portion of the companies income tax already paid to be imputed to the income tax liability of the shareholders¹⁵⁵⁵. In this circumstance, a shareholder will be given credit for the tax already deducted under the companies income tax. The imputation system is well-grounded in the European Union¹⁵⁵⁶.

In view of the advantage of the imputation model, it may be worthwhile for the operators in the capital market to advocate for the imputation model instead of seeking for direct elimination of taxation of company or dividends. But there is the need to be careful of its implications on the earning of the government(s) and inter-government fiscal relations¹⁵⁵⁷.

EFFECTS OF THE ECONOMIC RECESSION ON THE TAXATION OF THE NIGERIAN CAPITAL MARKET

The global financial meltdown is a topical issue because it seems to have affected many countries all over the world. It has various implications for both the developed and developing economies. In the case of the developing countries of which Nigeria is one, the implications are noticeable in the areas of crash in shares prices, dwindling government revenues, massive reduction in capital inflows, followed by Divestment (FDI, Portfolio, ODA, remittances etc) leading to a crash of the Nigerian Stock Market. The demand pressure on the forex market arising

¹⁵⁵⁴ Ibid p. 17

¹⁵⁵⁵ Ibid

¹⁵⁵⁶ Ibid

¹⁵⁵⁷ Ibid

divestment and repatriation of capital and dividends by foreign investors intensified in the face of falling revenue¹⁵⁵⁸.

This resulted in the de-accumulation of foreign reserves and pressures on exchange rate, hence naira depreciation. Greater forex outflows also mean liquidity mop-up and tightness of liquidity in the financial system, combined with greatly reduced rate of monetization of forex inflows from oil sales. All this would lead to higher government borrowing which would reduce credit to the private sector¹⁵⁵⁹.

The global economic recession has much to do with the crash of stock/share prices in the various stock exchange markets of countries including Nigeria. The problem is that once the companies publicly declare the state of their insolvency and the huge losses experienced by them, the investors' confidence was eroded. The result was a stampede where both the small and large investors wanted to offload their shares in the market. In line with the principle of demand and supply, as more shares are offloaded into the market, the prices dropped as far as investors showed interest in investing¹⁵⁶⁰. This will eventually have serious effect on the tax that is levied on the income of the companies and the dividends and other distributions made to shareholders out of the profits of companies.

It is important to note that the economic recession has greatly affected investment mobility as in taxation of capital gains, taxation of stamp duties, withholding tax on shares as well as value added tax. The reason is not far-fetched, the unstable liquidity in the market has resulted in a serious effect concerning revenue generation of the government of Nigeria.

CONCLUSION

The paper has made a chronicle of Taxation of Capital Market in Nigeria. It is found that taxation of capital market in Nigeria involves different categories of tax which

¹⁵⁵⁸ The Stockwatch Nigeria May 18 2009, p. 31

¹⁵⁵⁹ Ibid

¹⁵⁶⁰ N.G Nwokah et al., 'Global Financial Melt Down and Implications for Marketing in Nigeria' *Journal of Money, Investment and Banking-Issue 11 2009*, See

<http://www.eurojournals.Com/JMTB.htm> accessed on 15 November 2011

include income tax on dividends usually paid to owners or shareholders in a company and taxation of dividends by a Nigerian company to a foreign company and vice-versa.

The paper proceeds to capture the arguments for and against the reintroduction of Capital Gains Tax with emphasis on shares in the Nigerian Capital Market. But it is observed that there is need for the government to reintroduce capital gains tax in the Nigerian Stock Market in tandem with prevailing international tax practice¹⁵⁶¹. The Capital Gains Tax Act must continue to be reviewed to meet the imperatives of economic realities. CGT should include gains on stock and shares, right issue, bonus shares, stock options and splits. There should be a mechanism to ensure accountability on the CGT collected through stock market operations to improve the capital market infrastructures and provide welfare services for Nigerians.

Although Stamp Duties in Nigeria is a federal tax, administration is shared between the federal and the state governments. In Nigeria, a shareholder's equity in a company is evidenced by share certificate but an electronic depository known as Central Securities Clearing System (CSCS) has presently been introduced which has been able to solve the difficulties associated with the transfer of shares.

Withholding tax on dividends was also looked into and it is observed that though it guarantees regular flow of revenue to the government but in most cases, deductions made are not remitted to the Inland Revenue Service. The withholding tax from the dividends payable to individuals is supposed to be remitted to the State Board of Inland Revenue (SBIR) where the investor is resident. There is difficulty for the SBIR to audit the accounts of each company to ensure that appropriate tax has been withheld and remitted in respect of individuals who are resident in each state.

¹⁵⁶¹ Adeyemi S.B. and Babington Ashaye M.T., 'Re: Introduction of Capital Gains in the Nigerian Capital Market' See <[http://www.secure.irs-ogun.org/download /C](http://www.secure.irs-ogun.org/download/C)> accessed on 21 November 2011.

Therefore, there is the need to ensure cooperation between the FIRS and the SBIR ensuring that this requirement is faithfully implemented¹⁵⁶².

As far as Value Added Tax is concerned, the burden of VAT being a consumption tax is borne by the consumers of various services that make the capital market operation who invariably are the users of funds (companies and government).

Regarding the charge of Double Taxation and Capital Market Operation in Nigeria, a company is viewed as a distinct and separate person from its shareholders, the taxation of income of a company cannot be said to be the same with taxation of the income of the shareholders. The rationale behind this is that the classical theory of taxation of companies views company's income tax as part of the price paid for the privileges of incorporation. An investor who desires to avoid paying companies income tax has a choice of carrying on business either as a sole proprietor or partnership¹⁵⁶³. Therefore the above description does not amount to double taxation as far as the capital market is concerned.

The global financial meltdown has various implications for both the developed and developing economies but the impact is greatly felt in the developing economy of which Nigeria is one. This is noticeable in areas of crash in share prices, dwindling government revenue, massive reduction in capital inflows followed by divestment leading to a crash of the Nigerian Capital Market. The problem is that once the companies publicly declare the state of their insolvency and the huge losses experienced by them, the investors' confidence was eroded. This will lead to stampede where both the small and large investors wanted to offload their shares in the market. As more shares are offloaded into the market, the price will have serious effect on the tax that is levied on the income of the companies and the dividends and other distributions made to shareholders out of the profits of companies. The recession has greatly affected taxation of capital gains, stamp duties, withholding tax on shares as well as value added tax. Of course the unstable

¹⁵⁶² Sanni Abiola, 'Tax Reform in the Capital Market – A Welcome Development' (Paper presented at a Seminar organized by the Ogun State Board of Internal Revenue, Abeokuta) 2007 p. 24

¹⁵⁶³ Ibid, p. 17

ity in the market has resulted in a serious effect concerning revenue of the government of Nigeria.

of the measures to stabilize the Nigerian Stock Market;

The Central Bank of Nigeria should continue to monitor the level of liquidity in the system so as to maintain a reasonable balance of cash flow in the economic system. The Securities and Exchange Commission (SEC) has responded to the crisis by the introduction of market makers to boost liquidity in the Nigerian Capital Market'.

There is need for education of shareholders (investors) in Nigeria to appreciate the price movements. It cannot be one way positive, sometimes prices could drop with the tendency to move up later.

Government through the FIRS should not contemplate any tax increase during the crises period. The country should rather put in place the enabling environment that could enhance the productive capacities of the various companies and individuals.

Lending rate to investors should be reduced to encourage investments in sensitive developmental projects.

Government should develop mechanism that will support sensitive companies that could face financial crisis as in the case with some developed countries¹⁵⁶⁴.

By, it can be observed that tax issues on capital market operation in Nigeria are relevant to the FIRS than SBIR.

G. Nwokah et al., 'Global Financial Meltdown and Implications for Marketing in Nigeria' *Journal of Money, Investment and Banking* - Issue 11 2009 see www.eurojournals.com/JMTB.htm accessed on 15 November 2011