HARMFUL TAX PRACTICES AND REFORMS IN AFRICA

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Abstract: *The Paper is on harmful tax practices and Tax Reforms in Africa. It has adopted theoretical approach to examine the problems associated with tax practices and tax reforms in the African continent. It has examined such practices as Tax Evasion, Tax avoidance, tax havens and double taxation. It examines Tax Reforms and offers reasons why tax reforms are necessary. Governments in the continent have to adopt good tax best practices and may need to learn from Mozambique whose tax system conforms to international standards. The activities of international Audit Firms need to be checked because of the reported cases of their collusion in developed countries. They may be doing same if not worse things here.*

Keywords: Tax Practices, Tax Reforms, Tax Evasion and Avoidance, Tax Havens, Multiple Taxation

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INTRODUCTION

Tax is one of the most important sources of revenue for the government world wide. It is a compulsory payment imposed by various tiers of government on individuals and corporate bodies. Taxes may be levied on wealth or on flow of income. The most basic things we note about taxation are that it is compulsory and imposed on people and firms operating within a given territory. These apply to direct taxes and since they are compulsory, anyone or firm who falls within the jurisdiction but fails to pay, can be sanctioned by imposition of fine or imprisonment. Again it is said that there need not to be any 'quid pro quo' between tax payer and how government spends the revenue generated from taxes. Put in another way, the government does not need o disburse tax revenue directly for the benefit of the tax payer. The Government uses taxes in its best judgment to provide goods and services for all citizens.

Imposition of taxes may be indirect in which case only those who consume taxes goods and services pay the tax. For example, under Value Added Tax (VAT) you pay VAT if you consume vatable good and services.

Adam Smith and David Ricardo are the earliest Economists to articulate theories of taxation. Adam Smith gave what he called maxims or canons of taxation: Tax must be simple; Tax must be certain; Tax must not be disincentive to economic effort and there must be efficiency in tax collection and administration. Taxation remains one of the most important sources of generating revenue for government for the purposes of providing infrastructure and running government. Azubike (2009) in Ogbonna and Ebimobowei (2012) states that "tax is a major player in every society of the world. The tax system is an opportunity for government to collect additional revenue needed in discharging its pressing obligation". Apart from raising revenue, taxes are very important in government efforts at stabilization the economy.

In view of the importance of taxation, the world today had turned attention to dealing with tax practices especially harmful ones. Harmful tax practices are those that have ability to distort trade and investment flows, cause shifts in the distribution of tax burden, cause loss of revenue to government.

In pursuit of the war against harmful practices most governments especially being goaded by international bodies such as European Union (EU) and Organization for Economic Cooperation and Development (OECD), are undertaking tax reforms. Tax Reforms are the process of changing the way and manner taxes are collected, managed and administered by the government. Tax Reforms seek to reduce the overall level of taxation on all people. Some seek to make the tax system more progressive or less progressive. Others seek to simplify the tax system and make it more understandable and accountable.

STATEMENT OF PROBLEM/OBJECTIVE OF STUDY

Taxation is of paramount importance for the government everywhere in the world. Tax is very important in contributing to a nation's GDP and other development indices. Taxation continues to pose serious challenges to African nations. Thisen (2003) summarized the ugly situation thus "African governments have more often been unable to fully finance their expenditures in economic and social services and programmes due to tax revenue falling short of the planned expenditure". In many countries (African), the prevailing tax system was inequitable, unstable, complicated, distortionary and increasingly ineffective in mobilizing revenue relative to GDP". The presence of tax practices (harmful) and inadequate tax reforms have been blamed for the dismal position. This paper thus has set out to examine the issues of harmful tax practices in African together with attempts at reforms in the continent. Thus the main objective is to see how to deal with the harmful practices and how reforms are solving the problems of tax practices.

The methodology used is theoretical approach which will x-ray the issues of tax practices and tax reforms in Africa. The study will, where necessary, use examples in Nigeria because they are found handy by the researcher. Nigeria runs a big economy in Africa which makes it a fair representative of African Economies.

The study is arranged in four sections thus: Section (a) which deals with all matters discussed so far. Section (b) deals with theoretical foundation of taxation and Review of Literature. Section (c) deals with discussions of some of issues raised in Section (b). Section (d) concludes the paper with recommendations.

THEORETICAL FOUNDATION

Adam Smith and David Ricardo are credited with giving organized theories that aided the development of taxation. In his book, Wealth of Nations, Adam Smith (1776) set out the canons or maxims of taxation viz:

i. Ability to pay.
ii. Certainty of what to pay.
iii. Convenience of the tax payer.
iv. Efficiency in the collection.

Lambert's Modern Principles of Taxation

Lambert (1992) amplified Adam Smiths' 4 canons into what has been referred to as Lambert's Modern Principles of Taxation namely:-

(i) Simplicity is essential.
(ii) Certainty of what to pay must be there.
(iii) Neutrality to payer's savings and spending must be maintained.
(iv) Low cost of collection.
(v) Net beneficiaries according to him are exempt from tax- although the meaning of net beneficiaries is not clear.
(vi) Double taxation should be avoided.
(vii) PAYE should be at source as it is the practice.
(viii) There should be the ability to pay.
(ix) Tax paid should not be affected by varying circumstances.
(x) Tax should be based on economic power not legal form.

(xi) Basis of Taxation should be realistic.
(xii) Convenience of the payer is paramount.
(xiii) Tax payer should get adequate advice.
(xiv) No discretion of tax exemption is allowed.
(xv) Tax is a compulsory levy not fine or penalty.
(xvi) Tax is compulsory and there is no 'quid pro quo' between when the payer pays, and the benefits he gets from government.

Some other theories have been used to justify the existence of taxation such as "the Cost of service theory", "the Benefit theory" and "Ability to pay theory". Cost of service theory states that the cost incurred by the government to provide services for the society must be collectively met by the people who receive the services. The Benefit theory which is a modification of the first theory state that the burden of taxation should fall on the people according to the benefit received from the state. The "Ability to pay" theory advocates that the wealthy should pay more tax than the poor. This is the principle on which progressive taxation is based.

Apart from these theories, the 1999 Federal Constitution (S.16 (1)) is a basis for government taxation. The section states that "The state shall within the context of the ideals and objectives… Harness the resources of the nation and promote dynamic and self-reliant economy. Since tax is a veritable source of government revenue, it is duty bound to reform it to generate more revenue.

Fiscal policy measures in Africa have been largely driven by the need to promote such macroeconomic objectives as raising revenue to finance rapid economic growth of their economies, generating employment, maintaining price level and exchange rates stability and balance of payments equilibrium. To achieve these objectives one of the ways of dealing with taxation problems is to deal with harmful taxes practices. The two harmful practices that readily come to mind is TAX EVASION AND TAX AVOIDANCE.

Tax evasion is "any criminal activity or any offense of dishonesty, punished by civil penalties and which is intended to reduce the incidence of tax action" (Williams 2007). Tax evasion is illegal and may involve theft, fraud and forgery. In other words, tax evasion involves deliberate misrepresentation of facts to tax authorities. As a criminal act, it may lead to prosecution and penalty imposed by fines and for imprisonment. In a way tax evasion has been referred to as an activity commonly associated with underground economy which brings about a tax gap. The tax gap is the difference between the amount of tax legally owned and the amount actually collected by the government (Adreoni et al 1998). Allingham and Sandmo (1972) based on the earlier theory of Becker (1968) produced an economic model of tax evasion. Their theory which is on evasion of income tax states that "the level of evasion of income tax depends on the level of punishment provided by law". However Franzoni (1998) cautions that although tax evasion is said to occur when individuals deliberately fail to comply with their tax obligation, "evasion problems originate in the fact that the variables that define the tax base (incomes, sales revenues, wealth etc) are often not observable.

TAX AVOIDANCE

Tax avoidance unlike tax evasion is not criminal but may have to do with ethical dispositions of the tax payers (Williams 2007). Uiph (2006) defines tax avoidance as "using artificial or contrived methods of adjusting tax payers" social, economic or organizational affairs to reduce tax liability in accordance with the law while not affecting the economic substance of the transactions". In other words, tax avoidance is the legal utilization of the tax regime to one's own advantage, to reduce tax that is payable by means that are within the law. Literature has it that the United States Supreme Court once stated that "The legal right of an individual to decrease the amount of what would otherwise be his taxes or altogether avoid them, by means which the law permits, can not be doubled". Inspite of the general acceptance that tax avoidance is not illegal Wenzel (2002) holds that "both tax avoidance and evasion can be viewed as forms of tax noncompliance, as they describe a range of activities that are unfavorable to a states tax system". In effect tax evasion and avoidance form part of harmful tax practices in Africa and fact even in developed countries.

HARMFUL TAX PRACTICES AND TAX HAVENS

Tax Havens have been identified as creating enabling environment for harmful tax practices to thrive in all parts of the world including in the African continent. Ambrosanio and Caroppo (2005) have tax havens as "jurisdictions that engage in harmful tax competition by linking the distinctive features of their tax systems-a low or zero effective tax rate, financial and commercial secrecy, and lack of transparency-to special preferential tax regimes long with 'ring fencing' of those regimes, for particular activities and corporations (such as 'captive' insurance, offshore banking, trust trading, holding companies and international financial services)". European Union (EU) and Organization for Economic Corporation and Development (OECD) for the past two decades have started on campaigns to counter the harmful effects of tax havens. OECD gave classifications of tax havens based on some criteria:

- No tax, or only nominal tax, on the relevant income;
- No effective exchange of information which implies unwillingness to exchange information's on tax matter with tax authorities aiming to curb tax evasion and avoidance.
- Lack of transparency implies the unavailability of details of tax law and administrative practices.

- Absence of a requirement that substantial activities be carried on in the jurisdiction. This is construed to refer to tax privileges granted to foreign-owned enterprises that doubt have a significant presence in the jurisdiction or contribution to the local economy. These are TAX HAVENS by 2005 as reports by OECD (2000). Andorra, Anguilla, Antigua and Barbuda, Aruba, Bahamas, Bahrain, Barbados, Belize, British Virgin Islands, Cook Islands, Dominica, Gilbraltar, Grenada, Guernsey/Alderney, Isle of man, Jersey, Liberia, Liechtenstein, Maldives, Marshall Islands, Monaco, Montserrat, Nauru, Netherlands Antilles, Niue, Panama, Samoa, Seychelles, St. Christopher (St. Kitts) and Nevis, St. Lucia, St. Vincent and the Grenadines, Tonga, Turks and Caicos, US Virgin Islands and Vanuatu. (source Ambrosanio and Caroppo (2005) quoting OECD 2000). If Tax Havens are causing a concern for developed countries. Africa's concern should be that of night mare.

Multiple Taxation

Multiple taxation has also been reported as a harmful tax practices in Africa. This occurs as different tiers of government impose various types of taxes. In Nigeria, for example, we practice fiscal federalism in which fiscal responsibility of government is based on three tiered tax structure divided between the federal, state and local governments. Each tier of government is covered by the constitution to impose different types of taxes. But this has resulted in controversies about multiple taxes and has "created myriad of problems for corporate entities as they are assailed with several demands for pay tax from the various tiers of government". He adds that "the desire to increase revenue and capture tax within each of their jurisdiction has brought about cases where the tiers of government have crossed path and the ultimate burden of multiple taxes are borne by the taxable entity".

High Corporate Tax Rates

It has generally been stated that corporate or company's Tax Rate in Africa is on the high side. Mattern (2010) remarks that foreign investors should know certain things about doing business in Africa. Such things he lists are:- "Africa is not an easy place in which to do business", "Africa is perceived as corrupt" and that companies are often taken off guard by unanticipated taxation issues". He goes ahead to say that high corporate tax rates are common to many African countries. He gives examples of Kenya with corporate Tax Rate 30% and for non-residents 37.5%, Nigeria corporate Tax Rate is 30% and for non-residents is 6% of turnover. Mattern opines that "many African tax systems are outdated and simple, and they lack certainty on the interpretation of complex issues".

Tax Reforms in Africa

Odusola (2006) renewing the need for tax reforms of Nigeria states that some of the objectives of tax reforms in Nigeria include:-

- Ensuring effective protection for local industries;
- Encouraging greater use of local raw materials;
- Enhancing the value added of locally manufactured and primary products;
- Promoting greater geographical dispersion of domestic manufacturing activities
- And most importantly generating increased government revenue for development purposes and running government. He further observes that tax reforms are undertaken among other reasons to: review customs and excise duties; taxation of companies and personal income taxes; expand the range of exemptions and rebates; expand duty drawback schemes and implement Value Added Tax (VAT).

Thisen (2003) says that "several African countries undertook tax reforms within the framework of their structural Adjustment Programmes". He adds that tax reforms by African nations have aimed at achieving "effective revenue generating mechanism that is more fair, more buoyant, and more economically efficient so as to increase the tax ratio to GDP to allow government perform its activities and provide services for the benefits of the community like defense, education health, infrastructure policy, redistribution etc". He summarized the main objectives of tax in Africa countries as:-

- To improve economic efficiency of tax system through lowering and rationalizing tax rates to reduce compliance and administrative costs while expanding the tax bases.
- To expand the tax base by targeting untapped resources in the informal sector.
- To take care of equity in the vertical and horizontal distribution of tax burden.
- To improve administrative efficiency through enhance computerization and reduced revenue leakages.
- To enhance greater reliance of self-assessment system and improve tax payer education
- To enhance use of Value Added Tax (VAT)
- To estimate tax policy capacity including training of tax officials. From all these it is clear that the ultimate goal of tax reforms in Africa is to build a modern tax system that is conducive to sustained economic growth and development.

DISCUSSION

We have seen the harmful practices that inhibit effective taxation in Africa such practices are based on internal factors which Ndikumana and Boyce (2008) narrated as weak tax authorities and administration; the large dominance of informal economy; lack of transparency, numerous tax exemption and pressure from transnational investors and global tax races to the transnational from internal factors are international factors militating against developing country's (including Africa's) efforts to raise revenue. Harmful practices are rife and are detrimental to Africa's efforts at tax efforts. The adverse effects of the existence of tax havens are not hard to imagine. African countries are acting from inherent weak economic system and are left to the whims and caprices of the tax havens.

It is also not difficult to notice biased reportage to the problems of Africans nations. For example Mattern's speech on African tax practices. He cautions that "Africa is also perceived as being corrupt, there are usually restrictive exchange control regulations; companies can face unique risks such as kidnapping of persons, piracy, or blocking of goods at borders; and many companies have hard regrettable experiences with state interference and monopolistic practices or with governments not honouring agreements. Doing business in Africa can also come with social obligations such as the building of schools or hospitals". He concludes that for foreign investors in the continent "the key is to do your home work. Try to anticipate all possible problems and how these could be addressed and overcome". African nations have to deal with issues like this when they are eagerly seeking to develop their countries by influx of foreign direct investments. Against such perception of Africa, one can contrast it with what giant Accounting/Auditing firms are reported to be doing in developed countries. Sikka (2010) reports how US Senate Permanent Sub-committee on Investigation (2003 pp 1-2 and 5) in one of its investigations. The committee observes that internationals "firms are spending substantial resources and forming alliances, and developing the internal and external infrastructure necessary to design, market and implement hundreds of complex tax shelters some of which are illegal............and are able to draw upon the vast resources and reputations of the country's largest accounting firms..............one may wonder if the corrupt Africa leaders are not getting facilitations from outside.

CONCLUSION

African countries are faced by odds in tax practices and implementation of tax reforms. Many of them have started. There should be no relaxing to achieve solution to the harmful tax practices and tax reforms.

RECOMMENDATIONS

African countries may need to go to Mozambique to learn how from them how they are succeeding. Schickinger (2009) reports that "the political commitment of the government of Mozambique for implementing tax reforms is well rooted in the over all Government reform agenda". He further reports that "the tax system of Mozambique corresponds today largely to the international good practices standard in developing countries". Tax Reforms may seek for ways to investigation the activities of International Audit firms operating in developed and developing countries. Sikka (2010) reports about American Congress investigations of some of these firms that have aided mass avoidance schemes in developed countries under guises of tax consultancy and advice. African nation's governments should also take decided steps to curb endemic corruption and enthrone probity benefit from tax reforms.

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